

160 FERC ¶ 61,144  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, and Robert F. Powelson.

Tennessee Gas Pipeline Company, L.L.C.

Docket Nos. CP15-88-000  
CP15-88-001

ORDER APPROVING ABANDONMENT, ISSUING CERTIFICATE,  
AND DENYING REHEARING

(Issued September 29, 2017)

1. On February 13, 2015, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application under sections 7(b) and (c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> for authorization to (1) abandon by sale to its affiliate, Utica Marcellus Texas Pipeline LLC (UMTP), approximately 964 miles of pipeline facilities in Louisiana, Arkansas, Mississippi, Tennessee, Kentucky, and Ohio; and (2) construct and operate pipeline and compression facilities in Ohio and Kentucky to enable Tennessee to continue to provide firm transportation service to its existing customers following the proposed abandonment. As discussed below, the Commission grants the requested authorizations for the Tennessee Abandonment and Capacity Restoration Project (ACRP), subject to certain conditions.

**I. Background and Proposal**

2. Tennessee is a Delaware limited liability natural gas company engaged in the interstate transportation of natural gas. Tennessee's system includes approximately 14,000 miles of pipeline, extending from Texas and Louisiana through Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, Connecticut, Rhode Island, and New Hampshire. Tennessee's system has historically been used to move gas from southern production fields to markets in the northeast, but now operates bidirectionally.<sup>3</sup>

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

<sup>2</sup> 18 C.F.R. pt. 157 (2017).

<sup>3</sup> Tennessee states "the dynamic nature of flows on its system "have recently changed from a historical south-to-north flow to a north-to-south flow from at or near the

**A. Proposed Abandonment and Construction**

3. The project would consist of abandoning pipeline and associated facilities, constructing and operating new and modified pipeline facilities, and adding compression to replace capacity lost to abandonment. The abandonment would require ground-disturbing activities at about 160 sites along the existing pipeline system.

4. Tennessee proposes to abandon in place approximately 964 miles of its 24-inch diameter Line 100 and its 26-inch diameter Line 200, specifically: (1) 677 miles of Line 100-1 from Compressor Station 40 in Natchitoches Parish, Louisiana, to Compressor Station 106 in Powell County, Kentucky; (2) 77 miles of Line 100-3 from Compressor Station 106 to Compressor Station 200 in Greenup County, Kentucky; and (3) 210 miles of Line 200-3 from Compressor Station 200 to mainline valve (MLV) 216 in Columbiana County, Ohio. Activities associated with the proposed abandonment would include: (1) 14 disconnects of the abandoned pipeline and directly associated equipment at existing Compressor Stations 40, 47, 54, 63, 71, 79, 87, 96, 106, 110, 200, 204, 209, and 214; (2) abandonment in place of 82 existing MLVs associated with the abandoned pipeline; (3) 45 sites where taps would be disconnected, abandoned, and relocated, including 12 off- right-of-way tap reconnects; and (4) 80 sites where crossover/connector lines that connect the abandoned pipeline to one or more of Tennessee's adjacent and parallel gas lines would be disconnected and removed or abandoned in place.

5. Tennessee states it has other parallel pipelines proximate to the Line 100 and 200 sections it proposes to abandon, and that by adding looping, compression, and other facilities on these other pipelines, it will be able to continue to meet its existing firm service obligations.<sup>4</sup> Tennessee proposes to construct: (1) 7.7 miles of pipeline in Carter and Lewis Counties, Kentucky, which would connect with its existing Line 100-4, closely parallel the route of its existing Line 100-5, and connect to its existing Line 100-7; (2) four mid-point Compressor Stations 202.5, 206.5, 211.5, and 216.5 on existing Lines 200-1, 200-2, and 200-4, each with one 20,500 horsepower (hp) Solar Titan 130 gas-fired turbine compressor unit to add a total of 82,000 hp in Mahoning, Tuscarawas, Morgan, and Jackson Counties, Ohio; (3) two 16,000 hp Solar Mars 100 gas-fired turbine compressor units, totaling 32,000 hp, at existing Compressor Station 110 in Rowan County, Kentucky; and (4) one 10,771 hp Solar Taurus 70 gas-fired turbine compressor

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northernmost portion" of the pipeline it proposes to abandon. Tennessee's May 18, 2015 Answer at 18-19.

<sup>4</sup> "The multiple looped pipelines that span the length of Tennessee's 100 and 200 Line systems are generally located side-by-side and are tied together at regular intervals allowing all parallel lines to operate together seamlessly." Application at 7.

unit at Compressor Station 875 in Madison County, Kentucky.<sup>5</sup> Tennessee notes that the south-to-north capacity it plans to abandon from Station 40 to Station 87 will not be replaced, because it is no longer needed to meet current and anticipated levels of firm contract demand.

6. To maintain service for existing customers and facilitate construction of new compression, Tennessee proposes to: (1) relocate a pig launcher/receiver at or near MLV 111; (2) make minor modifications at 82 MLV locations; (3) provide 41 new customer taps on its retained pipeline facilities to replace taps on its abandoned pipeline facilities; (4) modify existing compressor station piping and pig launchers/receivers at 14 sites to disconnect them from the abandoned pipeline and reconnect them to the retained pipeline; and (5) replace two short segments of existing pipeline: a 1.0-mile-long, 30-inch-diameter section of Line 100-3 near MLV 53 in Washington County, Mississippi, and a 1.5-mile-long, 30-inch-diameter section of Line 800-1 in Madison County, Kentucky.<sup>6</sup>

7. Tennessee estimates the total cost of the project, including contingency, overhead, and allowance for funds used during construction, will be approximately \$412 million.<sup>7</sup> Tennessee states that UMTP will cover the full cost of the ACRP through contributions in aid of construction payments.

8. Tennessee held an open season from November 11 to December 11, 2013, to solicit potential customer interest in contracting for new or additional firm service that would use existing available capacity from receipt points in Zone 1 to delivery points in Zone 4, i.e., from the southern portion of its system north to Ohio. No bids were presented for the posted capacity. Tennessee notes that to date, no customer has expressed an interest in contracting for the existing available south-to-north capacity on a firm, long-term basis. In view of this, Tennessee proposes to abandon approximately 235,000 dekatherms per day (Dth/d) of south-to-north service south of

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<sup>5</sup> Tennessee is proposing to add a second unit to Compressor Station 875, a compressor station currently under construction with a single 16,000 hp unit. *Tennessee Gas Pipeline Co., L.L.C.*, 156 FERC ¶ 61,157 (2016), *order denying stay*, 157 FERC ¶ 61,154 (2016), *reh'g pending*.

<sup>6</sup> See the Environmental Assessment (EA) at 9 and Table 1.5-2. The maximum allowable operating pressure on these segments has been reduced to comply with U.S. Department of Transportation (DOT) regulations, and by removing and replacing the pipeline along these segments, Tennessee will be able to flow gas through the replaced sections at up to its certificated operating pressure.

<sup>7</sup> Application at 11 and Exhibit K.

Station 87 at Portland, Tennessee. Tennessee asserts that because this capacity is not necessary to meet existing or anticipated customer demand, abandonment will not have an adverse impact on firm customers' services south of Station 87. Tennessee states that north of Station 87, the capacity to be abandoned will be replaced by the compression and pipeline facilities it seeks to construct.

9. Upon completing its proposed construction, Tennessee will disconnect and remove from service the pipeline that it seeks to abandon and sell it to UMTP.<sup>8</sup> UMTP will pay Tennessee the net book value at the time of closing and reimburse Tennessee for costs incurred to disconnect and prepare the abandoned pipeline for transfer, along with the cost to construct the proposed new compression and pipeline facilities. In addition, UMTP will reimburse Tennessee for fuel costs associated with operation of the added compression facilities for ten years from the date the new facilities are placed in service. Tennessee will credit the UMTP fuel reimbursement payment to its customers via its fuel tracker.

10. Tennessee states that UMTP, upon acquiring the abandoned pipeline, will repurpose it to transport natural gas liquids (NGL) and construct additional pipeline facilities as part of its Utica Marcellus Texas Pipeline Project (UMTP Project). Tennessee explains that local markets are unable to absorb the growing volumes of NGLs associated with gas produced from the Marcellus and Utica shale formations, and that current takeaway capacity is insufficient to enable NGLs to reach markets where there is a higher demand, in particular, the Gulf Coast region. Tennessee asserts that UMTP, in repurposing its abandoned pipeline to carry NGLs, will add NGLs takeaway capacity in an efficient and environmentally preferable manner by making use of existing infrastructure and obviating the need to construct new, greenfield NGLs pipelines.

11. In addition to requesting NGA section 7(c) case-specific certificate authority for the proposed pipeline loop, additional compression, and other facilities described above, Tennessee plans to rely on the automatic authorization provided by section 2.55(a) of the Commission's regulations to install auxiliary facilities on its retained pipeline facilities and at its compressor stations to ensure that it will be able to meet existing firm service obligations.<sup>9</sup> Tennessee also plans to rely on the replacement authority provided by 2.55(b) of the regulations and on its Part 157, subpart F, blanket construction certificate

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<sup>8</sup> Tennessee and UMTP executed a Purchase and Sale Agreement the same day Tennessee filed its application. *See* Application, Exhibit U.

<sup>9</sup> 18 C.F.R. § 2.55(a) (2017). As required by section 2.55(a)(2)(iii) of the regulations, Tennessee's Exhibit Z-1 and Resource Report 1, submitted with its application, describe related auxiliary facilities that Tennessee plans to install by relying on the authority provided by 2.55(a). Application at 11-12.

authority to replace several relatively short sections of pipeline at UMTTP's expense to prepare the pipeline being abandoned to be able to transport NGLs. Specifically, Tennessee states that its Purchase and Sale Agreement with UMTTP requires Tennessee to remediate short sections of pipeline containing "wrinkle bends" prior to transfer of the pipeline to UMTTP to the extent Tennessee can do this work without degrading service to its existing customers.<sup>10</sup> Tennessee states it will rely on the authority provided by section 2.55(b) of the regulations when replacement activities would use only areas that were previously disturbed at the time the wrinkle bend pipe was laid, and when replacement activities would need to use previously undisturbed areas, it will rely on its Part 157 blanket certificate authority.

## **B. Tariff and Rates**

12. Tennessee asserts its proposal will not impact its rates because UMTTP will acquire the abandoned pipeline for its current book value and reimburse Tennessee for the cost of facilities constructed to replace the capacity lost as a result of the abandonment. Thus, Tennessee does not intend to alter its existing rates in a future rate proceeding to recover any project construction costs. Tennessee does not intend to alter its tariff, as it intends to provide service, including service that relies on the new facilities it plans to construct, under the same terms and conditions of its existing tariff.

13. Tennessee states that because UMTTP will pay the cost to construct the proposed new facilities, the cost of the new facilities will not be added to its rate base and no return or depreciation expense will be incurred.<sup>11</sup> In addition, UMTTP will mitigate any increased fuel costs associated with the added compression for ten years. Following the proposed abandonment, Tennessee's customers will no longer be responsible for expenses associated with the abandoned pipeline facilities, and Tennessee claims these avoided expenses – operation and maintenance, future replacements, and any eventual

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<sup>10</sup> Application, Exhibit U, Purchase and Sale Agreement section 5. Wrinkle bending was commonly used when the sections of Line 100 and 200 to be abandoned were installed in the 1950s. The technique involved heating pipe and then mechanically bending it to conform to the contour of the land and route before laying the pipe in the ground. Application at 12. Wrinkle bending is no longer commonly used. See the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration's (PHMSA's) regulations at 49 C.F.R. § 192.315 (2017).

<sup>11</sup> Tennessee notes that the unamortized plant costs for the abandoned pipeline will ultimately be removed from its rate base entirely, but because the facilities to be abandoned are older and have been significantly depreciated, their removal from Tennessee's rate base will have a relatively small impact on rate base and related depreciation and return costs.

abandonment liability – will exceed the cost to operate and maintain the new compression, loop, and other facilities that it proposes to construct to replace the capacity of the abandoned pipeline facilities. Tennessee stresses that because the facilities it seeks to abandon were put in place in the 1940s and 1950s, it expects the proposed new facilities will operate more efficiently and economically, resulting “in lower rates over time as these costs savings are reflected in future rate proceedings.”<sup>12</sup> In view of this, Tennessee concludes its proposed project will have no adverse impact on its existing customers’ rates.

14. Based on the avoided costs of maintaining the old pipeline facilities that Tennessee proposes to abandon, and UMTF’s commitment to reimburse Tennessee for costs associated with abandonment and replacement, including increased fuel costs to operate additional compression, Tennessee states that it does not intend to file under NGA section 4 to alter its rates to seek recovery of costs related to its proposal, and thus its proposal will have no adverse impact on its existing customers’ rates.

## **II. Notice, Comments, Interventions, Request for Rehearing, Protests, Answers, and Request for Technical Conference**

15. Notice of Tennessee’s application was published in the *Federal Register* on March 6, 2015, with interventions and protests due by March 23, 2015.<sup>13</sup> The parties listed in Appendix A to this order filed timely, unopposed motions to intervene.<sup>14</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission’s Rules of Practice and Procedure.<sup>15</sup>

16. Motions to intervene out-of-time were filed by Kaiser Marketing Northeast, LLC; CNX Gas Company LLC; Michael Harford; Michael Younger; Allegheny Defense Project (Allegheny); Ohio Valley Environmental Coalition; Center for Biological Diversity; FreshWater Accountability Project; Heartwood, Inc.; and Kentucky

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<sup>12</sup> Application at 16.

<sup>13</sup> 80 Fed. Reg. 12,167 (March 23, 2015).

<sup>14</sup> As indicated in Appendix A, a number of interveners filed comments with their motions to intervene.

<sup>15</sup> 18 C.F.R. § 385.214 (2017).

Heartwood.<sup>16</sup> On October 27, 2016, the Commission issued a notice granting these motions to intervene out-of-time. Tennessee seeks rehearing, arguing against granting the late motions to intervene. We deny Tennessee's request, as the motions to intervene out-of-time were granted when doing so would not cause undue delay or unfairly prejudice or burden any party. The information in the motions has assisted us in our decision-making process, and the Commission's practice in certificate proceedings has generally been to grant a motion to intervene that demonstrates the movant's interest in the proceeding and is filed prior to issuance of the Commission's order on the merits.<sup>17</sup>

17. The parties identified in Appendix B protest Tennessee's application. The majority of the protestors are existing firm transportation customers. These existing customers are concerned principally with the potential for Tennessee's proposal to adversely impact their quality and cost of service.

18. In addition to the comments submitted with motions to intervene, comments were submitted by a number of non-intervening entities, including the U.S. Department of the Interior's Fish and Wildlife Service (Fish and Wildlife Service) and several state and local agencies, organizations, and environmental groups. These non-intervening commenters are identified in Appendix C. Finally, numerous landowners, state and local officials, and environmental groups filed comments focused on potential environmental impacts of Tennessee's proposal, including the safety of converting a pipeline from gas vapor to gas liquids service.<sup>18</sup> These comments and the Commission's staff's response

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<sup>16</sup> Tennessee filed answers opposing the six conservation groups' late-filed motions to intervene, and in turn, Allegheny and the Center for Biological Diversity filed separate responses to Tennessee's answers.

<sup>17</sup> See, e.g., *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106, at P 9 (2016); *Florida Se. Connection, LLC*, 154 FERC ¶ 61,080, at PP 42-43 (2016); and *Belmont Mun. Light Dep't v. Cent. Maine Power Co.*, 156 FERC ¶ 61,198, at P 36 (2016).

<sup>18</sup> NGLs include a range of hydrocarbons heavier than natural gas (methane), including propane, ethane, normal butane, isobutane, pentane, and other heavy hydrocarbons. NGLs are produced both from the refining of crude petroleum and from processing natural gas, which emerges from gas wells mixed with NGLs that are extracted in gas processing plants. The safety of converting Tennessee's abandoned pipeline to NGLs service was frequently cited in objections to the proposed project. We acknowledge this as a legitimate concern, and the cumulative impacts section of the EA considers potential impacts of converting a pipeline from vapor gas to gas liquids service. See EA at 27-36. However, statutory authority to assess, monitor, and mitigate risks associated with interstate NGLs pipelines rests with PHMSA, not the Commission. See 49 C.F.R. pt. 194 (2017). Once we have determined NGA-jurisdictional facilities may be abandoned, our role is limited to ensuring such facilities are retired safely from natural

are discussed in the Environmental Assessment (EA). We summarize and address certain of these comments below.

19. Tennessee submitted an answer to the protests and comments, to which the Tennessee Customer Group filed a reply, as did National Fuel Gas Distribution Corporation jointly with New Jersey Natural Gas Company, NJR Energy Services Company, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas, and PSEG Energy Resources & Trade LLC (Joint Companies). Although our Rules of Practice and Procedure do not permit answers to protests or answers to answers,<sup>19</sup> this provision may be waived for good cause.<sup>20</sup> We do so here as Tennessee's answer and the replies provide information that has assisted us in our decision-making process.

20. The New England Local Distribution Companies (New England LDCs) request that we establish a technical conference to consider (1) options potentially more profitable for Tennessee than the ACRP and (2) whether abandonment could compromise Tennessee's ability to provide the same quality of service or increase its cost to provide service. We find the merits of these matters can be adequately assessed and addressed based on the information in the record in this proceeding; therefore, we find no need to convene a technical conference.

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gas service. While we have jurisdiction under the Interstate Commerce Act to regulate the rates, terms, and conditions for the pipeline transportation of crude oil and petroleum products, including NGLs, we have no role in authorizing the construction or operation of new pipeline facilities or repurposing of abandoned gas pipelines facilities to provide anything other than the transportation of natural gas in interstate commerce. *See, e.g., Mid-Am. Pipeline Co., LLC*, 111 FERC ¶ 61,128 (2005) (exercising jurisdiction under the Interstate Commerce Act to accept and suspend revised rates for the transportation of NGLs); *see also N. Dakota Pipeline Co. LLC*, 147 FERC ¶ 61,121, at P 23 (2014) (approving applicant's proposed tariff structure for oil transportation service on new pipeline facilities and denying protesters' requests that the Commission reject the applicant's tariff proposal based on protesters' allegation that there was no need for the new oil pipeline facilities, stating that "[s]ince the Commission does not have jurisdiction to grant certificates to oil pipelines or otherwise authorize or prevent construction, determining whether a pipeline is needed is not within its authority").

<sup>19</sup> 18 C.F.R. § 385.213(a)(2) (2017).

<sup>20</sup> 18 C.F.R. § 385.101(e) (2017).

### III. Discussion

21. Since Tennessee seeks to abandon, construct, and operate facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, its proposal is subject to the requirements of subsections (b), (c), and (e) of NGA section 7.<sup>21</sup>

#### A. Abandonment

22. NGA section 7(b) provides for the abandonment of jurisdictional facilities or services if we find “that the present or future public convenience or necessity permit such abandonment.”<sup>22</sup> The burden of proof is on a company to show its proposed abandonment is consistent with the public interest.<sup>23</sup> This does not mean that abandonment will not be permitted if there is any harm to any narrow interest. Rather, we take a broad view, and weigh benefits against detriments on a case-by-case basis.<sup>24</sup> If existing firm customers seek to continue to receive certificated firm services and we find that the proposed abandonment will not jeopardize the continuity or stability of existing firm services,<sup>25</sup> we generally defer to a company’s business judgment and permit abandonment.<sup>26</sup>

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<sup>21</sup> 15 U.S.C. §§ 717f(b), 717f(c), and 717f(e) (2012).

<sup>22</sup> 15 U.S.C. §717f (b) (2012).

<sup>23</sup> See, e.g., *Michigan Consol. Gas Co. v. FPC*, 283 F.2d 204, 214 (D.C. Cir. 1960) and *Transcon. Gas Pipe Line Corp. v. FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973). In *Pennsylvania Pub. Util. Comm'n v. FERC*, 881 F.2d 1123, 1127 (D.C. Cir. 1989), the court observed that “under the public convenience and necessity test applicants ha[ve] the burden of establishing only that the public interest would not be disserved by the abandonment; affirmative proof of benefit to the public interest is not necessary to justify an abandonment” as the Commission has explicitly shifted the identification of the public interest away from the interest of only specific customers to the interest of the market as a whole (citations and quotations omitted).

<sup>24</sup> See, e.g., *S. Nat. Gas Co.*, 50 FERC ¶ 61,081, at 61,222 (1990).

<sup>25</sup> See, e.g., *El Paso Nat. Gas Co.*, 148 FERC ¶ 61,226, at P 12 (2014) (citations omitted) (*El Paso*).

<sup>26</sup> See, e.g., *Transwestern Pipeline Co., L.L.C.*, 140 FERC ¶ 61,147, at P 13 (2012) (*Transwestern*) (citing *Trunkline Gas Co.*, 94 FERC ¶ 61,381, at 62,420 (2001) (*Trunkline*) and *Pennsylvania Pub. Util. Comm'n v. FERC*, 881 F.2d 1123, 1127).

## 1. Continuity of Service

23. Tennessee claims its proposal presents no continuity of service issue because the firm capacity currently under contract that will be lost as a result of abandonment will be replaced by the construction of new facilities. Tennessee stresses the abandoned facilities will not be taken out of service until the new facilities required to maintain the amount of capacity necessary to meet existing firm service obligations are placed in service. Tennessee states that while the 235,000 Dth/d of south-to-north capacity from Compressor Station 40 to Compressor Station 87 will not be replaced, this capacity is currently unsubscribed and is no longer needed to meet firm service demands.

24. Our review of flow diagrams and hydraulic models of the Tennessee system confirms that the new capacity that will be provided by the proposed new compression and pipeline facilities will be sufficient to enable Tennessee to meet its firm service obligations after abandonment. Tennessee has demonstrated its proposed facilities will ensure that it will have the amount of capacity it will need north of Compressor Station 87 to maintain existing firm service. Following the proposed abandonment of the designated sections of Lines 100 and 200, Tennessee will retain three parallel mainlines along the length of its system, which in combination with the proposed new facilities, will enable Tennessee to fulfill its firm service demands with comparable continuity and stability. Moreover, because Tennessee avers it will not abandon any of its pipeline facilities north of Compressor Station 87 until its new facilities are in operation, customer service should not be compromised by its proposal. In view of this, we conclude the ACRP will have no adverse impact on existing customers' continuity of service.

25. In addition to finding the proposed new facilities will be sufficient to replace capacity lost to abandonment north of Compressor Station 87, we find the 235,000 Dth/d day of capacity south of Compressor Station 87 that Tennessee proposes to permanently abandon will not be needed to meet existing firm service demands. As previously described, Tennessee sought customers for this capacity in an open season in 2013, but received no binding bids. Since then, Tennessee has posted this capacity on its electronic bulletin board (EBB), but has yet to receive a request for long-term firm service.<sup>27</sup> This lack of customer interest demonstrates that south-to-north capacity from Compressor Station 40 to Compressor Station 87 is no longer needed to satisfy firm service demands.

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<sup>27</sup> Tennessee remarks that “none of the Protestors or any other shippers submitted a binding bid for the Abandoned Capacity in the open season” or “expressed interest in contracting long-term for the Abandoned Capacity at Tennessee’s maximum rates.” Tennessee’s May 18, 2015 Answer at 8.

Consequently, there is no reason to require that Tennessee continue to operate facilities to maintain this capacity.<sup>28</sup>

26. Commenters and protesters do not disagree with Tennessee's assessment that following the proposed abandonment, the planned new facilities will permit it to continue to provide firm service at current levels. However, concerns are expressed that the project could limit Tennessee's ability, and increase its costs, to add capacity in the future. For example, the East Kentucky Power Cooperative (East Kentucky) argues that Tennessee's request to permanently abandon pipeline facilities south of Compressor Station 87 does not take into account (1) the electric industry's increasing reliance on gas-fired generation as coal-fired units are phased out and (2) the effects of the PJM Interconnection, L.L.C. (PJM) request to revise its tariff in a manner that East Kentucky contends will encourage electric generators to favor the use of firm over interruptible gas transportation.<sup>29</sup> East Kentucky argues the Commission should not approve the proposed project unless Tennessee can show that it will be able to meet anticipated requests for firm service after abandonment.<sup>30</sup> East Kentucky urges the Commission to require Tennessee to evaluate what it expects will be an increase in demand for firm transportation on Tennessee's system for gas to fuel electric plants, pointing out that to do so would be consistent with Commission policy to encourage coordination between

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<sup>28</sup> This approach is consistent with *Tallgrass Interstate Gas Transmission, LLC*, 144 FERC ¶ 61,197 (2013) (*Tallgrass*) and *Trunkline*. In those cases, like the proposal here, a company requested approval to remove hundreds of miles of gas pipeline from service to be repurposed to carry another hydrocarbon commodity. Because there were no prospective customers seeking additional firm service, and because existing firm customers would continue to receive comparable service after abandonment, we approved the requested abandonments. In *Trunkline*, in response to claims that it was likely the abandoned facilities would be needed to meet future demands for additional service, we replied that we "cannot require Trunkline to hold unwanted transmission capacity in reserve awaiting the arrival of potential firm demand that may not materialize." *Trunkline*, 94 FERC at 62,421. We concluded that "[w]here continued gas service will not be jeopardized, the Commission has exercised its abandonment authority to permit an interstate pipeline to rationalize its gas plant and operations for various business reasons." *Id.* at 62,420.

<sup>29</sup> See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, *order denying clarification and granting reh'g in part*, 152 FERC ¶ 61,064 (2015), *order on reh'g and compliance*, 155 FERC ¶ 61,157 (2016).

<sup>30</sup> East Kentucky Protest at 3 (citing *Tallgrass*, 44 FERC ¶ 61,197 at P 21).

the gas and electric industries.<sup>31</sup> Similarly, the Joint Companies and New England LDCs argue that capacity lost to abandonment may be needed to meet future increases in the volumes of Appalachian shale gas production transported south to liquefied natural gas (LNG) export terminals along the Gulf of Mexico. In view of this, they suggest that as an alternative to abandonment, Tennessee should consider modifying its system's facilities to enable it to flow greater volumes of gas north-to-south.

27. We do not dispute that gas may displace coal as a fuel source for power generation, or that Appalachian gas may move south to markets in the Gulf region. However, these possible outcomes, and any number of other hypothetical scenarios that could increase the demand for transportation on Tennessee's system, are too speculative to provide a basis for finding that the *future* public convenience or necessity does not permit Tennessee's proposed abandonment. Thus, our determination of whether to approve Tennessee's proposed abandonment depends primarily on whether Tennessee will be able, after its proposed abandonment and installation of new facilities, to meet current and reasonably foreseeable service demands, and we find Tennessee will be able to do so.

28. There are no claims that post-abandonment the proposed new facilities will prove insufficient to replicate current firm service (there are concerns about the quality of service provided via the new facilities, which we address below), but there are claims that abandonment could render Tennessee unable to meet future service requests. When we consider a company's capability to meet future demands, we start with a company's current firm service obligations then add to that firm service for which prospective customers have signed binding commitments. In this case, there are no pending requests for new firm service on the sections of the pipeline that will be abandoned, and we do not expect there to be any, given that Tennessee has not been able to secure customers for additional firm service despite holding an open season and posting unsubscribed capacity on its EBB. Accordingly, we conclude Tennessee's ACRP will have no adverse impact on its ability to meet current and reasonably foreseeable firm service demands.

29. While the commenters argue the ACRP could limit Tennessee's ability and increase its costs to add capacity in the future, we are reluctant to substitute our business judgment for a pipeline company's own business judgment regarding how much capacity it will need to meet anticipated firm service requests and whether continuing to maintain facilities not needed to satisfy current service obligations is an economical plan for

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<sup>31</sup> *Citing Centralized Capacity Markets in Reg'l Transmission Orgs. and Indep. Sys. Operators/Winter 2013-2014 Operations and Market Performance in Reg'l Transmission Orgs. and Indep. Sys. Operators*, 149 FERC ¶ 61,145, at P 20 (2014); *California Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,202 (2014); and *Posting of Offers to Purchase Capacity*, 146 FERC ¶ 61,203 (2014).

meeting future requests for firm service.<sup>32</sup> As discussed above, in making its business decision, Tennessee has taken into account costs it believes it will avoid by not having to maintain the older pipeline facilities it proposes to abandon and UMTF's commitment to reimburse Tennessee for costs associated with the abandonment, replacement facilities, and increased fuel costs to operate additional compression.<sup>33</sup> Because we do not interpret our NGA section 7(b) mandate to determine the present or future public convenience or necessity of a proposed abandonment as extending to weighing alternative uses for a company's physical assets, we will not second guess the prudence of Tennessee's decision to abandon a portion of its system. Further, when a pipeline company makes the economic decision to seek authorization to abandon facilities and capacity it does not need to meet existing or anticipated firm service obligations, approval of the abandonment can promote the goal "to assure that pipelines maintain the optimum amount of capacity to meet demand, while avoiding unneeded capacity that can create false price signals and weaken the long-term gas transportation market."<sup>34</sup> It is reasonable to assume that Tennessee would have elected to retain the facilities it proposes to abandon if it was as confident as the protesters that there would be a swell in demand for north-to-south service that would justify repairing and maintaining these facilities until the day this demand materializes. Tennessee points out that prior to submitting its application in this proceeding, it tried to market an expansion that would have made use of the pipeline facilities it seeks to abandon, but was unable to develop a project

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<sup>32</sup> See, e.g., *Nat. Gas Pipeline Co. of Am. LLC*, 151 FERC ¶ 61,232, at P 22 (2015) (stating that "[i]f the Commission finds that a pipeline's proposed abandonment of particular facilities will not jeopardize continuity of existing natural gas transportation services, it will defer to the pipeline's own business judgment").

<sup>33</sup> See *El Paso*, 148 FERC ¶ 61,226 at P 20:

The record of this proceeding, including the gas flow diagrams provided, supports a conclusion that El Paso will be able to continue service at the present levels without using the remaining Jal Lines segments ... El Paso has demonstrated that the Line 1000 and Line 1001 ... would not be instrumental in any future expansion of that facility. We also find that ConocoPhillips has not described any future demand or expansion that would require using the Jal Lines segments.

<sup>34</sup> *Trunkline*, 94 FERC at 62,420 (approving the abandonment of 720 miles of gas pipeline facilities by transfer to an affiliate that would repurpose the facilities to transport refined petroleum products, explaining that "[w]here continued gas service will not be jeopardized, the Commission has exercised its abandonment authority to permit an interstate pipeline to rationalize its gas plant and operations for various business reasons").

competitive with the offerings of other interstate pipelines, and consequently, as an alternative, it proposed the ACRP.

30. Current customers acknowledge that after the proposed abandonment Tennessee will be able to offer the same volume of firm service that it is now providing, but question whether the quality of the service, which will depend on adding new compression, will be less reliable or flexible than service that did not depend on additional compression. They are also concerned that if the planned NGLs conversion comes to pass, then “a disruption or even a leak in the liquids pipe” could adversely affect the operation of Tennessee’s remaining, adjacent gas pipelines.<sup>35</sup> The National Grid Gas Delivery Companies (National Grid) question whether the proposed project could diminish Tennessee’s ability to provide service during periods of routine maintenance and to provide service for firm customers at secondary receipt and delivery points specified in their service agreements.

31. As discussed above, the Commission’s staff’s review of flow diagrams and hydraulic models of the Tennessee system confirms that Tennessee will continue to be able to meet its firm service obligations once the proposed capacity-restoration facilities are in service. Even after abandoning sections of one pipeline loop, Tennessee will be left with other parallel pipelines, and we expect the redundancy provided by being able to rely on multiple pipelines to ensure the proposed abandonment will not degrade the service firm customers currently receive. All gas transported by pipeline moves as a result of pressure differentials, and gas is only rarely driven over interstate distances solely by wellhead pressure. Transportation on the Tennessee system depends on pressure provided by compressor facilities, and we find nothing remarkable about the proposal to add compression to ensure current service can continue. Adding compression should not degrade the quality of Tennessee’s service, as this service has always relied on compression. Further, adding compression should not increase the risk of operating Tennessee’s system, because the system will continue to function within its certificated pressure range. Increasing compression is a routine means to move greater volumes of gas through a given section of pipeline, and we have permitted companies to add compression to restore capacity lost as a result of abandoning a pipeline.<sup>36</sup>

32. Tennessee states it will operate its system’s facilities following the proposed abandonment “to minimize the impact of future maintenance or repairs.” Tennessee also notes that because it “must provide reservation charge credits to firm shippers if [it] is unable to provide firm transportation service from and to primary points,” it “is

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<sup>35</sup> Joint Companies’ Protest at 12.

<sup>36</sup> See, e.g., *Dominion Transmission, Inc.*, 98 FERC ¶ 62,186 (2002).

incentivized to minimize the duration of any service disruption during maintenance or repair events.”<sup>37</sup> We concur.

33. With respect to UMTF’s plan to convert the abandoned pipeline to NGLs service and that pipeline’s location adjacent to the pipelines Tennessee will continue to own and operate, we find this represents no more of an impediment to Tennessee’s ability to maintain reliable service than the proximity of the pipelines Tennessee will retain. It has been and will continue to be the case that a mishap on one of the parallel pipelines has the potential to interfere with operations on another. As noted, PHMSA, not the Commission, is the agency authorized to oversee safety-related aspects of gas vapor and gas liquid pipelines. Our conclusions in this proceeding are premised on the expectation that in order for the abandoned pipeline segments to be returned to service to carry NGLs, the repurposed facilities will have to be able to comply with PHMSA requirements.

34. Regarding secondary firm service, Tennessee avers its proposal will not result in the loss of any receipt or delivery meters available to its current firm customers on a primary or secondary basis, and that following abandonment these customers will retain the right to nominate the same secondary receipt and delivery points, pursuant to the scheduling priority of secondary service under Article IV of the General Terms and Conditions of its tariff. Tennessee acknowledges secondary point service may be curtailed after abandonment. However, as Tennessee emphasizes, service at the secondary receipt and delivery points specified in a customer’s contract is available only to the extent capacity is available at those points. Therefore, we do not consider the potential impacts of Tennessee’s proposal on its firm customers’ ability to receive service at the secondary receipt and delivery points specified in their service agreements as a degradation of service.<sup>38</sup> In this case we are satisfied that the continuity of firm service is assured, and that the ACRP will not degrade Tennessee’s ability to continue to provide its current firm customers with comparably stable and safe service at their primary receipt and delivery points.

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<sup>37</sup> Tennessee’s May 18, 2015 Answer at 11.

<sup>38</sup> *See, e.g., S. Nat. Gas Co.*, 95 FERC ¶ 61,220, at 61,741 (2001) (explaining that firm service using a point as a primary point has priority over firm service using the same point as a secondary point; service at a secondary point is subject to bumping during the scheduling process by customers using that point as their primary point; therefore, the potential for the proposed project to provide service for new expansion shippers and thereby limit existing customers’ ability to use their secondary receipt points would not constitute a degradation of existing customers’ service).

## 2. Costs and Rates

35. Objections to the ACRP's potential to adversely impact rates were submitted by the New England LDCs, the Joint Companies, and Atmos Energy Corporation (Atmos), and by Consolidated Edison Company of New York, Inc. jointly with Orange and Rockland (ConEd). They allege the proposed project will have an adverse impact on operation and maintenance (O&M) costs and contend Tennessee did not account for other costs beyond ad valorem taxes, such as allocated corporate overhead costs and the capacity-restoration facilities' retirement costs. In response, Tennessee affirms its belief that the impact of its proposal on its O&M costs will be relatively minor and that the project would significantly reduce sustaining capital expenses, since it expects the proposed new facilities that will be paid for by UMTP will prove less costly to maintain the old pipeline facilities that will be abandoned by transfer to UMTP.

36. Protesters are concerned there may be other potential operating cost increases, such as administrative and general (A&G) expenses. They note the Tennessee application does not specify the accounting treatment for the proposed replacement facilities and are apprehensive the initial cost of the new facilities could lead to increases in cost responsibility for any corporate overhead costs based on gross plant.

37. Regarding its cost of service, Tennessee replies that depreciation, return, and income taxes associated with the facilities it proposes to abandon will be greater than the net increase in ad valorem taxes associated with its proposed capacity-restoration facilities.<sup>39</sup> Tennessee adds that the anticipated increase in ad valorem taxes will be more than offset by the fact that there will be no depreciation and/or negative salvage expense or return on rate base associated with the replacement facilities. Tennessee estimates that after its proposed project is in operation, it will realize a net decrease in its cost of service, O&M expenses, and sustaining capital expenses over the next 20 years.<sup>40</sup> We accept Tennessee's showing that its proposal would result in an immediate and sustained decrease in costs, and thus would not adversely impact current firm customers through and beyond the terms of their current contracts. However, Tennessee will need to demonstrate the ACRP's anticipated cost of service savings have been realized, or that the ACRP has provided system-wide benefits, if it seeks to modify rates in a future NGA

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<sup>39</sup> *Id.*, Exhibit C, Estimated Cost of Service Impact (calculating an anticipated reduction in the cost of service of \$4,178,200 per year).

<sup>40</sup> *Id.*, Exhibit D, Twenty Year Forecast of the Potential Impact of the Project on Tennessee's O&M and Sustaining Capital Expenses (calculating an aggregate net O&M cost of approximately \$2.6 million over 20 years, or approximately \$130,000 per year, and a reduction in sustaining capital expenses resulting in an aggregate savings of approximately \$96.5 million over 20 years, or approximately \$4.8 million per year).

section 4 proceeding in a manner that would place current customers at risk for the recovery of unreimbursed ACRP costs.

38. On May 15, 2015, in Docket No. RP15-990-000, Tennessee filed an Offer of Settlement outside the context of any existing Commission proceeding. Article XI of the Settlement addresses rate adjustments in the event Tennessee spins down or spins off facilities meeting certain criteria. Article XI states that Tennessee:

shall file a limited Section 4 filing to adjust the Settlement Rates in effect at the time of the spin-down or spin-off to reflect the cost of service effect of the removal of depreciation (including negative salvage) associated with the spun-down or spun-off facilities and the return and related income taxes associated with such facilities based on the value of the sales proceeds received by [Tennessee].<sup>41</sup>

39. Article XI of the Offer of Settlement also addressed Tennessee's ACRP application filed in this docket on February 13, 2015, stating that:

In addition to the cost of service effect for depreciation, return and related income taxes associated with the spun-down or spun off facilities, the adjustment associated with the proposed Abandonment and Capacity Restoration Project in Docket No. CP15-88-000 shall also reflect the net cost of service effect of additional ad valorem taxes associated with the Replacement Facilities and Abandoned Line, as those terms are defined in Tennessee's abbreviated application in CP15-88-000.<sup>42</sup>

40. Finally, Article X provides that Tennessee may submit an NGA section 4 tariff filing to propose changes to its Fuel Adjustment Mechanism required as a result of any final Commission order in this or any other certificate proceeding.

41. As the result of the Settlement, Tennessee agreed to reduce its system rates applicable to its existing customers for most of the fixed costs associated with the abandoned facilities, and agreed that any changes to its Fuel Adjustment Mechanism must be the subject of a future NGA section 4 rate change filing. The above-noted protestors were identified in Appendix E of the Settlement as parties actively supporting

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<sup>41</sup> See Tennessee's May 15, 2015 Petition for Approval of Settlement at 15.

<sup>42</sup> *Id.*

or not opposing the Settlement. We approved the Settlement as unopposed,<sup>43</sup> and in view of this, we find that Tennessee, Atmos, the New England LDCs, the Joint Companies, and ConEd have agreed on a process to manage the costs of the abandoned and new facilities and associated rate adjustments. Consequently, we dismiss cost and rate matters that are subject to the Settlement as moot.

### 3. Reimbursement of Fuel Costs

42. To replace the capacity of the pipeline facilities that Tennessee seeks to abandon and transfer to UMTP, Tennessee proposes to install additional compression facilities on its adjacent looped pipelines. The proposed compression would be gas-fueled and installed between Compressor Station 40 and Compressor Station 216. Tennessee states that UMTP will mitigate any increased fuel costs associated with the added compression for the first ten years of operation. As described by Tennessee,<sup>44</sup> it will calculate the fuel credit by multiplying the amount of gas used to operate all gas-fueled compression facilities between Compressor Station 40 and Compressor Station 216 by the ratio of the total horsepower of the new compression facilities proposed in this proceeding to the total horsepower of all gas-fueled compression facilities between Compressor Station 40 and Compressor Station 216, including the compression facilities proposed here and any other new gas-fueled compression facilities that may be added. Tennessee states that its fuel tracker filings will include workpapers detailing the derivation of the fuel factor and fuel quantities credited to the fuel tracker.<sup>45</sup>

43. The commenters raise concerns regarding Tennessee's proposed fuel credit mechanism because it would not account for any increased use of existing gas-fueled and electric-powered compression facilities that may result from Tennessee's abandonment of pipeline facilities and reliance on compression to transport more gas through its remaining pipeline facilities. They also assert that Tennessee's abandonment of existing facilities and construction of new facilities may cause gas and electric use at Tennessee's compressor stations to change in unpredictable ways, and that Tennessee therefore has made an overly simplistic assumption that increased fuel costs to operate the new compression facilities will be proportional to their horsepower. The commenters emphasize that Tennessee has not performed a gas fuel electric power study or provided any other information to support a finding that its proposal will not result in its existing compression facilities needing to be operated more frequently. They also object to

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<sup>43</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 152 FERC ¶ 61,009 (2015). The Settlement became effective on November 1, 2015. See *Tennessee Gas Pipeline Co., L.L.C.*, Docket No. RP15-990-001 (Oct. 8, 2015) (unpublished letter order).

<sup>44</sup> Application at 17.

<sup>45</sup> *Id.*

Tennessee's proposal to end fuel crediting after ten years when its reimbursement agreement with UMTP ends, notwithstanding that the proposed compression facilities will still be need to be operated to replace the pipeline capacity that Tennessee seeks to abandon.

44. We find Tennessee's formula ensures its customers are credited for gas used as fuel to operate the proposed new compression facilities. However, we agree with the commenters that the formula does not assure that customers will not be allocated any increased costs to operate Tennessee's existing electric and gas-fueled compression facilities resulting from the proposed ACRP. We also agree with the commenters that it is not clear that Tennessee should not be required to continue providing a fuel credit to its customers following the end of its ten-year reimbursement agreement with UMTP. However, Tennessee has not proposed and we are not approving any tariff revisions that would relieve Tennessee of its burden to prove that any proposal to change its gas fuel tracker or to recover its costs of operating electric compression facilities in future NGA section 4 proceedings is just and reasonable. While Tennessee asserts its belief that over time abandoning older pipeline facilities and adding new compression on its retained pipelines will result in cost savings that will benefit its customers, there is no basis for finding that its proposed construction is needed at this time to maintain reliable service for its customers. Thus, Tennessee's proposed construction to replace capacity it seeks to abandon is not the type of replacement project for which Commission policy recognizes it will be appropriate for existing customers to bear the costs.

45. In view of the above considerations, Tennessee's annual fuel tracker filings under NGA section 4 will need to include workpapers and other information sufficient to support findings that proposed fuel credits to its customers are appropriate to account for fuel used by the new compression facilities proposed in this proceeding. Tennessee's fuel tracker filings and any other NGA section 4 filings in which it proposes changes to recover increased costs to operate its current electric and gas-fueled compression facilities also will need adequate supporting information to demonstrate that Tennessee has not included costs attributable to increased reliance on those compression facilities that would not have been necessary but for its need to make up for pipeline capacity that it seeks to abandon in this proceeding.

#### **4. Purchase and Sale Agreement**

46. Protestors object to aspects of the Tennessee-UMTP Purchase and Sale Agreement. National Grid, Atmos, the New England LDCs, Joint Companies, and ConEd are concerned Tennessee may subsequently seek to pass through to its customers future liabilities attributable to the abandoned facilities, e.g., costs due to adverse environmental impacts resulting from UMTP's use of the subject pipeline facilities to

transport NGLs or costs UMTF incurs in retiring the pipeline facilities.<sup>46</sup> While it presumably will be years before Tennessee retires its proposed new compression and pipeline facilities from natural gas service, it also may be years before the eventual retirement of Tennessee's abandoned pipeline facilities if UMTF successfully converts those facilities to NGLs service.

47. The Joint Companies and ConEd ask us to require Tennessee to quantify projected retirement costs for both sets of facilities so that they can be compared and taken into account in assessing the potential for the ACRP to lead to Tennessee seeking to recover unnecessary costs from its gas customers in the future and thereby in effect subsidize UMTF's use of Tennessee's abandoned pipeline facilities to transport NGLs. They also ask that we require Tennessee to have UMTF post surety and maintain insurance as a guarantee of its ability to perform decommissioning work at the end of the useful life of the pipeline facilities that it intends to acquire, a condition Tennessee imposed on the acquiring party in a prior abandonment by sale.<sup>47</sup> The New England LDCs state that the application does not include information concerning UMTF's creditworthiness or financial stability, and suggest that since Tennessee and UMTF are Kinder Morgan

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<sup>46</sup> Protesters point to section 13(a) of the Purchase and Sale Agreement, which states: "Upon each Staged Closing, Buyer agrees to assume and pay, perform, fulfill and discharge all claims, costs, expenses, liabilities and obligations related to ownership or operation of the Assets that were subject to the Staged Closing after the Effective Time." Application, Exhibit U at 10. Protesters add that under section 7(e) of the Agreement, Tennessee warrants to the best of its knowledge that "the Assets are in full compliance with all applicable Environmental Laws" and agrees to "indemnify, defend, and hold harmless Buyer, its successors and assigns, from and against any and all claims, losses, damages, penalties, and costs, including but not limited to reasonable attorney, engineering, expert, or other professional fees, arising out of or resulting from a breach of the representations and warranties set forth in this Section." Application, Exhibit U at 5.

<sup>47</sup> The protesters reference Tennessee's agreement with Kinetica Partners, LLC (Kinetica) for Tennessee's sale of certificated gathering facilities in Louisiana and the Gulf of Mexico to Kinetica, which was authorized by the Commission in 2013. *Tennessee Gas Pipeline Co., L.L.C.*, 143 FERC ¶ 61,196 (2013), *order denying reh'g and reconsideration and granting clarification*, 147 FERC ¶ 61,196 (2014). Tennessee asserted in the proceeding that its sale of underutilized pipeline facilities would reduce its potential for future liability when the facilities were ultimately decommissioned. *Tennessee Gas Pipeline Co., L.L.C.*, 143 FERC ¶ 61,196 at P 53. Together with the abandonment application, Tennessee submitted a settlement agreement with many of its customers. Article IV of the settlement described the potential environmental and other liabilities that Kinetica would be assuming for the eventual decommissioning of the subject facilities. *Id.* P 259.

subsidiaries, the Purchase and Sale Agreement should clarify whether the parent company will be assuming any liability or acting as a guarantor. Finally, the New England LDCs ask Tennessee to show that in conveying facilities to its affiliate, UMTP is not receiving preferential treatment that may come at the expense of gas customers.<sup>48</sup>

48. Tennessee acknowledges it has not done a study to project and compare the costs of retiring its proposed capacity-restoration facilities at the end of their useful life and the costs of retiring the pipeline facilities it seeks to transfer to UMTP when they are no longer used for any service. However, Tennessee anticipates, based on past experience, that the ultimate cost to retire the underground pipeline in place will exceed the cost to retire its proposed capacity-restoration facilities, which are primarily above-ground compression facilities.<sup>49</sup> The Purchase and Sale Agreement makes UMTP responsible for the cost of decommissioning the underground pipeline facilities it plans to acquire from Tennessee, with the only exception, as noted above, being the condition that Tennessee could be responsible for any additional decommissioning costs that are the result of its failure to disclose any knowledge that its pipeline facilities are not in full compliance with all applicable environmental laws in effect at the time of transfer to UMTP.<sup>50</sup> We find nothing exceptional or objectionable about the agreement making Tennessee responsible for potential liabilities that might arise as result of its failure to disclose knowledge it had of the subject pipeline facilities failing to comply with all applicable environmental laws.<sup>51</sup> Since there is no basis for assuming Tennessee will have any responsibility for costs to decommission the pipeline facilities transferred to UMTP at the end of their useful life, we reject the request that we condition approval of Tennessee's

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<sup>48</sup> New England LDCs' Protest at 8.

<sup>49</sup> Tennessee references a study included in its last rate case in 2011 in Docket No. RP11-1566, which projected higher costs to retire underground pipeline than above-ground compression facilities. Tennessee's May 18, 2015 Answer at 15 and the Retirement Cost Study attached thereto as Exhibit E.

<sup>50</sup> Application, Exhibit U, Purchase and Sale Agreement, section 7(e).

<sup>51</sup> As noted, protesters also express concerns regarding section 13(a) of the Purchase and Sale Agreement, which we also find reasonable since it merely makes Tennessee responsible for cost liabilities attributable to the period during which it owned and operated the pipeline facilities it plans to sell to UMTP, even if such liabilities are not identified until after the facilities have been acquired by UMTP. Our approval of the abandonment is not, however, a predetermination that Tennessee will be able to pass any such cost through to its shippers. The Commission will address such questions when and if they arise.

proposal on it requiring UMTP to post surety and maintain insurance as a guarantee of its ability to perform decommissioning work.

49. We do not agree with the New England LDCs that Tennessee needs to provide additional evidence that its affiliate UMTP is not receiving preferential treatment under their Purchase and Sale Agreement at the expense of natural gas customers. UMTP will pay Tennessee the net book value for the pipeline facilities it is purchasing and reimburse Tennessee for the cost of preparing the pipeline facilities for UMTP's use in transporting NGLs. UMTP has also agreed to reimburse Tennessee for the cost of constructing the compression and other facilities which will ensure Tennessee will have sufficient system capacity to meet its firm service obligations.

50. We also do not agree that it is necessary to condition approval of Tennessee's proposal on Kinder Morgan – the parent of both Tennessee and UMTP – assuming liability or acting as a guarantor of UMTP's reimbursement commitments. As discussed below, there will be no presumption of rolled-in rate treatment for any costs resulting from Tennessee's proposal. Therefore, Tennessee will bear the risk of any failure on UMTP's part to satisfy the reimbursement commitments.

#### **B. NGA Section 7(c) Certificate Authorization**

51. To provide guidance on how to evaluate proposals to construct new facilities, we rely on a policy statement that establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.<sup>52</sup> The *Certificate Policy Statement* explains that in deciding whether to authorize the construction of major new facilities, we balance public benefits against 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 the construction of new facilities.

52. Under this policy, the threshold requirement in establishing the public convenience and necessity for proposed projects is that the applicant must be prepared financially to support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market area and their captive customers, and landowners and communities affected by the location of new facilities. If residual

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<sup>52</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (*Certificate Policy Statement*).

adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.

53. Tennessee observes that because UMTP's reimbursements will be treated for accounting purposes as a contribution in aid of construction, current customers will not be subject to a potential rate base increase as a result of the proposed project. Based on UMTP's reimbursement commitments and the likelihood that the proposed new compression and pipeline facilities will be less costly to maintain than the pipeline facilities that Tennessee seeks to abandon, Tennessee believes its ACRP will result in long-term cost savings for its customers. However, Tennessee has not provided sufficient evidence to support a finding that its ACRP will definitely result in long-term savings for its customers or that its proposed addition of compression and construction of new pipeline loop facilities is needed at this time to maintain reliable service for its customers (in the absence of the abandonment). Rather, Tennessee's proposed construction is predicated on its desire sell a significant portion of its existing pipeline system to UMTP for NGLs transportation. Under these circumstances, Tennessee's proposed abandonment of existing facilities and construction of new facilities to restore the abandoned facilities' capacity is not the type of replacement project for which Commission policy provides a presumption of rolled-in rate treatment.<sup>53</sup> Therefore, as discussed above, Tennessee will (1) be responsible for any abandonment and construction costs that are not fully reimbursed by UMTP, and (2) have the burden of proof in any future NGA section 4 rate proceeding to demonstrate that its ACRP has resulted in sufficient system-wide benefits to justify the recovery of any unreimbursed project-related costs from its customers. As also discussed above, Tennessee will have the burden of proof in future fuel tracker proceedings to demonstrate that any proposed changes will not result in its customers subsidizing the fuel for the additional compression proposed in this proceeding or any increase in fuel use by its existing compression facilities resulting from its decision to abandon and sell its pipeline to UMTP. Tennessee's acceptance of the certificate granted by this order will constitute its acknowledgement of these risks and satisfy the *Certificate Policy Statement's* threshold

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<sup>53</sup> See the *Certificate Policy Statement*, 88 FERC ¶ 61,227 at n.12:

Projects designed to improve existing service for existing customers, by replacing existing capacity, improving reliability or providing flexibility, are for the benefit of existing customers. Increasing the rates of the existing customers to pay for these improvements is not a subsidy.

requirement that an applicant be prepared to support a proposed project financially without relying on subsidization from existing customers.

54. We find Tennessee's proposal will not adversely affect existing customers' current service or the operational capabilities and conditions of Tennessee's system.<sup>54</sup> The pipeline facilities to be abandoned will remain in service until the proposed new facilities are placed in service to maintain capacity sufficient to satisfy all of Tennessee's firm service obligations. We also find the proposed ACRP will not adversely affect any other company or its captive customers because the project is not intended to replace existing customers' service on any other existing pipeline. No other existing pipelines in the market area or their customers have protested the application.

55. Most of the proposed 7.7-mile-long segment of loop line would be located adjacent to an existing right of way containing Tennessee's mainline facilities which can be used in constructing the proposed loop line, thereby reducing the width of the additional right of way that would be needed. The proposed compression facilities would be within the fence lines of Tennessee's existing compressor stations or on other land it already owns. In view of this, we find that the proposed project has been designed to minimize the need to rely on eminent domain and to minimize impacts on landowners and communities.

56. Based on our findings that Tennessee will be at risk for any costs associated with its proposed project that are not reimbursed by UMTP, that the project will not result in adverse effects on existing customers' services or other pipelines and their captive customers, and that Tennessee has designed its project to minimize adverse effects on landowners or communities, we conclude that Tennessee's ACRP is consistent with the *Certificate Policy Statement*. Based on this determination and the environmental review of the ACRP, we further find that the public convenience and necessity require approval and certification of the project under NGA section 7, subject to the environmental and other conditions in this order.

C. **Tennessee's Planned Reliance on Section 2.55 and Part 157 Blanket Certificate Authority to Engage in Construction Activities to Prepare Facilities Being Abandoned for NGLs Transportation Service**

57. As described above, Tennessee states that it plans to rely on the construction authority provided by 2.55(b) of the regulations and its Part 157, subpart F blanket construction certificate to replace some relatively short sections of pipeline at UMTP's expense to prepare the pipeline being abandoned to transport NGLs. Specifically,

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<sup>54</sup> As previously discussed in response to a comment questioning the reliability of compression-dependent transportation, we expect Tennessee will be as capable of meeting customer obligations after completion of the proposed project as it is now.

Tennessee states that its Purchase and Sale Agreement with UMTF requires Tennessee to remediate short sections of pipeline containing wrinkle bends prior to transfer of the pipeline to UMTF to the extent Tennessee can do the work without degrading service to its existing customers. Tennessee anticipates that a significant number of short sections of such wrinkle bend pipe will be identified during surveying and will need to be remediated. Tennessee states it will rely on the replacement authorization provided by section 2.55(b) of the regulations in instances where activities qualify under that section because the removal and replacement can be accomplished using only areas which were previously disturbed when the wrinkle bend pipe was installed. In situations where replacement activities will extend to previously undisturbed areas, Tennessee plans to rely on its Part 157 blanket certificate,<sup>55</sup> which can be used to invoke eminent domain and to engage in construction activities that use previously undisturbed areas, provided the activity will comply with all of the blanket certificate regulations' environmental conditions.

58. We have explained that the authorization to perform maintenance on gas facilities comes from the certificate authority under which the facilities were or will be constructed – whether it be self-implementing section 2.55 authority, Part 157 blanket certificate authority, or case-specific certificate authority.<sup>56</sup> The facilities Tennessee proposes to abandon were originally constructed pursuant to case-specific certificate authorizations granted by the Commission under NGA section 7 based on findings that the facilities were required by the public convenience and necessity to provide natural gas service subject to the Commission's NGA jurisdiction. The Commission's jurisdiction to authorize the construction of facilities under NGA section 7 is limited to facilities needed to provide jurisdictional natural gas service.

59. NGA section 2.55(b), by providing authorization for companies to replace previously certificated facilities “that are or will soon be physically deteriorated or obsolete” with replacement facilities that “will have a substantially equivalent designed delivery capacity” and “not result in a reduction or abandonment of service,” relieves companies of an unnecessary regulatory burden by reducing the number of applications that companies need to file for case-specific certificate authorization to replace facilities the Commission has already found to be required by the public convenience and necessity for jurisdictional gas service. The Part 157 blanket certificate program also reduces the number of applications that companies otherwise would have to file for case-specific certificate authorizations by providing authorization, subject to the blanket certificate regulations' cost limits and environmental conditions, for the construction of an “eligible facility,” which is defined in section 157.202(b)(2)(i) of the blanket

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<sup>55</sup> Application at 13.

<sup>56</sup> *Revisions to Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations*, Order No. 790, FERC Stats. & Regs. ¶ 31,351, at n.90 (2013).

certificate regulations as a “facility subject to the Natural Gas Act jurisdiction of the Commission that is necessary to provide service within existing certificated levels.” Thus, companies’ construction activities under both section 2.55 of the regulations and Part 157 blanket certificates are limited to facilities that companies need and will use to provide natural gas service. The purpose of Tennessee’s replacement of segments of the pipeline facilities it seeks to abandon and transfer to UMTP will be “to ready the Abandoned Line for UMTP’s subsequent use” in transporting NGLs.<sup>57</sup> While Tennessee’s and UMTP’s Purchase and Sale Agreement can make Tennessee responsible for having this work done, the replacement work cannot commence until after Tennessee has exercised this order’s abandonment authorization, and Tennessee cannot rely on 2.55 of the regulations, its Part 157 blanket certificate, or any NGA authorization to replace portions of the pipeline to prepare it for transfer to UMTP.<sup>58</sup>

#### **D. Environmental Analysis**

60. On April 17, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Abandonment and Capacity Restoration Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register* and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. Through October 2016, the Commission received 476 comment letters. Written comments were received from the U.S. Department of the Interior’s Bureau of Indian Affairs, Fish and Wildlife Service, and National Park Service; the U.S. Department of Agriculture’s Forest Service; eight state agencies; nine local government bodies; and 14 nongovernmental organizations. The majority of comments received were from individuals and businesses.

61. The primary issues raised during the scoping process include: the need to prepare an Environmental Impact Statement (EIS) rather than an EA; ACRP-induced natural gas production; safety issues related to older pipelines and NGLs transportation; noise and air quality impacts associated with compressor stations; the potential for soil contamination; forest fragmentation; impacts on water resources and wildlife (particularly special status species); impacts on agriculture; and localized impacts on traffic, residences, and

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<sup>57</sup> Application at 12.

<sup>58</sup> We note that once the facilities have been abandoned in accordance with the conditions specified herein, they will no longer be subject to our jurisdiction, and Tennessee, UMTP, or any other party that seeks to make use of the abandoned facilities will not need Commission authorization to do so (provided the facilities will not be returned to service to transport gas in interstate commerce).

property values. The majority of comments expressed concerns related to the potential use of the abandoned pipeline to transport NGLs.

62. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),<sup>59</sup> Commission staff prepared an EA. No agency expressed an interest in cooperating in the preparation of the EA. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, socioeconomics, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive environmental comments received in response to the NOI were addressed in the EA.

63. The EA was issued for a 30-day comment period, sent to the environmental mailing list, and placed into the public record on November 2, 2016. During the comment period, the Commission received submissions on the EA from the Fish and Wildlife Service; the Tennessee Department of Environment and Conservation; the Louisiana Department of Wildlife and Fisheries; the Choctaw Nation of Oklahoma (Choctaw Nation); a state senator; six county courts or boards; the City of Danville, Kentucky; 15 nongovernmental organizations; and 455 individuals and businesses. The nongovernmental organizations include environmental groups, industry groups, chambers of commerce in Kentucky, and religious groups. In addition, 166 comments were filed after the end of the comment period, including a letter from the Kentucky State Historic Preservation Office (SHPO). Tennessee also filed comments to provide clarifications regarding information reported in the EA. Substantive comments on the EA are addressed below.

### 1. EA vs. EIS

64. Commenters argue the EA is insufficient, pointing principally to an allegedly incomplete assessment of the potential environmental impacts associated with UMTTP's intended use of the pipeline facilities it plans to acquire from Tennessee to transport NGLs. They urge such impacts be reviewed in an EIS. For the reasons discussed below, we do not believe our assessment of Tennessee's proposal calls for a more detailed consideration of UMTTP's intended use of the pipeline facilities. We do not believe there are issues inadequately or inaccurately reviewed in the EA, or conclusions reached in the EA, that merit preparing an EIS.

65. In order to meet NEPA requirements, an agency may elect to prepare an EA to determine whether an EIS will be required. In this proceeding Commission staff, guided by experience with prior pipeline abandonment and construction projects, determined it

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<sup>59</sup> 42 U.S.C. § 4321 *et seq.* (2012).

would be appropriate to initially undertake an EA.<sup>60</sup> The EA concluded that if Tennessee abandons and constructs facilities in accordance with its application, as supplemented, and the environmental conditions described in the EA (which are incorporated as Appendix D to this order), approval of the ACRP would not constitute a major federal action significantly affecting the quality of the human environment. We agree with staff's analysis, conclusions, and recommendations in the EA and affirm the EA's determination that the project would not result in significant environmental impacts.

66. Commenters contest this, insisting significant adverse impacts would result from our approval of Tennessee's proposal. However, the potentially significant impacts commenters identify are associated primarily with UMTF's activities, not Tennessee's. Our approval of Tennessee's retirement of pipeline facilities from natural gas service, and abandonment by sale to UMTF, provides no authorization for UMTF to use the pipeline facilities for NGLs service. Because we have no jurisdiction over whether or not UMTF can use Tennessee's abandoned pipeline to transport NGLs, and because the project before us is independent of the UMTF Project, we will not undertake an EIS to assess UMTF Project impacts as if they were part of the ACRP.

67. Allegheny states the ACRP and the UMTF Project will encroach on public lands and wildlife areas, including the Green River Bioreserve Megasite, which Allegheny identifies as critical habitat for special status species, and requests we expand the scope of review by preparing an EIS to consider NGLs-related impacts on threatened and endangered species. We decline, since as explained, NGLs-related impacts are outside the scope of this proceeding. With respect to the ACRP's potential impacts on special status species, as described in section 2.4.4 of the EA, while effect determinations are pending for six species potentially affected by the ACRP, only two species, the Indiana bat and northern long-eared bat, are likely to be adversely affected. Tennessee has committed to participate in a Conservation Memorandum of Agreement and Mitigation In-Lieu Fee program to address the impacts on these species, an effort we anticipate will assist in ensuring that the impacts of Tennessee's proposed abandonment and construction activities will be less than significant.

68. Allegheny asserts that the ACRP is highly controversial<sup>61</sup> because of the large number of comments, and that "[m]any of these comments request that a full EIS be conducted to better disclose to the public potential risks associated with approval of the project."<sup>62</sup> Controversy, as Allegheny acknowledges, "refers to cases where 'a

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<sup>60</sup> See 18 C.F.R. § 380.6(b) (2017).

<sup>61</sup> See 40 C.F.R. § 1508.27(b)(4) (2017).

<sup>62</sup> Allegheny's Dec. 2, 2015 Comments at 8.

substantial dispute exists as to the size, nature, or *effect* of an action, not ‘the existence of opposition to a use.’”<sup>63</sup> The number of comments opposing a proposal has no bearing on whether the effects of an action may be significant. In this case, because the EA responds to all issues raised, we find no need to prepare an EIS to better disclose to the public potential project risks. Allegheny and Envision Franklin County maintain the proposal is controversial because other federal agencies have expressed conflicting procedural preferences on how to evaluate the ACRP and UMTF Project. Allegheny points in particular to the Fish and Wildlife Service, which elected to consider the two projects together, and urges that we do the same in an EIS. The manner in which other federal agencies chose to carry out their responsibilities for the ACRP and the UMTF Project does not determine how the Commission does so. In this case, we find the EA appropriately included UMTF Project impacts in considering the ACRP’s cumulative impacts and appropriately excluded UMTF Project impacts from any additional consideration in view of the fact that UMTF’s anticipated use of Tennessee’s abandoned facilities would be excluded from our jurisdiction. We affirm the EA’s finding that the ACRP would not have significant environmental impacts, and consequently find no need to prepare an EIS.

69. Allegheny argues the length of the EA (approximately 185 pages of text and 215 pages of appendices) indicates the need to prepare an EIS. We disagree. The length of the EA reflects the data and detail Commission staff deemed necessary to be confident in concluding that the proposal would have no significant adverse environmental impacts. Ideally, we would comply with CEQ’s recommendation to “agencies to keep the length of EAs to not more than approximately 10–15 pages.”<sup>64</sup> Regrettably, it has been our

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<sup>63</sup> *Id.* at 7-8 (citing *Town of Cave Creek, Arizona v. FAA*, 325 F.3d 320, 331 (D.C. Cir. 2003) (emphasis in original) (quoting *Found. for N. Am. Wild Sheep v. U.S. Dep’t of Agric.*, 681 F.2d 1172, 1182 (9th Cir. 1982))).

<sup>64</sup> *Forty Most Asked Questions Concerning CEQ’s NEPA Regulations*, 46 Fed. Reg. 18,026, 18,037 (March 17, 1981). Allegheny cites CEQ’s observation that “[i]n most cases ... a lengthy EA indicates that an EIS is needed.” We note this comment follows at the end of CEQ’s response to the question: “Under what circumstances is a lengthy EA appropriate”; to which CEQ answers that a lengthy EA is appropriate “in unusual cases, where a proposal is so complex that a concise document cannot meet the goals of [40 C.F.R.] Section 1508.9 and where it is extremely difficult to determine whether the proposal could have significant environmental effects.” *Id.* We believe the proposed project qualifies as complex and/or difficult. The EA, despite aspiring to brevity in accord with section 1508.9, is unavoidably voluminous given the substantial scale of the project and the necessity of adequately describing and responding to the complex issues raised. Finally, we note that the 10-15 page limit for an EA is a CEQ suggestion, not a NEPA requirement.

experience that in reviewing the types of gas project proposals most often presented, such a succinct EA would not permit us to make a sufficiently informed and defensible decision on a proposal's potential impacts.

70. Allegheny cites *Sierra Club v. Marsh*,<sup>65</sup> in which the court, in considering an EA of comparable length, commented that the length and detail of documents included as part of the proposed project pose “something of a dilemma”: “On the one hand, one is tempted to argue that the very complexity of the documents shows that an EIS is needed,” whereas “[o]n the other hand . . . the lengthy documents reflect a thorough consideration of potential impact on the environment.”<sup>66</sup> In this case, a thorough consideration of the proposal's potential impact led to a lengthy EA, reflecting the almost 1,000 miles of pipeline to be abandoned and the variety of terrain found between Louisiana and Ohio (not to mention the addition of significant compression and several miles of new pipe). In view of the scope of the ACRP, and in comparison to EAs Commission staff has prepared for other large projects, we find the EA in this proceeding, while admittedly robust, was not disproportionately long. We observe that “[w]hat ultimately determines whether an EIS rather than an EA is required is the scope of the project itself, not the length of the agency's report.”<sup>67</sup>

## 2. Programmatic EIS

71. Allegheny argues, as it has done in other proceedings, that we should prepare a programmatic EIS to take into account the aggregate existing and potential natural gas infrastructure in the Appalachian region and develop a methodology reviewing applications for new gas projects in this region.

72. CEQ regulations do not require programmatic NEPA reviews. However, CEQ has explained that such a broader review may be appropriate where an agency is adopting official policy or a formal plan or program, or is proceeding with multiple projects that are temporally and spatially connected. The Supreme Court has held that a programmatic review covering an entire region is required only “if there has been a report or recommendation on a proposal for major federal action” with respect to the region,<sup>68</sup>

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<sup>65</sup> 769 F.2d 868 (1st Cir. 1985).

<sup>66</sup> *Id.* at 874. The court also comments that “[s]ince these documents, at least arguably, already amount to an EIS in all but name, what is the practical point of requiring additional preparation of another document?” *Id.*

<sup>67</sup> *Heartwood, Inc. v. U.S. Forest Serv.*, 380 F.3d 428, 434 (8<sup>th</sup> Cir. 2004).

<sup>68</sup> *Kleppe v. Sierra Club*, 427 U.S. 390, 399 (1976) (*Kleppe*).

which has not happened here. As we have previously explained, there is no Commission plan, policy, or program for the development of natural gas infrastructure.<sup>69</sup> Our role is reactive rather than proactive, in that the Commission responds to applications as submitted by gas companies, but does not recommend or otherwise initiate project proposals. Courts have concluded that there is no requirement for a programmatic EIS where an agency cannot identify the projects that may be sited within a region because individual permit applications will be submitted at a later time,<sup>70</sup> which reflects the circumstances with respect to Appalachian gas infrastructure development.

73. Allegheny maintains that because there are pending and prospective projects capable of transporting gas produced from the Appalachian region, we should conduct a programmatic EIS to consider the collective environmental impacts of gas projects on this region. With respect to the production of gas from Appalachian fields, we anticipate the requested broad, regional analysis would “be little more than a study ... concerning estimates of potential development and attendant environmental consequences,”<sup>71</sup> which would not present “a credible forward look and would therefore not be a useful tool for basic program planning.”<sup>72</sup> This would fall short of meeting CEQ’s stated aim for programmatic NEPA reviews, which is to “add value and efficiency to the decision-making process when they inform the scope of decisions,” “facilitate decisions on agency actions that precede site- or project-specific decisions and actions,” or “provide information and analyses that can be incorporated by reference in future NEPA reviews.”<sup>73</sup>

74. Because we do not believe these benefits can be realized by a programmatic review of projects that may serve to transport Appalachian gas, and because such projects that are subject to our jurisdiction do not share sufficient elements in common to narrow future alternatives or expedite the current detailed assessment of each particular project,

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<sup>69</sup> See, e.g., *Nat’l Fuel Gas Supply Corp.*, 154 FERC ¶ 61,180, at P 13 (2016) and *Texas E. Transmission, LP*, 149 FERC ¶ 61,259, at PP 38-47 (2014).

<sup>70</sup> See *Piedmont Env’tl. Council v. FERC*, 558 F.3d 304, 316-17 (4<sup>th</sup> Cir. 2009) (programmatic EIS not required with respect to the Commission’s permitting of individual electric transmission facilities).

<sup>71</sup> *Kleppe*, 427 U.S. 390, 402.

<sup>72</sup> *Piedmont Env’tl. Council v. FERC*, 558 F.3d 304, 316.

<sup>73</sup> 2014 Programmatic Guidance at 13.

we conclude that a programmatic EIS is neither required nor useful under current circumstances.

### 3. Adequacy of the EA

75. Allegheny faults the EA for failing to follow CEQ directions to “include brief discussions of the need for the proposal.” We believe the EA section 1.2 description of Tennessee’s proposal, and the EA section 3.0 consideration of alternative actions that might meet the proposal’s objectives, qualify as brief discussions of the need for the proposal. Allegheny complains the EA “simply refers to Tennessee’s stated ‘purpose of the Project’ without providing any independent assessment of that purpose [or] inquiry into the actual need.”<sup>74</sup> Consistent with our past practice, our environmental document accepts, but does not analyze, the applicant’s statement of purpose – an analysis is undertaken in the order, where our appraisal of need plays a part in determining whether a proposal is required by the public convenience and necessity. We follow this approach here, and thus find no fault with the EA’s description of Tennessee’s statement of purpose and need.<sup>75</sup>

76. Allegheny would have us modify this approach, arguing that it is only after need is considered that a reasonable range of alternatives to a proposal can be defined. We disagree, and courts have upheld federal agencies’ use of applicants’ identified project purpose and need as the basis for evaluating alternatives.<sup>76</sup> Allegheny claims that the Commission, by deferring its consideration of and decision on need to an order, “denies the public the right to comment on all aspects of the EA.”<sup>77</sup> The parameters of a proposal – e.g., the facilities, location, volumes, receipt and delivery points, and capacity – are presented in the application and in the NOI. Thus, commenters are not insufficiently

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<sup>74</sup> Allegheny’s Dec. 2, 2106 Comments at 1.

<sup>75</sup> Allegheny identifies statements made by Kinder Morgan in 2013, 2014, and 2015 that appear to indicate a shifting timeline for its affiliates’ prospective projects, and claims this calls into question the need for the ACRP. *See* Allegheny’s Dec. 2, 2016 Comments at 3-2. We dismiss this as immaterial. It is common for a company planning a project to make scheduling revisions to better synchronize with anticipated market needs. Whatever changes the ACRP underwent prior to the application being filed are irrelevant, as we take the purpose and need as stated in the application as our starting point.

<sup>76</sup> *See City of Grapevine v. Dep’t of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994), *cert. denied*, 513 U.S. 1043 (1994).

<sup>77</sup> *Id.* at 2.

informed or otherwise disadvantaged in submitting comments on a proposal prior to the completion of the environmental review. Proposals are often changed in response to comments received in the course of the environmental review, and any significant modification, in particular any revision that would alter the initially stated purpose and need, would require an amendment to the application, and thereby trigger a separate, subsequent round of comments on the changes proposed in the amendment. In this case, following issuance of the EA, we invited and received comments on the EA, some of which took issue with the need for and alternatives to the proposal. In view of the opportunities presented to the public to comment on the ACRP, we do not believe our current procedures precluded the public from presenting fully informed comments on the proposal prior to our reaching a final determination. To the extent parties to this proceeding object to the conclusions in this order, they may request rehearing of this order.

77. Commenters complain we should have provided for additional public hearings prior reaching a decision, insisting the ACRP meets the CEQ criteria whereby public hearings may be merited when there is a “[s]ubstantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.”<sup>78</sup> The Bluegrass Area Development District believes public hearings should have been held in the Kentucky counties where local governments passed resolutions and/or ordinances regarding the proposed repurposing of the pipeline.<sup>79</sup>

78. We believe the public has had an adequate opportunity to comment on the proposal, particularly in light of the time allotted between the February 2015 submission of the application and the issuance of this order. Our procedures do not appear to have deterred the public from presenting comments: we received and considered 476 comments prior to the December 2016 publication of the EA and at least 649 comments since then. Because the majority of these comments focus on safety aspects of the UMTF Project, we note that should the UMTF Project proceed, the U.S. Army Corps of Engineers (Corps of Engineers), would be the lead federal permitting agency, and would be responsible for soliciting and reviewing comments on that project. We also note that in response to the number of comments received regarding the UMTF

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<sup>78</sup> 40 C.F.R. § 1506.6(c)(1) (2017).

<sup>79</sup> *See, e.g.*, the Madison County Fiscal Court’s Sept. 19, 2016 Comments, which include a copy of an ordinance adopted June 14, 2016, amending the planning and zoning regulations of Madison County, Kentucky, to require, among other stipulations, that “[p]roposed compressor units associated with pipelines that were constructed and put into operation prior to adoption of a comprehensive plan and zoning regulations for Madison County shall require a conditional use permit prior to construction and operation of the compressor units.”

Project, we sought additional information on that project's impacts and incorporated the information, as appropriate, into our cumulative impacts review.<sup>80</sup>

79. In objecting to staff's determinations in the EA, numerous commenters stress the age of the pipe (approximately 70 years old), the quality of its welding, and the potential for a leak or rupture to harm water resources and wildlife. Some commenters point to purported faults in the safety record of Kinder Morgan, the parent company of both Tennessee and UMTF. The Marion County Fiscal Court asserts the gas-to-NGLs conversion will increase risks and argues landowners should not have to bear such risks as a result of easements entered into long ago.

80. Clark's Run Environmental Education Corporation, the Kentucky Resources Council, Inc., the Kentucky Environmental Foundation, Envision Franklin County, and Kentuckians for the Commonwealth state that PHMSA has suggested some natural gas pipelines are not candidates for flow reversal or conversion to carry alternative products, particularly pipelines that have incomplete test or historical data; or are low-frequency electric-resistance welded, lap-welded, and unknown seam-welded; or have a history of failures. Kentucky Resources Council states that types of welds used in installing Tennessee's pipeline decades ago would not be acceptable today. Kentucky Resources Council and Kentucky Environmental Foundation describe the gas-to-NGLs conversion as "unprecedented." Kentucky Resources Council claims the conversion presents numerous engineering, operational, and emergency response challenges. Kentucky Environmental Foundation expresses concerns about the potential for an NGLs "leak, explosion or similar incident."<sup>81</sup> Kentuckians for the Commonwealth states there are subdivisions and schools in close proximity to Tennessee's Lines 100 and 200, and that in the event of an accident, the only escape route could be covered with toxic, explosive gas. Kentuckians for the Commonwealth doubts a new NGLs pipeline could be approved for such locations. Envision Franklin County asks the Commission to consider "[t]he alternative of replacing sections of pipe and/or rerouting the [NGLs] pipeline to avoid areas that affect federally listed species, public water supplies, other rare species, and critical habitat must be developed."<sup>82</sup>

81. We reiterate: our jurisdiction over the subject pipeline ends once it is abandoned in accord with the conditions we specify herein. If the abandoned pipeline is later repurposed to transport anything other than natural gas in interstate commerce, the Commission will play no role in that resurrection. The Corps of Engineers and other

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<sup>80</sup> See EA section 2.11 generally and EA section 2.11.4 specifically.

<sup>81</sup> Kentucky Environmental Foundation's Nov. 30, 2016 Comments at 7.

<sup>82</sup> Envision Franklin County's Dec. 1, 2016 Comments at 2.

federal and state agencies would be responsible for reviewing environmental impacts of the UMTF Project, and UMTF would be responsible for complying with DOT's Minimum Federal Safety Standards to ensure that the facilities may be safely returned to service to carry NGLs.<sup>83</sup> Although we would play no part in this review process,<sup>84</sup> in response to comments, we observe that pipelines of a similar vintage continue to be used for the safe transport of various products, as it is not age per se, but the condition of a pipeline that determines whether it remains fit for service. We clarify that whether an easement obtained to install, operate, and maintain a pipeline to transport natural gas would terminate if the pipeline ceased to transport gas would depend upon the terms of the easement itself. We note that modifying pipelines to be able to flow gas bidirectionally is a commonplace alteration. Less common, but not unusual, is the conversion of a pipeline to carry another commodity.<sup>85</sup> Thus, there is nothing unprecedented in the ACRP and UMTF Project proposals.

#### 4. Alternatives to the ACRP

82. CEQ regulations require that an EA include a brief discussion of alternatives to the proposal and the environmental impacts of the alternatives.<sup>86</sup> Although the consideration of alternatives in an EA need not be as rigorous as the consideration of alternatives in an

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<sup>83</sup> EA section 2.11.4 provides a summary of reliability and safety relative to the UMTF Project, including information on pipeline standards for transportation of hazardous liquids (which include NGLs) in 49 C.F.R. pt. 195 (2017) and PHMSA's requirements for conversion from natural gas to NGLs service, *Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service*, 79 Fed. Reg. 56,121 (Sept. 18, 2014).

<sup>84</sup> Note that following the abandonment of a formerly jurisdictional facility, a company could no longer make use of NGA section 7(h) eminent domain authority for activities involving that facility.

<sup>85</sup> See, e.g., *KN Interstate Gas Transmission Co.*, 79 FERC ¶ 61,268 (1997) (converting 804 miles of an existing crude oil pipeline to natural gas service), and *Tallgrass* (converting approximately half of the same pipeline back to crude oil service). See also *Trunkline* (abandoning a 720-mile-long natural gas pipeline for conversion to transport refined petroleum products); *Energy W. Dev., Inc.*, 103 FERC ¶ 61,015 (2003) (converting an existing liquids products pipeline to natural gas service); and *Petal Gas Storage, LLC*, 118 FERC ¶ 61,253, *reh'g granted in part and denied in part*, 120 FERC ¶ 61,226 (2007) (converting an existing NGLs storage cavern and an existing brine storage cavern to store natural gas).

<sup>86</sup> 40 C.F.R. § 1508.9(b) (2017).

EIS,<sup>87</sup> commenters nevertheless complain the EA's treatment of alternatives was inadequate.

83. Envision Franklin County asserts the alternative of abandonment and removal, rather than abandonment in place, should be developed in detail. Kentucky Environmental Foundation claims the EA did not objectively analyze the No Action Alternative, but instead rejected it based on speculation about the costs and environmental impacts of continuing to keep Lines 100 and 200 in service.<sup>88</sup>

84. The principal alternative to the proposal is to take no action and leave Lines 100 and 200 in service to continue to transport gas. If Lines 100 and 200 are abandoned, the alternatives are to either leave the pipeline in place or unearth and remove it. EA section 3.2 compares these alternative treatments and finds leaving the pipeline in place is preferable because it would cause far less ground disturbance. Given that Tennessee's proposed action is limited to taking its pipeline out of service, comments that address returning the pipeline to service are beyond the scope of this proceeding and therefore are not considered here. Such comments would be appropriate in a proceeding proposing to bring the abandoned pipeline back into service.<sup>89</sup>

85. In response to Kentucky Environmental Foundation, we concede that in considering costs and impacts we invariably rely on speculation; however, we do not believe this undercuts the validity of our conclusions, as we have a sound basis for

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<sup>87</sup> See *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1323 (D.C. Cir. 2015) (*Myersville*).

<sup>88</sup> Kentucky Environmental Foundation, in claiming that the environmental impact of the proposed action would be greater than the No Action Alternative, conflates the proposed pipeline abandonment with the prospective use of the pipeline to carry NGLs, and thus is inapplicable here. To clarify, the No Action Alternative to the proposed project would be to maintain the status quo, with Tennessee retaining its pipeline facilities and using them to provide natural gas transportation service. The comparative environmental impacts of the proposed action and the No Action Alternative played little part in our decision, due to our expectation that there would not be a significant difference between the impacts of abandonment and compressor and loop line construction and operation as compared to the impacts of retaining, maintaining, and continuing to operate the existing gas pipeline. See EA section 3.1 at 173.

<sup>89</sup> A future proceeding considering whether the abandoned Lines 100 and 200 should be returned to service would also be the appropriate forum to discuss routing alternatives. In the proceeding at hand, we have no cause to question the location of the existing facilities.

projecting costs and impacts. For example, we calculate future O&M costs based on previously incurred O&M costs for similar facilities, and our experience permits us to predict such costs with reasonable confidence. In this case, even if our predicted O&M costs prove imprecise, we do not believe this could overturn our determination that it would cost more for Tennessee to provide service using old than new facilities. Similarly, in comparing the environmental impacts of the proposal and the alternatives, we believe we can reliably anticipate and gauge impacts based on our prior experience with similar activities. There is nothing unusual about the Tennessee proposal that would lead us to second guess our methodology or findings concerning the project's predicted costs and environmental impacts.

## **5. Direct Impacts**

### **a. Geology and Soil**

86. Commenters are concerned about seismicity and karst conditions in Kentucky.<sup>90</sup> EA section 2.1.1 discusses seismicity in the project area and concludes that earthquakes would not pose a significant risk to the project. The same section also discusses potential land subsidence associated with karst and concludes that with implementation of Tennessee's mitigation measures, subsidence associated with karst would not have a significant adverse impact on the project. We affirm these findings and note that Tennessee's existing system has operated to date without seismic or karst events and that such geological hazards are not anticipated to affect the future operation of the system.

### **b. Water Resources**

87. Tennessee points out that EA section 1.10.3 inaccurately states it will test water wells within 200 feet of construction workspaces before and after construction.<sup>91</sup> We revise this to state that Tennessee will test groundwater supply wells within 150 feet of workspaces or 200 feet of blasting activities. EA section 2.2.1 accurately describes the distances for well testing and includes a recommendation that Tennessee conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and

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<sup>90</sup> We note these comments focus principally on the possible future use of the abandoned pipeline to transport NGLs, rather than on Tennessee's proposal to add facilities to its system to restore capacity.

<sup>91</sup> EA at 22.

water quality for all private wells within 150 feet of construction workspaces.<sup>92</sup> These procedures are incorporated as conditions of the certificate granted by this order.<sup>93</sup>

**c. Vegetation**

88. The Tennessee Department of Environment and Conservation, Division of Natural Areas, comments that the Tennessee Natural Heritage Program recommends use of native trees, shrubs, and warm season grasses or stabilization of disturbed areas, where practicable. It further recommends that care be taken to prevent re-vegetation of disturbed areas with plants listed by the Tennessee Exotic Pest Plan Council as harmful exotic plants. As described in EA section 2.3.1, Tennessee will implement its *Invasive Species Management Plan* to control invasive plant species and noxious weeds. In general, temporary workspaces will be restored and revegetated to their original vegetative cover type in accordance with Tennessee's *Invasive Species Management Plan*, and Tennessee will develop seed mixes and seeding rates according to the Natural Resource Conservation Service guidelines.

89. The Tennessee Department of Environment and Conservation, Division of Air Pollution Control, states that open burning regulations should be followed, if applicable, and recommends that detailed clearing activities, the total amount of areas where soils are to be disturbed, and associated impacts be addressed in the final EA.<sup>94</sup> Vegetation impacts are quantified in EA table 2.3-2 and clearing activities are described in EA sections 1.10.2 and 2.3.1. Tennessee has not indicated that it will use open burning for clearing vegetation.

**d. Wildlife and Threatened, Endangered, and Special Status Species**

90. Commenters express general concerns about karst habitats and associated wildlife or conservation areas. The Tier 1 Interior Low Plate Karst Conservation Area priority conservation area (PCA) and the Green River Bioreserve Megasite contain karst features; Tennessee will limit workspaces in these areas to existing, previously disturbed, permanent rights-of-way.<sup>95</sup> If karst features are encountered, Tennessee will implement

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<sup>92</sup> *Id.* at 46.

<sup>93</sup> See Environmental Conditions 13 and 14 in Appendix D to this order. Note that the incorrectly stated distance in EA section 2.1.1 does not affect the findings in the EA; distances are correctly stated in EA section 2.2.1 and in Environmental Condition 13.

<sup>94</sup> The EA issued on November 2, 2016 is the final EA.

<sup>95</sup> See EA section 2.3.3 at 68.

construction methods to avoid or minimize impacts on these sensitive areas. To reduce the risk of impacts from spills during construction, Tennessee will implement state-specific *Spill Prevention Control and Countermeasures (SPCC) Plans* that specify prevention and cleanup procedures for spills or leaks of fuel, lubricants, coolants, or solvents. Tennessee will also implement the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures* with alternative measures (Tennessee's *Plan and Procedures*). Tennessee's compliance with the *SPCC Plans* and Tennessee's *Plan and Procedures* should ensure there will be no long-term impacts on karst habitats within the Tier 1 Interior Low Plate Karst Conservation Area PCA or the Green River Bioreserve Megasite. EA section 2.4.1 identifies caves as features used by federally listed bats for hibernation/roosting. As discussed in the EA, we find Tennessee has developed cave/karst mitigation measures sufficient to mitigate effects of pipeline construction through a karst feature.<sup>96</sup>

91. The Fish and Wildlife Service requests that we specify whether Tennessee will provide compensatory mitigation for the loss and fragmentation of habitat for protected bird species resulting from the ACRP and UMTF Project. Environmental Condition 51 of this order adopts the EA recommendation that Tennessee file a *Migratory Bird Conservation Plan* for its proposed project, along with documentation of consultation with the Fish and Wildlife Service that should include mitigation measures to address impacts of habitat loss and forest fragmentation on migratory birds.

92. Allegheny states the Commission must initiate formal consultation with the Fish and Wildlife Service to be in compliance with section 7 of the Endangered Species Act (ESA).<sup>97</sup> We did so directly after issuance of the EA.<sup>98</sup>

93. The Fish and Wildlife Service observes that the EA identifies several species for which an effect determination could not yet be made due to a lack of access to conduct habitat assessments and/or species surveys. Commission consultation with the Fish and Wildlife Service under section 7 of the ESA cannot be completed before these assessments and/or surveys are provided to the Fish and Wildlife Service and it responds to the Commission's effect determinations. Allegheny asserts the EA does not provide sufficient information on ESA section 7 consultation because the Fish and Wildlife Service has not provided concurrence/nonconcurrence for the Commission's effect

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<sup>96</sup> *Id.* at 37.

<sup>97</sup> See 16 U.S.C. §§ 1531-1544 (2012).

<sup>98</sup> Letter dated Nov. 9, 2016, from Commission staff to the Fish and Wildlife Service. FERC eLibrary Accession Number 20161110-3042.

determinations. Contrary to this assertion, EA section 2.4 provides adequate descriptions of the occurrence of federally listed species and their habitats to support our proposed effect determinations for the ACRP, including results of surveys for all but six species. NEPA does not require that ESA section 7 consultation be complete prior to issuance of an EA. To ensure compliance with ESA section 7, prior to initiating construction activities within areas of potential effect, species surveys must be conducted and Commission staff must complete ESA consultation with the Fish and Wildlife Service.<sup>99</sup>

94. Allegheny points out that in comments on the EA, the Fish and Wildlife Service “said that it could not concur with FERC’s ‘may affect, not likely to adversely affect’ determinations” for several species and critical habitat.<sup>100</sup> This is incorrect; the Fish and Wildlife Service did not say it could not concur with our effect determinations, but said it could not concur with the effect determinations for the UMTP Project based on the information provided. We have not made effect determinations for the UMTP Project because we have no jurisdiction over that project. The Corps of Engineers will be the lead federal agency responsible under ESA section 7 for the UMTP Project, as the Fish and Wildlife Service acknowledges in December 1, 2016 comments on the EA. The Fish and Wildlife Service adds that it will provide concurrence/nonconcurrence to the Commission’s effect determinations for the ACRP when it receives the species effect determinations for all species that may potentially be affected by both the ACRP and UMTP Project.

95. The Louisiana Department of Wildlife and Fisheries comments that several state listed species (three birds, three fish, and one plant) and habitats of conservation concern may be affected by the project in Louisiana. As described in EA section 2.4.2,<sup>101</sup> all project activities in Louisiana would occur within the existing right-of-way, and no waterbodies would be crossed. Based on the minimal amount of suitable habitat that could be affected, and the implementation of mitigation measures committed to by Tennessee, including following Tennessee’s *Plan and Procedures*, we affirm the EA’s finding that the ACRP will have no significant adverse impacts on state listed species in Louisiana.

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<sup>99</sup> See Environmental Condition 21 of this order.

<sup>100</sup> Allegheny’s Dec. 2, 2016 Comments at 10. Allegheny is concerned in particular with freshwater mussels.

<sup>101</sup> EA at 91.

e. **Land Use**

96. Tennessee clarifies that after completing construction of its new facilities in Kentucky and Mississippi, the permanent right-of-way would revert back to Tennessee's original existing easement. This explanation pertains to EA section 1.8 on Land Requirements, which states that "for the new-build [7.7-mile-long loop] pipeline in Kentucky, Tennessee would use a 125-foot-wide construction right-of-way. Following construction, the permanent right-of-way would be 50 feet wide and would be maintained in an herbaceous state."<sup>102</sup> Table 1.8-1 of the EA<sup>103</sup> indicates that no additional land would be required during operation for the replacement pipelines, consistent with Tennessee's clarification.

97. The Tennessee Department of Environment and Conservation recommends that the final EA include more detailed maps and geographic information system data so that Tennessee state agencies can better assess whether conflicts with existing underground storage tanks sites could arise and whether state land would be affected by the ACRP. The agency also recommends the final EA include state-specific information, as applicable, regarding disposal of contaminated soil, asbestos-containing material, and hazardous waste.

98. Project maps that are more detailed than those in the EA are available in the record in this proceeding.<sup>104</sup> EA section 2.1.2 addresses contaminated soils and hazardous materials and their disposal. EA section 2.10.1 specifically addresses treatment of asbestos-containing material,<sup>105</sup> as does Environmental Condition No. 28 of this order.

f. **Socioeconomics**

99. Kentuckians for the Commonwealth request that we adhere to Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations*,<sup>106</sup> by identifying and addressing any disproportionately high and adverse human health or environmental effects of the proposed project on minority, low-income, or Native American populations. This Executive Order applies only to those federal agencies specified in the order, and the Commission is not among

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<sup>102</sup> *Id.* at 13.

<sup>103</sup> *Id.* at 12.

<sup>104</sup> *See, e.g.*, Volume II of the Application.

<sup>105</sup> EA at 138.

<sup>106</sup> 59 Fed. Reg. 7629 (Feb. 11, 1994).

those agencies. Moreover, none of the new and modified facilities for the proposed project would be sited within census block groups containing environmental justice populations. Nonetheless, we include consideration of a proposed project's impacts on minority, low-income, and Native American populations in our assessment of project impacts on the public in general. In this case, we find project activities in Kentucky would be minor and occur within existing rights-of-way. In any case, given our affirmation of the finding in the EA that the project will not have not significant environmental impacts, it accordingly will not have "high and adverse human health or environmental effects" on minority, low-income, Native American, or any other populations.

**g. Cultural Resources**

100. Tennessee's Department of Environment and Conservation's Division of Archaeology concurs with the EA's findings and recommendations. The Choctaw Nation comments that it has not reviewed cultural resource survey reports for some work areas in Arkansas, Mississippi, and Louisiana. Because information on the specific work areas of concern was not provided by the Choctaw Nation, some of these work areas may be part of the UMTF Project rather than the ACRP. The Choctaw Nation recommends revisions to the Unanticipated Discovery Plans. The Kentucky SHPO identifies three workspaces where an archaeological survey is not complete and an architectural survey is not required.

101. As stated in Environmental Condition 24 of this order, Tennessee cannot begin construction until it files and the Director of the Office of Energy Projects (OEP) approves the (1) remaining cultural resources survey reports; (2) site evaluation reports, avoidance plans, or treatment plans, as necessary; and (3) comments on the reports and plans, including plans for the Unanticipated Discovery of Cultural Resources and Human Remains, from the state SHPOs and interested Indian tribes.

**h. Air Quality**

102. The EA states that the proposed compressor station facilities will be subject to the New Source Performance Standards Subpart OOOO,<sup>107</sup> which should read, as Tennessee points out, Subpart OOOOa.<sup>108</sup> The misidentification in the EA does not affect any of the conclusions in the EA or this order.

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<sup>107</sup> EA at 125.

<sup>108</sup> 40 C.F.R pt. 60 (2017).

103. Tennessee's Department of Environment and Conservation's Division of Air Pollution Control recommends that mitigation of dust emissions and demolition of asbestos-containing materials be addressed in the final EA. Section 2.10.1 of the EA describes measures for proper handling and disposal of asbestos-containing materials,<sup>109</sup> as does Environmental Condition 28 of this order. Tennessee declares, in its June 18, 2015 Data Response, Response Number 64, that it will comply with state regulations concerning fugitive dust, which will be controlled during construction activities through the use of water or chemicals.

**i. Reliability and Safety**

104. Commenters worry that relying on new compression to restore capacity lost by taking out of service segments of Lines 100 and 200 would require increasing pressure on Tennessee's remaining pipelines, thereby raising the risk of an accident. Tennessee explains its new compression will cause higher operating pressures along certain segments of its remaining system and lower operating pressures along other segments of its system.<sup>110</sup> Because the higher pressures would not exceed Tennessee's certificated maximum allowable operating pressures, we find that adding compression would not compromise the safety or integrity of Tennessee's facilities or operations.<sup>111</sup>

105. We note that Tennessee's proposed new above ground compression facilities and below ground pipeline will be designed, constructed, operated, and maintained in accordance with the U.S. Department of Transportation's Minimum Federal Safety Standards.<sup>112</sup> PHMSA is responsible for enforcing these regulations, which are intended to protect the public and to prevent accidents and facility failures, and include specifications for material selection and qualification; minimum design requirements; and protection of pipelines from internal, external, and atmospheric corrosion.

106. Commenters challenge the finding in the EA that "available data show that natural gas transmission pipelines continue to be a safe, reliable means of energy transportation."<sup>113</sup> Commenters describe accidents and present statistics and reports on the safety of pipelines used to transport natural gas, oil, LNG, hazardous liquids, and

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<sup>109</sup> *Id.* at 138.

<sup>110</sup> *See* EA section 2.10.1 at 137.

<sup>111</sup> In addition to Commission constraints on pipeline pressure, Tennessee may not exceed the maximum pressure specified in 49 C.F.R. § 192.619 (2017).

<sup>112</sup> 49 C.F.R. pt. 192 (2017).

<sup>113</sup> EA at 138.

NGLs. Since the project before us is limited to natural gas pipeline facilities, we review risks associated with natural gas pipelines. We did not undertake a comparative study of risks associated with pipelines transporting products other than natural gas, because we do not believe it would assist us in assessing the merits of Tennessee's proposal to abandon, build, and operate natural gas pipeline facilities. We affirm both the data the EA relied on – which attributes to gas transmission pipelines, between 1995 and 2014, an average of 63 significant incidents, ten injuries, and two fatalities per year – and the EA's conclusion that the proposed ACRP does not represent a significant safety hazard.

## 6. Segmentation

107. CEQ regulations require that a NEPA analysis consider connected actions, cumulative actions, and similar actions.<sup>114</sup> Numerous commenters state that the ACRP and UMTP Project are connected, cumulative, and/or similar actions that must be considered together in the same environmental document. The requirement that an agency consider connected or cumulative actions in a single environmental document is “to prevent the government from ‘segmenting’ its *own* “federal actions into separate projects and thereby failing to address the true scope and impact of the activities that should be under consideration.”<sup>115</sup> “An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”<sup>116</sup>

### a. Connected Actions

108. Connected actions include actions that (1) automatically trigger other actions that may require an EIS; (2) cannot or will not proceed unless other actions are taken previously or simultaneously; or (3) are interdependent parts of a larger action and depend on the larger action for their justification.<sup>117</sup> In evaluating whether multiple

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<sup>114</sup> 40 C.F.R. § 1508.25(a) (2017).

<sup>115</sup> *Sierra Club v. U.S. Army Corps of Eng'rs*, 803 F.3d 31, 49-50 (D.C. Cir. 2015) (*Sierra Club*) (emphasis added) (quoting *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (*Delaware Riverkeeper*)).

<sup>116</sup> *Delaware Riverkeeper*, 753 F.3d 1304, 1313. In considering similar actions, in comparison to connected and cumulative actions, an agency has more discretion in deciding which actions to include in its environmental review. *See, e.g., Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1305-06 (9th Cir. 2003).

<sup>117</sup> 40 C.F.R. § 1508.25(a)(1)-(3) (2017).

actions are connected, courts have employed a “substantial independent utility” test, which we find useful for determining whether the foregoing criteria for a connected action are met. The test asks “whether one project will serve a significant purpose even if a second related project is not built.”<sup>118</sup> For proposals that connect to or build upon an existing infrastructure network, this standard distinguishes between those proposals that are separately useful and those that are not. While the analogy between the two is not apt in many regards, similar to a highway network, “it is inherent in the very concept of” the interstate pipeline network “that each segment will facilitate movement in many others; if such mutual benefits compelled aggregation, no project could be said to enjoy independent utility.”<sup>119</sup>

109. Citing *Delaware Riverkeeper*, Allegheny insists the ACRP is connected to the Broad Run Expansion and/or UMTP Project. The court in that case ruled that four projects, situated along different sections of a single linear pipeline, were “physically, functionally, and financially connected and interdependent”<sup>120</sup> and thus “functioned as one unified upgrade.”<sup>121</sup>

110. The court gave significant weight to the projects’ “temporal nexus,” stressing that at the time of the Commission’s review of the most recently proposed project, the other three projects were either pending before the Commission or under construction.<sup>122</sup> In a later case, the same court stated that in reviewing a pipeline application, the Commission need not jointly consider other projects unless they are “interdependent parts of a larger action and depend on the larger action for their justification.”<sup>123</sup> This description fits the

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<sup>118</sup> *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987). See also *O’Reilly v. U.S. Army Corps of Eng’rs*, 477 F.3d 225, 237 (5th Cir. 2007) (defining independent utility as whether one project “can stand alone without requiring construction of the other [project] either in terms of the facilities required or of profitability”).

<sup>119</sup> *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69.

<sup>120</sup> 753 F.3d 1304, 1308.

<sup>121</sup> *Id.* at 1319.

<sup>122</sup> *Id.*

<sup>123</sup> See *Myersville*, 783 F.3d 1301, 1326 (quoting 40 C.F.R. § 1508.25(a)(1)(iii) (2017)).

ACRP, as it is physically, functionally, and financially independent of both the Broad Run Expansion and UMTF Projects.

111. Allegheny claims the connection between the ACRP and the Broad Run Expansion Project is demonstrated by the fact that Tennessee cannot undertake its ACRP until its Broad Run Expansion Project goes into service, because the ACRP relies on the installation of a new Compressor Station 875, which is part of the Broad Run Expansion Project. Allegheny also contends the ACRP, Broad Run Expansion Project, and UMTF Project are interdependent components of Tennessee's intended restructuring of its system to transport Appalachian shale gas.<sup>124</sup> Allegheny cites a U.S. Energy Information Administration (EIA) observation that several pipeline companies, including Tennessee, have been restructuring their systems "to allow for bidirectional flow, adding the ability to send natural gas out of the northeast region,"<sup>125</sup> and claims the three Kinder Morgan projects are designed with this end in mind.

112. We do not dispute the three identified projects will enhance Kinder Morgan's capability to move gas vapor and NGLs north-to-south; however, the fact that these projects will contribute to a common cause does not denote their interdependence. Although the projects share in common certain physical, functional, and temporal elements, we affirm the finding in the EA in this proceeding and in the Broad Run Expansion Project order<sup>126</sup> that these projects are distinct and separate. Therefore, the need to "prevent agencies from dividing one project into multiple individual actions"

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<sup>124</sup> Allegheny references descriptions of the ACRP, Broad Run Expansion Project, and UMTF Project made by corporate parent Kinder Morgan that may be interpreted as associating the three projects more closely than we do. *See, e.g.*, Allegheny's Dec. 2, 2016 Comments at 2-4. While we take Kinder Morgan's statements into account, how a project is characterized by an applicant, affiliate, corporate parent, or commenter does not determine the project's status. We undertake our own independent review, and in this case although we found cause to consider certain environmental impacts of the three projects in our environmental document, we find Tennessee can complete its ACRP regardless of whether the Broad Run Expansion Project or UMTF Project goes forward.

<sup>125</sup> *See*, EIA's *Today in Energy*, Dec. 2, 2014, <http://www.eia.gov/todayinenergy/detail.php?id=19011>.

<sup>126</sup> *Tennessee Gas Pipeline Co., L.L.C.*, 156 FERC ¶ 61,157 at PP 96-97.

with less significant environmental effects<sup>127</sup> is not at issue here, since the ACRP stands on its own, apart from the Broad Run Expansion Project and UMTP Project.<sup>128</sup>

113. In addition, the UMTP Project stands apart jurisdictionally. Although our authorization of Tennessee's ACRP may be characterized as a prerequisite to the UMTP Project, once Tennessee's abandons its pipeline, Commission jurisdiction ends and we will have no further involvement if UMTP subsequently seeks to acquire the abandoned pipeline and convert it to NGLs service. Thus, our approach cannot be viewed as segmenting a larger action over which we have jurisdiction, as we would have no jurisdiction over the authorization and construction of the UMTP Project.

114. The two Tennessee projects serve different ends: the Broad Run Expansion Project will add 200,000 Dth/d of incremental capacity, whereas the ACRP will add facilities to replace capacity lost to abandonment to ensure current customers' continuity of service. The fact that both projects rely on compression at the new Station 875 does not connect the projects for the purpose of an environmental review. The Broad Run Expansion Project can proceed with or without the ACRP and vice versa – with the caveat that if ongoing construction of the Broad Run Expansion Project is not completed, then instead of installing a second unit at an existing compressor station as proposed, Tennessee's ACRP's plans would need to be changed to include modifying the partially completed Station 875 site as needed to house a 10,771 hp unit. We find no support for Allegheny's claim that Tennessee needs two units functioning in tandem at Compressor Station 875; rather, we find the 10,771 hp unit proposed here is sufficient for the ACRP, and the 16,000 hp unit authorized as part of the Broad Run Expansion Project is sufficient for that project. Considering this, we conclude the two projects are not connected actions for NEPA purposes.

**b. Cumulative Impacts**

115. The cumulative impact is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”<sup>129</sup> Commenters argue that the Broad Run Expansion Project,

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<sup>127</sup> *Myersville*, 783 F.3d 1301, 1326; *see also City of W. Chicago, Ill. v. U.S. Nuclear Regulatory Comm'n*, 701 F.2d 632, 650 (7th Cir. 1983) (citing *City of Rochester v. U.S. Postal Serv.*, 541 F.2d 967, 972 (2d Cir.1976)).

<sup>128</sup> The converse does not hold. Although the ACRP can go forward regardless of the ultimate disposition of the abandoned pipeline, because the UMTP Project depends on acquiring the pipeline Tennessee proposes to abandon, it is connected to the ACRP.

<sup>129</sup> 40 C.F.R., § 1508.7 (2017).

the UMTF Project, and the ACRP will produce a cumulatively significant impact. We affirm the EA's conclusion that the combined actions associated with these three projects will not.

116. CEQ has explained that "it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful."<sup>130</sup> Furthermore, a cumulative impact analysis need only include "such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well-nigh impossible."<sup>131</sup> Further, "the scope of the cumulative impact analysis is related to the magnitude of the environmental impacts of the proposed action," and actions that will have no significant direct and indirect impacts usually require only a limited cumulative impacts analysis.<sup>132</sup> Courts have held that a meaningful cumulative impacts analysis must identify:

(1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected *in that area* from the proposed project; (3) other actions-past, present, and proposed, and reasonably foreseeable-that have had or are expected to have impacts *in the same area*; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.<sup>133</sup>

117. Consistent with CEQ's *1997 Cumulative Effects Guidance*, to determine the scope of a cumulative impacts analysis for each project, Commission staff establishes a "geographic scope" in which various resources may be affected by both a proposed

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<sup>130</sup> CEQ's *Considering Cumulative Effects under the National Environmental Policy Act*, at 8 (January 1997) (*1997 Cumulative Effects Guidance*).

<sup>131</sup> *Id.* The Supreme Court has commented that the "determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies." *Kleppe*, 427 U.S. 390, 413.

<sup>132</sup> See CEQ's *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis*, at 3 (June 24, 2005).

<sup>133</sup> *Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006) (TOMAC), 433 F.3d 852, 864 (D.C. Cir. 2006) (emphasis added) (quoting *Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002), *as amended* (Aug. 27, 2002)).

project and other past, present, and reasonably foreseeable future actions.<sup>134</sup> An impact is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”<sup>135</sup>

118. Commenters highlight the impacts from the past, present, and reasonably foreseeable production of Appalachian shale gas, and claim the geographic scope used to analyze cumulative impacts was arbitrary. They assert we used an unduly constrained region of influence and neglected to take a hard look at the cumulative impacts of the ACRP and the UMTF Project in conjunction with other past, present, and reasonably foreseeable future actions.

119. Allegheny cites: *LaFlamme v. FERC (LaFlamme)*<sup>136</sup> to argue we cannot consider the cumulative impacts of the proposed project in isolation; *Natural Resources Defense Council, Inc. v. Hodel (Hodel)*<sup>137</sup> to argue we must consider ‘inter-regional’ impacts of Appalachian gas development activities; and *Delaware Riverkeeper and Northern Plains Resource Council, Inc. v. Surface Transportation Board (Northern Plains)*<sup>138</sup> to argue projects need not be finalized before they are reasonably foreseeable, and that even if we do not know the extent of gas production activities, we are aware of its nature and cannot arbitrarily narrow its cumulative impacts analysis. In addition to case law, Allegheny references various studies in support of its contention that Appalachian gas production will have a “substantial impact” on the environment.<sup>139</sup>

120. The EA explains that the geographic scopes for the resource-specific cumulative analyses were selected based on the magnitude and extent of the proposed project’s anticipated impacts.<sup>140</sup> To determine what projects and actions to include within the geographic scopes, Commission staff researched federal, state, and local municipality permit actions, and used information provided by Tennessee, to generate a list of 228 past,

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<sup>134</sup> See, e.g., *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

<sup>135</sup> *Sierra Club v. Marsh*, 976 F.2d 763, 767. See also *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

<sup>136</sup> 852 F.2d 389 (9th Cir. 1988).

<sup>137</sup> 865 F.2d 288 (D.C. Cir. 1998).

<sup>138</sup> 668 F.3d 1067, 1085 (9th Cir. 2011).

<sup>139</sup> Allegheny’s May 11, 2016 Comments at 33 and 46.

<sup>140</sup> See EA section 2.11.1.

present, and reasonably foreseeable activities that were considered in the cumulative impact analyses.<sup>141</sup> We find the EA's methodology to be appropriate and affirm the EA's conclusion that the ACRP's contribution to cumulative impacts will be relatively minor, and will be reduced still further by the mitigation measures described in the conditions of this order. We find there will be an insignificant cumulative effect when the impacts of the ACRP are added to other projects within the geographic scopes of resources affected by the ACRP.<sup>142</sup>

121. The demarcations of the geographic scopes are consistent with CEQ's recommendations<sup>143</sup> and case law.<sup>144</sup> Our cumulative impacts analysis considered the additive impact of the proposed action's direct and indirect effects with other past, present, and reasonably foreseeable actions that have impacts occurring within the same region and time span as the impacts of the proposed action.<sup>145</sup>

122. We disagree with the assertion that cumulative impacts associated with induced Appalachian gas production were inadequately addressed. We have previously concluded in natural gas infrastructure *expansion* proceedings that the environmental impacts resulting from gas production are generally not sufficiently causally related to specific gas

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<sup>141</sup> *Id.* at 141 and Appendix J.

<sup>142</sup> Because we find the proposed project's potential cumulative impacts would be localized (with the exception of air quality, which is discussed below), we reject Allegheny's request that we "examine the impacts that 24-hour shale gas drilling and compressor station operations are having on wildlife populations throughout the Appalachian Basin" and "consider the cumulative impacts of pipeline and compressor station expansions and shale gas development on wildlife." Allegheny's April 11, 2016 Comments at 36-37. We interpret Allegheny's advocacy for an "inter-regional" wildlife review as a proposal to undertake a programmatic EIS, which we decline to do, for the reasons discussed herein.

<sup>143</sup> See CEQ's 1997 *Cumulative Effects Guidance* at 12-16.

<sup>144</sup> See, e.g., *Sierra Club v. FERC*, 827 F.3d 36, 50 (D.C. Cir. 2016) (*Freeport LNG*) (stating that a "NEPA cumulative-impact analysis need only consider the 'effect of the current project along with any other past, present or likely future actions in the same geographic area' as the project under review" (quoting *TOMAC*, 433 F.3d 852, 864)).

<sup>145</sup> As a cumulative impact of the proposed project and of the Broad Run Expansion Project, we included a review of the new Compressor Station 875, which will contain two units, one installed in connection with the Broad Run Expansion Project, and one as proposed herein.

infrastructure projects, nor are the potential impacts from gas production reasonably foreseeable such that the Commission could undertake a meaningful analysis that would aid in our decision making.<sup>146</sup> We reached this result although projects were adding new capacity, and thus were arguably inducing additional production. By way of contrast, the ACRP would not add capacity and thus would not impact production. In addition, EA section 1.4 explains that production-related impacts were not included as cumulative impacts because there is no Appalachian gas exploration, production, or development within the geographic scope of the ACRP. The past, present, and reasonably foreseeable impacts of Appalachian production are too far removed, geographically and temporally, from ACRP impacts to be considered as adding to impacts on resources that would be affected by the project. Even if production-related impacts were to occur within the geographic scope of the ACRP, we would not include such impacts in our cumulative analysis if we were to find the impacts too speculative to be meaningful. This applies as well to indirect impacts, as discussed in the following section.

123. Allegheny's reliance on *LaFlamme* is misplaced. In *LaFlamme*, the court found that in reviewing the environmental impacts of a hydroelectric project, we failed to properly consider cumulative impacts because we relied on an EIS previously prepared for a different project located on the same river in which the scope of review was limited to the impacts of that project's own diversion dams and facilities. The court criticized our reliance on the "narrow analysis" in a different project's EIS as a substitute for the analysis required for the hydroelectric project under review.<sup>147</sup> In this case, unlike *LaFlamme*, we do not rely on analyses or studies conducted in connection with other projects; here we prepared a project-specific environmental document for the ACRP. Further, the court in *LaFlamme* did not fault us for limiting our cumulative impacts analysis to dams and facilities in the area of the proposed project. Consistent with this approach, in conducting our cumulative impacts analysis, we established a geographic scope appropriate to the ACRP.

124. Allegheny's reliance on *Hodel* is misplaced as well. In *Hodel*, the court found that the U.S. Department of the Interior, in leasing offshore oil and gas tracts, should have included the development of oil and gas leases in adjacent areas in the cumulative impacts analysis, because development would take place simultaneously, thereby forcing migratory species traveling through the leased tracts "to swim through each area, with no

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<sup>146</sup> See, e.g., *Nat'l Fuel Gas Supply Corp.*, 158 FERC ¶ 61,145, at PP 148-159 (2017); *Rover Pipeline LLC*, 158 FERC ¶ 61,109, at PP 267-269 (2017); and *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255 at P 118. Note that in these cases, unlike this one, new facilities were installed in order to increase transportation capacity.

<sup>147</sup> 852 F.2d 389, 401 ("At no point did the EIS analyze the effects other projects, pending or otherwise, might have on" the section of the river basin under review.).

respite from the harmful effects of [the offshore] development.”<sup>148</sup> Allegheny interprets the *Hodel* holding to mean we must consider the reasonably foreseeable impacts of gas extraction on a broader scale.

125. We disagree. In *Hodel*, the court was persuaded by a prior Supreme Court statement that under NEPA, proposals for “related actions that will have cumulative or synergistic environmental impact upon a region concurrently pending before an agency must be considered together.”<sup>149</sup> The related actions in *Hodel* were the agency’s leasing of individual oil and gas tracts, which when stitched together with adjacent oil and gas tracts scheduled for simultaneous development, covered an extensive stretch of marine species’ migratory paths. The proposed action here does not present a comparable potential for cumulative or synergistic impacts, since the footprint of the ACRP is discreet, and with inconsequential exceptions, does not, as was the case in *Hodel*, abut other areas with ongoing projects or pending project proposals. Because there are not other projects that could magnify the impacts of the ACRP, we find *Hodel* has no bearing on this proceeding.

126. Allegheny relies on *Delaware Riverkeeper* and *Northern Plains* to insist we make use of forecasting and speculation to study gas production impacts. We see no need to do so, since the ACRP proposal would do no more than shift the current flow of gas from one pipeline to an adjacent pipeline on the same transportation path. Accordingly, we find the EA appropriately excluded a study of gas production from the cumulative impacts analysis.

127. Allegheny challenges the region considered for cumulative impacts on waterbodies and wetlands, arguing that although the EA designates this region as “the immediate watershed boundary (HUC 12) surrounding each compressor station,”<sup>150</sup> this is not in fact the watershed boundary, but is the sub-watershed boundary.<sup>151</sup> According to

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<sup>148</sup> 865 F.2d 288, 297.

<sup>149</sup> *Id.* (citing *Kleppe*, 427 U.S. 390, 410).

<sup>150</sup> EA at 114.

<sup>151</sup> See the U.S. Geological Survey’s *Federal Standards and Procedures for the National Watershed Boundary Dataset*, Chapter 3, Section A – Federal Standards, Book 11 – Collection and Delineation of Spatial Data, Section 3 – Techniques and Methods 11-A3, at 1 (2013), [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/nrcs143\\_021581.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_021581.pdf). The U.S. Geological Survey Watershed Boundary Dataset Hydrologic Unit Code states that an

Allegheny, if the Commission had employed the larger HUC 10 watershed, rather than the smaller HUC 12 sub-watershed, it likely would have included many shale gas wells in its analysis.

128. For the EA analysis, Commission staff “chose the HUC 12 sub-level watershed because of the small scale of the ACRP’s ground disturbance in relation to the area encompassing surrounding watersheds,”<sup>152</sup> and found the project would not have a significant cumulative impact within the sub-watershed boundary.<sup>153</sup> Had the EA utilized the HUC 10 standard and expanded the scope of the watershed, the assessment of project impacts would still not result in any significant cumulative impacts on the larger watershed.

## 7. Indirect Impacts

129. CEQ’s regulations direct federal agencies to examine the indirect impacts of proposed actions.<sup>154</sup> Indirect impacts are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”<sup>155</sup> Thus, to determine whether an impact should be studied as an indirect impact, the Commission must determine whether it is (1) caused by the proposed action and (2) reasonably foreseeable.

### a. Causation

130. NEPA “requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause” in order “to make an agency responsible for a particular effect under NEPA.”<sup>156</sup> As the Supreme Court explained, “a ‘but for’ causal

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HUC 12 sub-watershed is typically from 10 to 40 K acres (15 to 62 square miles) and an HUC 10 watershed is typically from 40 to 250 K acres (62 to 390 square miles).

<sup>152</sup> EA at 140.

<sup>153</sup> *Id.* section 2.11.3.

<sup>154</sup> 40 C.F.R. § 1508.25(c) (2017).

<sup>155</sup> 40 C.F.R. § 1508.8(b) (2017).

<sup>156</sup> *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752 at 767 (2004) (*Public Citizen*) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (*Metro. Edison*)).

relationship is insufficient” to establish cause for purposes of NEPA.<sup>157</sup> Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation,” will not fall within NEPA if the causal chain is too attenuated.<sup>158</sup> Further, the Court has stated that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”<sup>159</sup>

131. Commenters argue the EA should have considered induced Appalachian production as an indirect effect, alleging Appalachian production and the proposed project are “two links of a single chain.”<sup>160</sup> Allegheny states that by ignoring induced upstream production, the EA uses “tunnel vision” to look only at direct impacts, rather than indirect impacts, similar to the NEPA analysis by the Corps of Engineers in *Colorado River Indian Tribes v. Marsh (Colorado River)*,<sup>161</sup> which failed to recognize that a stabilization project on a riverbank would function as a prerequisite for real estate development adjacent to the river. In addition, several commenters are apprehensive that the proposal, by facilitating north-to-south transportation on Tennessee’s system, will induce the further development of LNG export terminals along the Gulf of Mexico.

132. Because Tennessee’s proposal will not add capacity, but simply ensure the continuity of existing firm service by using an alternate means to move the same volume of gas along the same route, the ACRP should have no impact on gas production or gas consumption. Following completion of its ACRP, Tennessee will continue to function as an interstate transmission system, receiving gas that has been gathered by third parties and delivered to points of interconnection with its interstate system. Thus we find there is neither a sufficient causal link nor a reasonably foreseeable relationship between

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<sup>157</sup> *Id.* See also *Freeport LNG*, 827 F.3d 36, 46 (observing that the Commission need not examine everything that could conceivably be a ‘but for’ cause of a project) and *Sierra Club v. FERC*, 827 F.3d 59, 68 (D.C. Cir. 2016) (*Sabine Pass LNG*) (finding that the Commission’s authorization of LNG terminal export facilities was “not the legally relevant cause” of increased production of natural gas).

<sup>158</sup> *Metro. Edison*, 460 U.S. 766, 774.

<sup>159</sup> *Public Citizen*, 541 U.S. 752, 770.

<sup>160</sup> Allegheny’s April 11, 2016 Comments at 16 and 18 (quoting *Sylvester v. U.S. Army Corps of Eng’rs*, 884 F.2d 394, 400 (9th Cir. 1989)).

<sup>161</sup> 605 F. Supp. 1425 (C.D. Cal. 1985).

Tennessee's project and any potential new production activities or increase in LNG exports.<sup>162</sup>

133. Here, Allegheny, like the environmental groups in *Central New York Oil and Gas Co., LLC (Central New York)* case,<sup>163</sup> seek review of impacts (induced production of Appalachian shale gas) that are not “caused by” the construction and operation of the ACRP.<sup>164</sup> In *Central New York*, the Commission authorized construction and operation of a 39-mile long pipeline traversing Northeast Pennsylvania, which was intended, in part, to “provide access to interstate markets for natural gas produced from the Marcellus [s]hale in northeast Pennsylvania”<sup>165</sup> In that case, environmental groups, before the Commission and the Second Circuit, argued that the pipeline would “serve[] as a ‘catalyst’ for Marcellus shale development in the Bradford, Lycoming and Sullivan Counties crossed by the pipeline, and would ‘facilitate the development of Marcellus [s]hale.’”<sup>166</sup> The Commission determined, and the court agreed, that the Commission need not consider the environmental impacts of production from the Marcellus shale region when authorizing a pipeline project that would connect an interstate gas pipeline to a specific Marcellus shale gas production region.<sup>167</sup>

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<sup>162</sup> See e.g. *Sierra Club v. DOE*, 2017 WL 3480702, slip op. at 7 (D.C. Cir. Aug. 15, 2017) (increased gas production not reasonably foreseeable when agency cannot predict the incremental quantity of natural gas that might be produced in response to an incremental increase in LNG exports); see also *Sierra Club v. FERC*, 827 F.3d 36, 46 (D.C. Cir. 2016) (FERC need not examine everything that could conceivably be a but-for cause of the project at issue); *Sierra Club v. FERC*, 827 F.3d 59, 68 (D.C. Cir. 2016) (FERC order authorizing construction of liquefied natural gas export facilities is not the legally relevant cause of increased production of natural gas).

<sup>163</sup> 137 FERC ¶ 61,121 (2011), *order on reh'g*, 138 FERC ¶ 61,104 (2012), *pet. for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 Fed. App'x 472 (2d Cir. 2012).

<sup>164</sup> See EA at 7 (noting that it is the existing and ongoing development of the Marcellus shale gas play that drives demand for takeaway interstate pipeline facilities).

<sup>165</sup> *Central New York*, 138 FERC ¶ 61,104 at P 5.

<sup>166</sup> *Central New York*, 137 FERC ¶ 61,121 at P 81.

<sup>167</sup> See *id.* P 37 (finding no causal connection between pipeline and shale gas production in part “because the Commission plays no role in, nor retains any control over,” well development).

134. Unlike the *Central New York* pipeline, the ACRP Project will not provide a new transportation path for moving gas from the production area to market. Rather, the project merely creates replacement capacity on Tennessee's existing system. Thus, here, any link between the ACRP and Marcellus Shale gas production is significantly more attenuated than in the *Central New York* case.

135. Last, the case Allegheny relies upon, *Colorado River*, is inapposite. At issue in *Colorado River* was the scope of the Corps' environmental review for a permit for a developer to place riprap<sup>168</sup> to stabilize a portion of the shoreline along the Colorado River.<sup>169</sup> The riprap was an integral and necessary part of the developer's proposed 156-acre residential and commercial development project, which included 447 single-family homes, mobile homes, and commercial facilities, along the Colorado River.<sup>170</sup> The Court determined that the Corps – the agency responsible for issuing a permit for the riprap – violated NEPA by limiting its review to the physical impacts from the developer's installation of the riprap and failing to consider the impacts of the developer's larger residential and commercial development that was dependent on the installation of the riprap.<sup>171</sup> *Colorado River* highlights the close causal relationship necessary to mandate consideration of indirect impacts – a causal link that is absent here.

136. In this case Commission staff did not analyze the effects of gas production activities because, unlike in *Colorado River*, there is not a sufficient causal link between our authorization of the ACRP project and any additional production. Unlike *Colorado River*, where installing riprap to stabilize the riverbank was an essential predicate to building along the riverbank, current and future gas production and LNG exportation can and will continue with or without the ACRP.

137. Commenters also maintain impacts of the UMTF Project are indirect effects of the ACRP. We find no causal link because the eventual disposition of Tennessee's pipeline after abandonment is not a part of the proposed action and because the pipeline, once abandoned, will no longer be under Commission jurisdiction, and we will have no

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<sup>168</sup> Riprap is large boulders placed along shorebanks to stabilize the banks and prevent erosion.

<sup>169</sup> *Colorado River*, 605 F. Supp. at 1432-34.

<sup>170</sup> *Id.* at 1428.

<sup>171</sup> *Id.* at 1433 (Corps violated NEPA by failing to consider the indirect and cumulative impacts of the residential and commercial development where it was "reasonably foreseeable that the placement of the ripraps was just a stepping stone to major development in the area").

authority to weigh in on its future use.<sup>172</sup> Further, although we will permit the pipeline to be abandoned in place rather than requiring its removal, our approval of this treatment, while arguably a prerequisite to potential repurposing, does not qualify as the cause of the pipeline's future use as contemplated by CEQ regulations.<sup>173</sup> Therefore, the EA appropriately did not address impacts that may occur after abandonment as indirect effects.

**b. Reasonable Foreseeability**

138. Allegheny contends that Appalachian gas development is reasonably foreseeable, and because speculation is implicit in NEPA,<sup>174</sup> there is no need to know the precise location, scale, scope, and timing of such development. Allegheny cites *Mid States Coalition for Progress v. Surface Transportation Board (Mid States)*, in which the court stated that “when the nature of the effect is reasonably foreseeable but its extent is not, [an] agency may not simply ignore the effect.”<sup>175</sup> Allegheny insists there is adequate information available to meaningfully forecast gas development.<sup>176</sup>

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<sup>172</sup> The EA at 4 observes that “while the abandonment would allow for whatever future use [Tennessee] ultimately decides to undertake, the abandonment would not be the cause of the future use as contemplated by CEQ regulations. Therefore, the EA does not address the potential impacts that could occur after the abandonment as indirect effects.”

<sup>173</sup> Kentucky Resources Council and Tom FitzGerald argue our abandonment approval is sufficient to “federalize” the UMTP Project, thereby obliging us to consider the impacts of the UMTP Project in our environmental review of the ACRP. We disagree, given that the ACRP is independent of the UMTP Project and that we will have no role in determining if the UMTP Project goes forward. The UMTP Project will require its own federal approvals, and the whether these approvals will federalize the UMTP Project, and thereby subject it to NEPA review, will be determined by the agencies responsible for issuing the federal approvals.

<sup>174</sup> Allegheny's April 11, 2016 Comments at 23 (citing *Delaware Riverkeeper*, 753 F.3d 1304, 1310 (quoting *Scientists' Inst. For Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973))).

<sup>175</sup> 345 F.3d 520, 549 (8<sup>th</sup> Cir. 2003).

<sup>176</sup> Allegheny's April 11, 2016 Comments at 24 and 41 (citing, e.g., Morningstar Energy Observer, *Shale Shock: How the Marcellus Shale Transformed the Domestic*

139. We reiterate that because the ACRP would add facilities to restore existing capacity lost to abandonment, but would not add capacity, current and future gas production should be unaffected. Thus, unlike *Mid States*, here we do not “simply ignore” the impacts of future gas development; rather, we do not expect there to be any. To the extent there are, we find there are no identified “specific and causally linear indirect consequences that could reasonably be foreseen and factored into the Commission’s environmental analysis.”<sup>177</sup> This applies as well to the even further attenuated impacts of the UMTP Project, which some commenters urge us to treat as reasonably foreseeable consequences of Tennessee’s proposal.

## 8. Similar Actions

140. Similar actions have “similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography,” and an agency should review similar actions collectively if it finds “the best way to assess adequately the combined impacts of similar actions or reasonable alternatives” is in a single environmental document.<sup>178</sup> Commenters anticipate the ACRP and the Broad Run Expansion Project, and possibly the UMTP Project, will result in similar impacts, and urge us to include and review all such impacts in our environmental document in this proceeding.

141. In the Broad Run Expansion Project proceeding, we rejected the identical assertion that we should view the ACRP as a similar action, and here we reach the same result for

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*Natural Gas Landscape and What It Means for Supply in the Years Ahead* (Feb. 2014), Attachment 5 of the Comments).

<sup>177</sup> *Freeport LNG*, 827 F.3d 36, 48. We find the other case cited by Allegheny, *Delaware Riverkeeper*, is inapposite. In that case, the court faulted the Commission for segmenting its environmental review of four “contemporaneous” Commission-jurisdictional pipeline projects. 753 F.3d 1304, 1318. Reasonable foreseeability was not at issue.

<sup>178</sup> 40 C.F.R. § 1508.25(a)(3) (2017).

the same reason.<sup>179</sup> With the exception of Compressor Station 875,<sup>180</sup> the two projects' impacts would be geographically distinct, thus we conclude that considering them in the same NEPA document is neither necessary nor the best way to assess their impacts or alternatives.<sup>181</sup> Some portions of the UMTF Project will overlap geographically; however, that project's timing remains uncertain, but for the certainty that if it advances, it will not commence until sometime after Tennessee has abandoned its mainline.

142. In urging us to undertake a multi-project review, Allegheny references *Delaware Riverkeeper*. We find the circumstances differ significantly. In *Delaware Riverkeeper* the court emphasized the temporal nexus in finding a multi-project review to be appropriate for four projects that were all proposed or under construction simultaneously along the same mainline.<sup>182</sup> There is no equivalent temporal nexus here, and but for Compressor Station 875, no equivalent geographic overlap.

143. In addition, for similar actions, agencies are accorded more deference in deciding whether to review such actions from multiple projects in a single environmental document.<sup>183</sup> Whereas the regulations state that connected and cumulative actions "should be discussed in the same impact statement,"<sup>184</sup> the regulations relax this with respect to similar actions, and instead state that an "agency may wish to analyze these

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<sup>179</sup> See *Tennessee Gas Pipeline Co., L.L.C.*, 156 FERC ¶ 61,157 at PP 100-102 (explaining why we do not view the Broad Run Expansion Project and ACRP impacts as similar).

<sup>180</sup> For the station site, in this and in the Broad Run Expansion Project proceedings, the impacts from both projects were deemed cumulative, and analyzed as such.

<sup>181</sup> Note that when the Broad Run Expansion Project was authorized in September 2016, we anticipated it and the ACRP could be undergoing constructed within a similar time frame, and nevertheless declined to characterize them as similar actions. The anticipated similarity in the projects' construction schedules no longer applies.

<sup>182</sup> 753 F.3d 1304, 1309 (referencing the temporal nexus, the court stated "[w]e emphasize here the importance we place on the timing of the four improvement projects").

<sup>183</sup> See, e.g., *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1305-1306 (9th Cir. 2003).

<sup>184</sup> 40 C.F.R. §§ 1508.25(a)(1) and (2) (2017).

actions in the same impact statement.”<sup>185</sup> Thus, it is an agency’s prerogative to decide how to review similar actions (a decision often based on administrative efficiency), in contrast to connected and cumulative actions, which should be reviewed in a single environmental document. This different regulatory treatment is presumably designed to preclude cloaking the overall impacts of a large undertaking by segmenting it into smaller units. Since the ACRP is not a segment of a larger interdependent undertaking, we find no reason to review similar impacts attributable to other projects in the EA for the ACRP.

#### **IV. Conclusion**

144. Based on the information and findings in the EA and in this order, we conclude that if Tennessee’s ACRP is constructed and operated in accordance with the application, as supplemented, and in compliance with the environmental conditions in Appendix D to this order, our approval of this proposal will not constitute a major federal action significantly affecting the quality of the human environment.

145. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this order. 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.<sup>186</sup>

146. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and supplements and exhibits thereto, and all comments submitted, and upon consideration of the record,

#### **The Commission orders:**

(A) A certificate of public convenience and necessity is issued to Tennessee under NGA section 7(c) authorizing it to construct and operate pipeline and compression facilities, as described in this order and the application.

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<sup>185</sup> 40 C.F.R. § 1508.25(a)(3) (2017).

<sup>186</sup> See 15 U.S.C. § 717r(d) (state or federal agency’s failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with the Commission’s regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation or would delay the construction and operation of facilities approved by the Commission).

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

(1) completing the authorized construction of the proposed facilities and making them available for service within two years from the date of this order, pursuant to section 157.20(b) of the Commission's regulations; and

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

(C) Tennessee is granted permission and approval under NGA section 7(b) to abandon the facilities described in this order and the application, subject to the conditions described herein.

(D) Tennessee shall notify the Commission within 10 days of the date of its abandonment of facilities, as permitted and approved by this order, and complete its abandonment within two years from the date of this order.

(E) Tennessee shall submit its proposed final accounting for the abandoned facilities within six months after the sale and transfer transaction is consummated. The accounting submission shall provide all transaction-related accounting entries made to the books and records along with appropriate narrative explanations describing the basis for the entries.

(F) Tennessee shall comply with the environmental conditions set forth in Appendix D to this order.

(G) Tennessee shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by any other federal, state, or local agency 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.

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(H) Tennessee's request for rehearing of the October 27, 2016 Notice Granting Late Interventions is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A****Timely Motions to Intervene**

- Anadarko Energy Services Company
- James R. Angel, M.D.
- James R. Angel and Sherri Angel
- Atmos Energy Corporation
- Atmos Energy Marketing LLC
- Joan Spalding Brown, Larry Spalding et al.
- John Brown Ltd Inc.
- Rock E. Bryant
- Cabot Oil & Gas Corporation
- Calpine Energy Services, L.P.
- Chesapeake Energy Marketing, L.L.C.
- Chevron U.S.A. Inc.
- ConocoPhillips Company
- Consolidated Edison Company Of New York, Inc. and Orange and Rockland Utilities, Inc.
- Direct Energy Business Marketing, LLC
- East Kentucky Power Cooperative, Inc.
- East Tennessee Group<sup>187</sup>
- EQT Energy, LLC
- Exelon Corporation
- Independent Oil & Gas Association of West Virginia, Inc.
- Indicated Shippers
- Kentucky Resources Council, Inc.
- Louisiana Municipal Gas Authority

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<sup>187</sup> The East Tennessee Group is made up of the Gas Appalachian Natural Gas Distribution Company, Athens Utilities Board, Bridgeport Utilities, Cookeville Gas Department, Elk River Public Utility District, Etowah Utilities Gas Department, Fayetteville Public Utilities, Gallatin Natural Gas System, Harriman Utility Board, Hawkins County Gas Utility District, Jamestown Gas System, Jefferson-Cocke County Utility District, Knoxville Utilities Board, Lenoir City Utilities Board, Lewisburg Gas Department, Livingston Gas Department, Loudon Utility Gas Department, Madisonville Gas System, Marion Natural Gas System, Middle Tennessee Natural Gas Utility District, Mt. Pleasant System, Oak Ridge Utility District, Powell Clinch Utility District, Rockwood Water & Gas, Sevier County Utility District, Sweetwater Utilities Board, and Unicoi County Gas Utility District.

- Louisville Gas and Electric Company
- National Fuel Gas Distribution Corporation
- National Grid Gas Delivery Companies<sup>188</sup>
- New England Local Distribution Companies<sup>189</sup>
- New Jersey Natural Gas Company
- New York Public Service Commission
- New York State Electric & Gas Corporation
- NiSource Distribution Companies<sup>190</sup>
- NJR Energy Service Company
- Piedmont Natural Gas Company, Inc.
- Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas Company
- Chattanooga Gas Company
- Northern Illinois Gas Company d/b/a Nicor Gas Company
- PSEG Energy Resources & Trade LLC
- Range Resources-Appalachia, LLC
- Repsol Energy North America Corporation
- Sequent Energy Management, L.P.
- Shell Energy North America (US), L.P.
- SWEPI LP
- Talisman Energy USA Inc.
- Tenaska Marketing Ventures
- Tennessee Valley Authority
- Terri Slater

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<sup>188</sup> The National Grid Gas Delivery Companies are The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, collectively d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid.

<sup>189</sup> The New England Local Distribution Companies are Bay State Gas Company d/b/a Columbia Gas of Massachusetts; The Berkshire Gas Company; Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities; Connecticut Natural Gas Corporation; Fitchburg Gas and Electric Light Company; City of Holyoke, Massachusetts Gas and Electric Department; Northern Utilities, Inc.; NSTAR Gas Company; The Southern Connecticut Gas Company; Westfield Gas & Electric Department; and Yankee Gas Services Company.

<sup>190</sup> The NiSource Distribution Companies are Columbia Gas of Kentucky, Inc., Columbia Gas of Ohio, Inc., and Columbia Gas of Pennsylvania, Inc.

- Tennessee Customer Group<sup>191</sup>
- UGI Distribution Companies<sup>192</sup>

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<sup>191</sup> The Tennessee Customer Group is made up of Centerpoint Energy Resources Corp.; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; West Tennessee Public Utility District; Athens Utilities; City of Florence, Alabama; Hartselle Utilities; City of Huntsville, Alabama; Municipal Gas Authority of Mississippi; North Alabama Gas District; Tuscumbia Utilities; and Sheffield Utilities.

<sup>192</sup> The UGI Distribution Companies are UGI Utilities, Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc.

**Appendix B****Protests**

- Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.
- East Kentucky Power Cooperative, Inc.
- James R. Angel and Sherri Angel
- Joan Spalding Brown, Larry Spalding
- John Brown Ltd Inc.
- Joint Companies<sup>193</sup>
- Kentucky Resources Council, Inc.
- Louisiana Department of Wildlife and Fisheries
- National Grid Gas Delivery Companies
- New England Local Distribution Companies
- Chattanooga Gas Company
- Northern Illinois Gas Company d/b/a Nicor Gas Company
- Tennessee Customer Group

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<sup>193</sup> The Joint Companies are National Fuel Gas Distribution Corporation; New Jersey Natural Gas Company; NJR Energy Services Company; Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas; and PSEG Energy Resources & Trade LLC.

**Appendix C****Commenting Entities**

- City of Danville, KY
- Indicated Shippers<sup>194</sup>
- Kentuckians for the Commonwealth
- Kentucky Conservation Committee
- Kentucky Heartwood
- Kentucky State Nature Preserves Commission
- Louisiana Department of Wildlife and Fisheries
- Marion County Fiscal Court
- U.S. Fish and Wildlife Service

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<sup>194</sup> Indicated Shippers are Anadarko Energy Services Company, ConocoPhillips Company, Direct Energy Business Marketing, LLC, Shell Energy North America (U.S.), L.P., and SWEPI LP.

## Appendix D

### Environmental Conditions

1. Tennessee Gas Pipeline Company, L.L.C. (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 Environmental Assessment (EA), unless modified by the Order. Tennessee must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to (1) issue (or deny) any approvals or authorizations necessary to carry out the conditions of this order, and (2) take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority may include:
  - a. the modification of conditions of the Order; and
  - b. the design and implementation of any additional measures, **including stop-work authority**, to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of any 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 (EI), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Tennessee shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of

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

Tennessee's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Tennessee's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipelines or aboveground facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

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

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

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

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Tennessee must file revisions to the plan as schedules change. The plan shall identify:

- a. how Tennessee will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
  - b. how Tennessee will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Tennessee will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in session(s);
  - f. the company personnel and specific portion of Tennessee's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Tennessee will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Tennessee shall employ at least one EI per construction spread. The EIs shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;

- d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Tennessee shall file updated status reports with the Secretary on a **biweekly basis until all abandonment, construction, and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Tennessee's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Tennessee from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's response.
9. Tennessee must receive written authorization from the Director of OEP **before commencing construction of any Project facilities**. To obtain such authorization, Tennessee must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Tennessee must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

11. **Within 30 days of placing the authorized facilities in service**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed and installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the certificate conditions Tennessee has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. **Prior to construction at Compressor Station 216.5**, Tennessee shall file with the Secretary the geotechnical investigation report for the compressor station site, stamped and sealed by the professional engineer-of-record registered in the state of Ohio. This report shall include an evaluation of the site suitability for Compressor Station 216.5 and provide mitigation recommendations if necessary.
13. **Prior to construction**, Tennessee shall file with the Secretary the location, by milepost, of all private wells within 150 feet of construction workspaces and Tennessee shall conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for these wells.
14. **Within 30 days of placing the facilities in service**, Tennessee shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each complaint was resolved for all private wells within 150 feet of construction workspaces.
15. **Prior to construction at workspaces MS0290 and MS0320**, Tennessee shall file with the Secretary documentation of consultation with the local agencies responsible for wellhead protection areas regarding mitigation measures for protection of the wellhead protection areas at these workspaces.
16. **Prior to construction**, Tennessee shall file with the Secretary, for review and approval by the Director of OEP, Tennessee's *Wetland and Waterbody Construction and Mitigation Procedures* that incorporate:
  - a. the site-specific alternative measures listed in table 2.2-6 of the EA, including use of specific additional temporary workspaces within 50 feet of certain waterbodies;
  - b. confirmation that Tennessee will not perform routine vegetation maintenance over the full right-of-way width;
  - c. confirmation that Tennessee will not use a construction right-of-way width greater than 75 feet in wetlands; and

- d. confirmation that Tennessee will not discharge water from trench dewatering to any waterbody.
17. **Prior to construction**, Tennessee shall file its final *Invasive Species Management Plan* with the Secretary for review and written approval by the Director of OEP.
  18. **Prior to construction**, Tennessee shall file with the Secretary the results of its consultation with state agencies regarding the approved construction timing window(s) for in-water work and construction plans that demonstrate consideration of the recommendations.
  19. **Prior to construction**, Tennessee shall file with the Secretary a *Migratory Bird Conservation Plan*, along with documentation of consultation with the U.S. Fish and Wildlife Service (Fish and Wildlife Service). The plan shall identify acreages of bird habitat that will be affected by the project (both temporary and permanent), assess the related effects of habitat loss and forest fragmentation to migratory birds, and identify mitigation measures to address the impacts.
  20. **Prior to construction**, Tennessee shall file with the Secretary documentation of consultation with the appropriate Fish and Wildlife Service field office and state agencies regarding any known bald eagle nests within 1,500 feet of the project construction workspaces and the appropriate avoidance and minimization measures.
  21. Tennessee shall not begin construction activities within areas of potential effect **until**:
    - a. Tennessee completes surveys (or provides confirmation from the Fish and Wildlife Service that no surveys are needed) for gray bat, Virginia spiraea, whorled sunflower, running buffalo clover, Short's bladderpod, and Price's potato-bean. Before the initiation of surveys, Tennessee shall consult with the Fish and Wildlife Service for appropriate survey methods and periods for each species. The survey reports and any Fish and Wildlife Service comments shall be filed with the Secretary. The survey reports shall include the following information:
      - (1) name(s) and qualifications of the person(s) conducting the survey;
      - (2) method(s) used to conduct the survey;
      - (3) date(s) of the survey;
      - (4) area surveyed (include the mileposts surveyed, as applicable); and
      - (5) proposed mitigation that would substantially minimize or avoid the potential impacts.

- b. Tennessee files with the Secretary the final Memorandum of Agreement with the Fish and Wildlife Service Kentucky Field Office for Indiana bats and northern long-eared bats.
  - c. Federal Energy Regulatory Commission (FERC) staff completes Endangered Species Act consultation with the Fish and Wildlife Service and Tennessee has received written notification from the Director of OEP that construction or use of mitigation may begin.
22. **Prior to construction**, Tennessee shall file with the Secretary, for review and approval by the Director of OEP:
- a. revised site-specific plans for residences less than 50 feet from the construction right-of-way for the mainline valve (MLV) 874 replacement pipeline. These plans shall be on aerial photography background, indicate all distances between the construction workspace and the residence, and show all residential features such as driveways; and
  - b. evidence of consultation with landowners for any construction work areas within 10 feet of a residence.
23. **Prior to construction**, Tennessee shall file with the Secretary, for review and written approval by the Director of OEP, a visual impact mitigation plan for Compressor Stations 202.5 and 211.5 that includes the following measures:
- a. maintaining existing foliage, to the maximum extent practicable, around the compressor station;
  - b. installing vegetative screening around the station boundaries;
  - c. installing slatted fencing around the compressor station boundaries;
  - d. painting buildings and equipment inside the stations in colors that reduce contrast with the natural environment; and
  - e. installing downward-facing, shielded lights to mitigate off-site exposure.
24. Tennessee shall not begin construction of facilities and/or use staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
- a. Tennessee files with the Secretary:
    - (1) remaining cultural resources survey reports;
    - (2) site evaluation reports, avoidance plans, or treatment plans, as necessary; and
    - (3) comments on the reports and plans, including Discovery Plans, from the State Historic Preservation Offices and interested Indian tribes.

- b. The Advisory Council on Historic Preservation has been afforded an opportunity to comment if historic properties will be adversely affected.
- c. FERC staff reviews and the Director of OEP approves all cultural resources reports and plans, and notifies Tennessee in writing that either treatment measures (including archaeological data recovery) may be implemented or construction may proceed.

All materials filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.”**

- 25. Tennessee shall file noise surveys with the Secretary **no later than 60 days** after placing Compressor Stations 202.5, 206.5, 211.5, and 216.5 in service. If a full load condition noise survey is not possible, Tennessee shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at Compressor Stations 202.5, 206.5, 211.5, and 216.5 under interim or full horsepower load conditions exceeds a day-night sound level ( $L_{dn}$ ) of 55 decibels on the A-weighted scale (dBA) at any nearby noise-sensitive areas (NSA), Tennessee shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Tennessee shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
- 26. Tennessee shall file noise surveys with the Secretary **no later than 60 days** after placing the authorized units at Compressor Stations 110 and 875 in service. If a full load condition noise survey is not possible, Tennessee shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of the new/modified units at Compressor Stations 110 and 875 at interim or full load exceeds an  $L_{dn}$  of 55 dBA at any nearby NSAs, Tennessee shall install additional noise controls to meet that level **within 6 months** of the in-service date. Tennessee shall confirm compliance with the  $L_{dn}$  of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
- 27. **Prior to any abandonment activities at existing compressor stations,** Tennessee shall file the following information with the Secretary for review and written approval by the Director of OEP:
  - a. identification of any equipment, including compressor units and piping, proposed for abandonment that may be contaminated with polychlorinated biphenyls (PCB);

- b. verification that the appropriate PCB testing will be conducted on this equipment, and discussion of how any abandoned PCB-contaminated facilities will be properly disposed of; and
  - c. measures to be implemented to provide adequate worker safety for handling PCB-contaminated materials.
28. **Prior to any abandonment or construction activities at existing compressor stations**, Tennessee shall file the following information with the Secretary for review and written approval by the Director of OEP:
- a. identification of any known facilities to be abandoned or disturbed having asbestos-containing materials (ACM);
  - b. protocols to comply with the appropriate requirements to identify ACMs that might be encountered;
  - c. if facilities with ACMs will be abandoned or disturbed, methods to separate the ACMs for proper disposal; and
  - d. protocols for worker protection and proper disposal of ACMs.

Document Content(s)

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