

101 FERC ¶ 61, 188
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

East Tennessee Natural Gas Company

Docket Nos. CP01-415-000
CP01-415-001
CP01-415-002
CP01-415-003
CP01-375-000

ORDER DENYING REHEARING, AUTHORIZING ABANDONMENT,
AND ISSUING CERTIFICATE

(Issued November 20, 2002)

1. On March 27, 2002, the Commission issued a preliminary determination addressing the non-environmental issues raised in this proceeding, finding that East Tennessee Natural Gas Company's (East Tennessee) proposed Patriot Project was required by the public convenience and necessity.¹ Issuance of a certificate authorizing construction of East Tennessee's proposed facilities was reserved pending completion of the environmental review process.
2. On April 26, 2002, East Tennessee filed a timely request for clarification, or alternatively, for rehearing of the March 27 preliminary determination. Also on April 26, 2002, Mrs. Barbara Smith filed a timely request for rehearing and stay of the preliminary determination. Michelle Bankey requested rehearing of the preliminary determination on April 18, 2002.
3. On June 26, 2002, East Tennessee filed a request to amend the application by modifying facilities proposed along the expansion portion of the Patriot Project by incorporating into the Patriot Project certain compression and looping facilities already

¹98 FERC ¶ 61,331 (2002).

approved by the Commission in an order issued December 21, 2001 in Docket No. CP01-375-000 as part of East Tennessee's TVA Project,² and by removing certain other facilities proposed as part of the Patriot Project that will not be necessary upon inclusion of the formerly approved TVA Project facilities as part of the Patriot Project. East Tennessee states that the Tennessee Valley Authority has decided not to develop an electric generation plant in Franklin County, Tennessee that the TVA Project was intended to serve. East Tennessee also filed a request that the Commission vacate the certificate authority granted in that proceeding, effective upon issuance of authorization to incorporate specific portions of the facilities authorized therein as part of the modified Patriot Project.

4. We have now completed our environmental analysis of East Tennessee's proposal, and, for the reasons discussed below, we will accept East Tennessee's proposed amendment, grant East Tennessee's request for clarification, deny the requests for rehearing, and grant final certificate authorization, subject to environmental compliance conditions.

Preliminary Issues

Answers to Pleadings

5. East Tennessee filed a reply to Mrs. Smith's rehearing and stay request, which included a copy of a study entitled "Patriot Extension Market Study" prepared for it by the Merrimack Energy Group. The Blue Ridge Coalition (Coalition) and Barbara Smith then jointly filed an answer to East Tennessee. Although our rules of procedure do not permit these types of pleadings, we may, for good cause, waive this provision.³ We find good cause to do so in this instance in order to help development of a complete record in this proceeding.

Late-filed Request for Rehearing

6. On April 12, 2002, the Coalition, noting that requests for rehearing of the March 27 preliminary determination were due April 26, 2002, filed a request for a 30-day extension of time in which to file a rehearing request. Thereafter, on April 29, 2002, the Coalition filed an untimely request for rehearing of the March 27 preliminary determination. The Coalition states it was not able to meet the filing deadline because it

²See 97 FERC ¶ 61,361 (2001).

³18 C.F.R. § 385.213(a)(2).

is a voluntary landowner group restricted in manpower and resources. The Coalition avers that, pursuant to the provisions of the Commission's regulations at 18 C.F.R. § 385.711(a)(iii)(3) (Rule 711), the Secretary of the Commission may extend the time limits for any brief on or opposing exceptions.

7. We will deny the Coalition's motion for an extension of time. Section 19(a) of the Natural Gas Act provides that any person aggrieved by an order of the Commission may file a request for rehearing within 30 days of such order. Contrary to the Coalition's argument, the Commission does not hold authority to waive the 30-day requirement. This time period is statutory. Both the Commission and the courts have consistently held that the 30-day requirement in section 19(a) is a jurisdictional requirement that the Commission does not have the discretion to waive, even with good cause.⁴ Rule 711 does not operate to allow extension of the rehearing filing deadline with respect to orders of the Commission under Subpart B of the Commission's Rules of Practice and Procedure; rather, Rule 711 applies only to initial decisions by an administrative law judge under Subpart E of the regulations.⁵

Request for Stay

8. Ms. Smith alleges that East Tennessee's application is deficient and the Commission's preliminary determination relies on incomplete or inaccurate information. She requests that the Commission stay implementation and enforcement of the preliminary determination until East Tennessee submits additional information that Ms. Smith believes is necessary for the Commission to address the issues she raises on rehearing. East Tennessee replies that Ms. Smith has not met the standard for granting a stay of a Commission order.

⁴See, e.g., *Associated Gas Distributors v. FERC*, 824 F.2d 981, at 1105 (1987); *City of Campbell v. FERC*, 770 F.2d 1180, at 1183 (1985); *Boston Gas Co. v. FERC*, 575 F.2d 975, at 979 (1st Cir. 1978); *Tennessee Gas Pipeline Company*, 95 FERC ¶ 61,169 (2001); and *Columbia Gas Transmission Corp.*, 40 FERC ¶ 61,195 (1987).

⁵The Coalition has nonetheless fully set forth its position in its other filings with the Commission in this proceeding.

9. The standard for granting a stay by administrative agencies, including this Commission, is whether justice so requires.⁶ Administrative Procedure Act (APA), 5 U.S.C. § 705. In applying the APA standard, we must balance the interests of the party seeking the stay with the overall public interest and determine whether the requesting party will sustain irreparable harm in the absence of a stay.⁷ Where this standard is not met, the Commission follows a general policy of denying motions for stay of its orders based on the need for definiteness and finality in administrative proceedings.⁸

10. We find that Ms. Smith has not demonstrated that justice requires staying our March 27, 2002 preliminary determination. The preliminary determination, as the name suggests, does not authorize construction of the proposed pipeline or, in fact, any other action, but instead only represents the Commission's findings on issues in the proceeding unrelated to environmental analysis. Accordingly, because Ms. Smith cannot experience any irreparable harm from the March 27 findings, we will deny the request for stay.

Motion for Clarification or Rehearing of Tolling Order

11. Commission regulations provide that in the absence of action on rehearing requests within 30 days, those requests for rehearing (and any timely requests filed subsequently) are deemed denied.⁹ In order to afford sufficient time for consideration of the matters raised on rehearing, in accordance with usual Commission practice, the Commission, on May 28, 2002, issued an order stating that it would issue an order on the merits of the requests when it issues a final order in this proceeding (tolling order).

12. On June 17, 2002, the Coalition filed a motion for clarification or rehearing of the Commission's May 28, 2002 tolling order. The Coalition requests clarification that the Commission will address the merits of the requests for rehearing filed in this proceeding in a sufficiently timely manner to ensure that the Commission's environmental staff will have adequate time to incorporate the Commission's conclusions in its preparation of the

⁶See Destin Pipeline Company, L.L.C., 85 FERC ¶ 61,057 (1998); and Portland Natural Gas Transmission, 83 FERC ¶ 61,080 (1998).

⁷See Tennessee Gas Pipeline Company, 81 FERC ¶ 61,386 (1997); and Commonwealth Gas Pipeline Corporation, 29 FERC ¶ 61,054 (1984).

⁸See Tennessee Gas Pipeline Company, 36 FERC ¶ 61,312 (1986); and Old Gas Ceiling, 36 FERC ¶ 61,102 (1986).

⁹18 C.F.R. § 385.713.

Final Environmental Impact Statement (FEIS) for East Tennessee's Patriot Project. The Coalition states that the May 28 tolling order appears to contemplate addressing rehearing issues after the FEIS is prepared. Doing so, argues the Coalition, will prejudice the appropriate consideration of possible alternatives to the route proposed, adopt false project goals, and alter the scope of the original proposal without appropriate notice.

13. We will deny the Coalition's June 17 request. In accordance with our usual practice, we issued a preliminary determination addressing largely economic issues, and finding that public benefits expected from the project will outweigh adverse impacts. The Commission's Certificate Policy Statement contemplates that the balancing of interests will often precede the environmental analysis.¹⁰ This process does not prejudice or otherwise limit the Commission's environmental analysis. Indeed, the Policy Statement specifically explains that if the environmental analysis following a preliminary determination should prefer a route different from the one proposed by the applicant, the earlier policy statement analysis balancing public benefits against adverse impacts could be reopened.¹¹ The Coalition's objections are thus premature. As set forth below, the FEIS and this order fully address all issues pertinent to this proceeding, including route alternatives, project goals, and notice.

Request to Delay Final Environmental Impact Statement

14. A Draft Environmental Impact Statement (DEIS) for the Patriot Project was issued in April 2002. On June 28, 2002, the Commonwealth of Virginia Department of Environmental Quality (Virginia DEQ) filed comments on the Commission's April 2002 DEIS. Included in its comments is a request that the Commission delay preparation of the FEIS until it completes its DEIS and receives comments with respect to another gas pipeline project proposed by Dominion Greenbrier Pipeline Company, LLC in Docket No. CP02-396-000 (the Greenbrier Project). The Virginia DEQ states that the two pipeline projects contemplate similar pipelines and routes, and, it avers, affect "basically" the same area. It suggests that after full environmental review is completed, it may become necessary for environmental considerations for FERC to reroute either or both pipelines, or even to choose between these two projects. The Virginia DEQ also

¹⁰Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC ¶ 61,227 (1999); order clarifying statement of policy, 90 FERC ¶ 61,128 (2000); order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000).

¹¹See 88 FERC ¶ 61,227, at p. 61,749.

Docket No. CP01-415-000, et al.

- 6 -

suggests that the Commission may need to analyze the cumulative impacts of the Patriot Project and the electric power plants and other developments that would depend on it.

15. East Tennessee replied that the Commission should proceed with the preparation of a FEIS without delay. The Commission, it says, has already rejected the proposition that the two projects may be mutually exclusive. East Tennessee stated that there are significant differences between the two projects. Most notably, it said, the timetables of the projects are very different; parts of the East Tennessee project are scheduled to go in service up to two years before the Greenbrier Project. The two projects, moreover, are intended to provide service to different customers; only one of the Patriot Project shippers, Public Service Company of North Carolina, will also be a customer of Dominion Greenbrier. East Tennessee points out that it has contractual commitments to begin service to three of its customers in May 2003,¹² and delaying final action on its application as requested by the Virginia DEQ will likewise delay the commencement of service to the detriment of East Tennessee and these customers.

16. We will deny the Virginia DEQ's request. The FEIS was issued on September 23, 2002. Section 3.13 of the FEIS discusses the potential cumulative impact of the Patriot Project and a number of other existing and planned energy projects for southwestern Virginia, including proposed electric generation plants, a new 57-mile long American Electric Power (AEP) electric power transmission line, and the Greenbrier Project. The FEIS explains that, although the two pipelines have been proposed for construction in the same general area, the Greenbrier Project is fully subscribed and the Patriot Project almost so; that the projects have committed the great majority of their capacities to separate, distinct users; and that the projects have different construction timetables and customer in-service dates. Thus, neither pipeline, concludes the FEIS, could satisfy the needs of all users by itself. The FEIS describes how the Greenbrier and Patriot Projects would run in close proximity for a short distance along the Henry/Pittsylvania County line, and that the Greenbrier Project would cross the Patriot Project in Rockingham County, North Carolina. The FEIS explains that the greatest potential impact of the project will be loss of trees along the two proposed routes. However, the FEIS concludes that, because only limited portions of the new right-of-way for the Patriot Project are forested and/or in the vicinity of the other linear project facilities, including the Greenbrier Project, the Patriot Project may be constructed, subject to recommended mitigation conditions, without resulting in any significant cumulative impacts.

¹²NUI Energy Brokers, Inc., Carolina Power & Light Company, and Duke Energy Murray, LLC (DENA Murray).

Background

17. On July 26, 2001, East Tennessee filed an application for a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA), to construct and operate pipeline facilities in Tennessee, Virginia, and North Carolina known as the Patriot Project. The proposed facilities consist of an expansion of East Tennessee's existing mainline facilities in Tennessee and Virginia, and a new extension of its mainline pipeline facilities in Virginia and North Carolina. As described more fully in the preliminary determination, the mainline expansion involves constructing approximately 87.2 miles of new pipeline loops and five new compressor stations, modifying 10 existing compressor stations, and uprating approximately 77.2 miles of existing pipeline. East Tennessee also proposes under section 7(b) to abandon certain facilities that would be replaced by the new facilities. The extension would involve constructing an approximately 93.6 mile mainline (Line 3600) from a point on Line 3300 near Wytheville, Virginia, to an interconnect with facilities of Transcontinental Gas Pipe Line Corporation (Transco) at Eden, North Carolina, and an approximately 7 mile lateral line from the mainline extension to a new electric power plant in Henry County, Virginia. The new facilities would ultimately provide up to 510,000 dekatherms (Dth) a day of firm natural gas service.

18. The March 26 preliminary determination found, based on non-environmental issues, that the Patriot Project is in the public interest because it will provide fuel for new electric generation plants, provide additional gas supplies to existing local distribution companies (LDCs) in Virginia and North Carolina, and bring natural gas service to portions of southwestern Virginia for the first time. The preliminary determination noted East Tennessee's prediction that the availability of natural gas service will stimulate industrial development, and its plan to install 20 taps at various locations in all the counties along the proposed pipeline route. Specifically recognizing the opposition of the Boards of Supervisors of Patrick and Henry Counties to the Patriot Project, we pointed out that, although there are as yet no customers identified at these tap points, a number of other local governments, business groups, and state and national elected government officials have submitted letters strongly supporting the Patriot Project and the taps as a means of enhancing the ability of their localities and the region as a whole to attract business and jobs. The Commission found that the public benefits of the proposed project will outweigh any adverse impacts.

Project Amendment

19. In its proposed amendment East Tennessee seeks authorization to: 1) eliminate 13.76 miles of pipeline loop and 6.14 miles of 16-inch diameter pipeline uprate,

originally proposed for the Patriot Project; 2) incorporate 1,590 horsepower (hp) of the compression authorized for the TVA Project at Station 3206, and reduce the compression proposed as part of the original Patriot Project at Station 3303 by 4,040 hp; 3) eliminate proposed compressor station 3219; 4) replace aerodynamic assemblies at two compressor stations as authorized for the TVA Project; 5) incorporate 8.74 miles of 20-inch diameter loop authorized in the TVA Project; and 6) uprate 5.44 miles of 12-inch diameter pipeline authorized for the TVA Project. The amended mainline expansion would now involve construction of 82.3 miles of new pipeline loop, 76.7 miles of pipeline uprates, and 9 compressor stations.

20. East Tennessee states that the amended facilities will result in a net reduction in the compression and looping originally contemplated for the combined Patriot and TVA Projects. East Tennessee avers that the amendment is necessary because the original Patriot Project facilities were designed under the engineering assumption that the TVA expansion project would be in service prior to installation of the Patriot Project facilities. The proposed modifications to the Patriot Project, avers East Tennessee, will not add any new facilities that the Commission has not already approved as part of the TVA Project or that are different from those currently under review in this proceeding. Likewise, the newly proposed facilities will not increase the firm transportation capacity of the Patriot Project.

21. East Tennessee also proposes to adjust the timing of construction of certain facilities to accommodate a one-year delay in the construction of the gas-fired electric power plant proposed to be constructed by Henry County Power, LLC in Henry County, Virginia. East Tennessee and Henry County Power have executed an amendment to their precedent agreement that reflects the construction schedule change and a shift in receipt points.

Engineering

22. In the March 27 preliminary determination we found that East Tennessee had properly designed the Patriot Project to provide up to 510,000 Dth a day of firm transportation service for the Patriot Project shippers without adverse effect on intervening pipelines. No parties have requested rehearing of the engineering findings in the preliminary determination, and no parties have raised operational or engineering issues regarding the amended Patriot Project. The modifications to the Patriot Project proposed by East Tennessee in its amendment do not affect our previous findings, and we confirm that the amended Patriot Project is properly designed to provide the proposed service.

Rates

23. The revised facilities reflect a net increase of \$282,000 in facilities' costs for a total Patriot Project cost of \$289.3 million -- a minor increase from the \$289 million originally estimated. East Tennessee is proposing a revised initial recourse rate to recognize the net increase in facilities costs. The revised proposed recourse rate will be \$10.156 per Dth or \$0.3339 per Dth on a 100 percent load factor rate basis as opposed to the original rate of a maximum recourse reservation charge of \$10.147 per Dth, or \$0.3336 per Dth on a 100 percent load factor basis. Additionally, East Tennessee has recalculated the fuel percentage for the expansion shippers based on the revised incremental compression that East Tennessee proposes to install as a result of this Amendment. East Tennessee recalculated the annual incremental fuel factor to 1.51 percent, up from the incremental fuel factor of 1.5 percent in its original application.

24. East Tennessee's amended recourse rate of \$10.156 per Dth and revised fuel rate are acceptable. The incremental recourse rate continues to be higher than the existing generally applicable Part 284 FT-A maximum rate of \$7.21 per Dth. Consistent with the original application, the amended recourse rate was designed based on the assumption that all the facilities would be constructed with a total additional contract entitlement of 510,000 Dth per day (of which 64,000 Dth are currently unsubscribed). Under the Commission's Policy Statement, East Tennessee is financially liable for the project costs and would not be able to shift such costs to its existing shippers.¹³ Further, the Policy Statement places the risk of underutilization on the pipeline or permits the pipeline and the incremental shippers to arrange for risk sharing in their contracts before construction and service begins.¹⁴ The precedent agreements between East Tennessee and the seven respective shippers do not include any language on the sharing of risks, however, and we strongly urge East Tennessee and the Patriot Project shippers, when they finalize their contracts, to enter into a cost sharing agreement on cost overruns and any changes to the recourse rate, if the contract entitlements are less than the 510,000 Dth per day certificated level of capacity.

25. In addition, we note that the Commission already provided in the March 27 preliminary determination that all costs attributable to the Patriot Project, including cost

¹³See Transcontinental Gas Pipe Line Corporation (Transco), 98 FERC ¶ 61,155 at 61,554 (2002); Transco, 97 FERC ¶ 61,094 at 61,486 (2001); and Tennessee Gas Pipeline Company, 94 FERC ¶ 61,194 at 61,704 (2001), order on reh'g and clarification, 95 FERC ¶ 61,096 at 61,284 (2001).

¹⁴88 FERC ¶ 61,227 at 61,747 (1999).

overruns, should be allocated to the incremental recourse rate should East Tennessee seek to recover such costs in a future section 4 rate proceeding.¹⁵ Therefore, rates of the existing shippers will not be adversely affected by the Patriot Project.

Request for Clarification and Rehearing by East Tennessee

26. East Tennessee states that the construction schedule included in its application proposed that construction of the Patriot Project would occur over an 18-month period, but that the Commission's preliminary determination requires that construction must be completed and made available for service within one year from the date of a final order authorizing the project. East Tennessee states that the magnitude of the project requires a longer construction timetable. The longer period, it notes, will allow East Tennessee to meet all the in-service dates requested by the various shippers. Although the Commission often imposes a 12-month construction period, states East Tennessee, Commission regulations do not prescribe a 12-month limit, and the Commission has authorized construction periods in excess of one year. East Tennessee requests that the Commission clarify that East Tennessee need not complete construction of the Patriot Project within 12 months from the date of certificate authorization.

Commission Response

27. As East Tennessee correctly points out, Commission regulations do not require that a Commission-authorized construction project be completed within any particular time frame. Instead, Commission regulations provide that in each order authorizing a construction project the Commission will establish a time frame for construction. In this proceeding, East Tennessee requested that it be allowed 18 months to complete construction of the Patriot Project, but subsequently modified its request to further adjust the construction schedule to accommodate a one-year delay in the in-service date for Henry County Power until January 1, 2005. In view of the size and scope of the project, we find that East Tennessee's request for a lengthier construction period is reasonable, and we will modify our preliminary determination in this respect to authorize East Tennessee to complete the Patriot Project authorized in this order by January 1, 2005.

¹⁵98 FERC ¶ 61,331 at 62,396 (2002).

Ms. Smith's Request for Rehearing**Need for Pipeline**

28. Ms. Smith alleges that the Commission's findings regarding need for the proposed service by East Tennessee and the public benefits from that service are based on out-of-date information, and that current data does not support a need for increased gas service in the region involved in this application. Contrary to the December 2000 U.S. Energy Information Administration (EIA) forecast for 4 percent annual growth rate for natural gas use cited in the Commission's preliminary determination, states Ms. Smith, the EIA's 2002 forecast predicts a substantially lower growth rate for residential and industrial gas use in the South Atlantic region and zero growth in pipeline capacity utilization from 2000 to 2020. Moreover, suggests the Coalition,¹⁶ there may not be any need for additional electric power in Virginia. East Tennessee's Merrimack Report, attesting to a need for more electric generation in the area under consideration is seriously flawed and not credible, says the Coalition. American Electric Power (AEP), the electric utility company in whose service territory the Patriot Extension would be built, avers the Coalition, does not need additional generating capacity until 2007 or later.

29. Ms. Smith and the Coalition also state that the planned Henry County and DENA Wythe electric power plants to be served by the Patriot Project are experiencing substantial construction delays and/or economic problems, which, they suggest, may cause them to cancel the projects. They argue that loss or substantial delay of these projects casts doubt on whether the pipeline is needed.

East Tennessee

30. In its proposed amendment to the application, East Tennessee stresses that all seven shippers entering into precedent agreements continue committed to the Patriot Project. Approximately 87 percent of the Patriot Project capacity remains committed on a long-term basis. Despite suggestions to the contrary, states East Tennessee, letters it has received from Duke Energy, the owner and developer of the DENA Wythe and DENA Murray plants, and Cogentrix Energy, Inc., the owner and developer of the Henry County facility, confirm that the proposed electric power plants continue to move ahead through the regulatory permitting process. Duke Energy's letter explains that the Patriot

¹⁶We have included comments from the Blue Ridge Coalition' various pleadings as part of the discussion of Ms. Smith's rehearing request. Ms. Smith is a member of the Coalition, sometimes signing their filings, and their positions often overlap significantly.

Project is vital to successful development of its DENA Wythe project as the Patriot Project is the only source of gas supply for the DENA Wythe facility, which has agreed to receive 85,000 Dth per day for 20 years. Construction of the DENA Murray power plant, which has contracted to receive 50,000 Dth per day through the Patriot Project, also for a 20-year period, has been completed and the plant has commenced commercial operations. Similarly, in a letter to East Tennessee dated June 18, 2002, Cogentrix confirmed that, although construction has been delayed for a year, it remains committed to the Henry County plant which will receive 200,000 Dth a day of natural gas for 20 years.

31. East Tennessee also attaches to its application amendment letters from two of the local distribution companies with which it has executed precedent agreements, confirming their continued support for the Patriot Project. Carolina Power & Light Company (CP&L), states that it needs the capacity from the Patriot Project (for which it has contracted 30,000 Dth per day for 15 years) to fuel its new peaking and intermediate load power generation facilities that commenced operations on June 1, 2002. CP&L stresses that this capacity is needed to replace and/or augment capacity it currently obtains on the secondary market. As discussed in more detail below, United Cities Gas Company, a local distribution company in southwestern Virginia, likewise confirms its continued support for the Patriot Project.

32. With respect to whether more natural gas service will be needed in the future, East Tennessee provides a January 2002 study it commissioned from the Merrimack Energy Group to assess the demand for natural gas and associated economic benefits and impacts in the region involved here. This study, it states, relies on individual LDC forecasts as the basis for its projections, and supports the earlier analysis that there will be significant gas use and need for pipeline capacity in the target markets justifying the Patriot Project. East Tennessee states that the Merrimack Energy study forecasts an overall growth in regional power demand over the next several years, and it avers that the current slowdown in the U.S. economy will delay, but not eliminate the need for more power and the fuel requirements to generate the power. As long as a need for more power exists, it states, projects will be built to meet this need and pipeline capacity will be necessary. East Tennessee states that any slowing in the increase in demand for additional infrastructure will be of short duration.

Public Benefits to Counties in Virginia¹⁷

33. Ms. Smith and the Coalition contend that the Commission's preliminary determination overstates the economic benefits reasonably to be expected from the proposed pipeline. Ms. Smith argues that the counties through which the proposed pipeline route would run in Virginia will not receive the benefits described by the Commission, and that they instead will be harmed by the pipeline. Ms. Smith asserts that the Commission order presents no measurable market evidence supporting the need for the pipeline except as a transmission conduit across the counties for the benefits of the supporting shippers, relying instead merely on the hope that a pipeline will attract industry to the region. Moreover, Ms. Smith doubts that local residential gas service would result from the Patriot Project because the low population density of the affected counties would render the cost of a distribution system prohibitive.

34. By including the taps as part of the objectives to be met by the proposed pipeline, the Coalition and Ms. Smith argue, the Commission has inappropriately narrowed the consideration of alternatives to the route proposed for the pipeline by East Tennessee. Ms. Smith contends that the Commission's acceptance of what she calls East Tennessee's narrow, self-defined economic objectives effectively negates and prejudices the possibility of giving appropriate consideration to alternative routes. East Tennessee, she says, should have solicited information from other communities along other different routes to ascertain how those communities could benefit from future development resulting from the availability of natural gas service. Ms. Smith suggests that the goal of bringing natural gas service to portions of southwestern Virginia could be attained whether the pipeline follows East Tennessee's proposed route or an alternative route. The Commission, she contends, must balance the economic impacts of these other potential routes to give due consideration to and balance the equities of alternative routes.

35. Ms. Smith and the Coalition contend that East Tennessee's statements that it has worked closely with local governments in agreeing to install the taps misrepresent the facts. Instead, they say East Tennessee has largely sought to impose taps on communities

¹⁷Ms. Bankey's rehearing request raises concerns similar to those of Ms. Smith regarding the need for the proposed pipeline and its impact on the local area. Her comments, however, relate primarily to a suggested alternate route more through the center of Floyd County, Virginia, a route which we are not approving. Accordingly, we need not discuss her rehearing request further. To the extent her comments relate to environmental issues, they have been addressed in the FEIS.

and landowners unilaterally, in many cases in direct opposition to the wishes of elected officials and communities. They aver that there have been no requests for taps by any persons in Patrick or Henry Counties, and that the Boards of Supervisors in those counties have actively opposed the taps and the pipeline before this Commission. The Coalition states that landowners it has contacted in Wythe and Carroll Counties have not requested taps nor been advised that their properties have been identified for tap installations. The Commission, they say, also has not addressed the issue of access to taps on private land and the impact that taps could have on the communities where the taps would be located.

36. The Coalition questions how much service the taps could actually provide in any event, given the fact that 446,000 Dth a day of the proposed pipeline's 510,000 Dth per day capacity is already committed for a substantial length of time. Assuming the 3 to 4 percent annual growth in demand predicted by the four contracting LDCs, the Coalition avers that the 64,000 Dth per day of capacity not yet under contract would be spoken for in a few years, without any consideration of demand from the taps. Although there are as yet no customers at any of the tap locations, there must be some consideration made for future need, if the taps are to serve as anything more than simply initial justification for the pipeline and its route. There is, asserts the Coalition, real doubt as to the ability of the proposed pipeline to serve the needs of the contracting shippers and any future need from the taps East Tennessee has proposed

East Tennessee

37. East Tennessee, while acknowledging that there is opposition to the proposed pipeline, avers that the Patriot Project is indeed strongly supported by local interests, and continues to maintain that its pipeline will bring economic benefits to the region. Specifically, LDC United Cities has informed East Tennessee that it has performed market studies that show sufficient demand to support cooperative development of a gas distribution system in the Towns of Hillsville and Galax in Carroll County. The Town Council of Hillsville and its mayor express strong support for the Patriot Project because of what they view as the real potential for economic development offered by the availability of natural gas service. The Town of Hillsville specifically supports the proposed tap at the Carroll County Industrial Park because it would encourage business to relocate there. The Carroll County Industrial Development Authority, the Carroll County Office of Economic and Education Development, and the Carroll County Board of Supervisors all support the project and its proposed route as a means of promoting economic development. There is similar support for the project at the other end of the Patriot Project in Rockingham County, North Carolina, avers East Tennessee. The Rockingham Partnership for Economic and Tourism Development states that the

proposed route will enable the development of a distribution system in several North Carolina towns, and the proposed tap locations would provide natural gas service to a corridor along a proposed Interstate Highway 73. The Rockingham County Board of Commissioners, and the Town of Stoneville, North Carolina likewise agree that the Patriot Project will enhance their plans for economic development.

38. East Tennessee states that Ms. Smith misstates applicable Commission precedent concerning review of alternatives. It is not the Commission's responsibility under NEPA to determine the goals of a project for the project sponsor. Rather, it states, the Commission generally adopts the project sponsor's goals as a starting point and then considers alternative ways of accomplishing those goals with less impact on the environment. Here, it says, the Patriot Project is intended to move gas between certain points and to provide taps for future supply for certain communities along the way. East Tennessee argues that Ms. Smith would have the alternatives analysis also consider not providing service to those communities, but to other communities instead. East Tennessee states that the law does not require a free-ranging inquiry into other potential projects that no one has proposed.

Commission Response

39. We affirm our finding in the preliminary determination that the proposed Patriot Project is required by the public convenience and necessity. As we explained in the preliminary determination, the precedent agreements into which East Tennessee has entered demonstrate strong market support for the Patriot Project. Approximately 446,000 Dth per day, representing approximately 87 percent of the Patriot Project's total proposed capacity of 510,000 Dth per day, is subscribed by seven contracting shippers for the long term. Actual providers of electric power have committed substantial amounts of capital to electric generator projects fueled by natural gas in the belief that more electric power will be needed in this region of the United States in future years. These power plants, and local gas distribution companies as well, are committing themselves contractually to receive specific quantities of gas over lengthy periods of time ranging from 10 to 25 years. Those opposing the project suggest that this support may drop substantially if, as they predict, the DENA Wythe and/or Henry County power plants are not constructed. However, subsequent to issuance of the preliminary determination, East Tennessee received confirmation of the continued support of the contracting shippers.

40. Moreover, although various studies show different rates of anticipated growth for gas and electric power in the Southeast, the Commission notes that all studies continue to show growth in energy needs for the South Atlantic Census Region, including the EIA's

Annual Energy Outlook 2002 and the North American Electric Reliability Council's Reliability Assessment 2001-2010. At the Commission's Southeast Energy Infrastructure Conference on May 9, 2002, participants explained that both the population and the need for electric power and natural gas in the southeastern states are expected to increase in coming years.¹⁸ Specifically, the following information was presented to the Commission:

- Population will increase across the Southeast United States by about 23 million by 2010;
- Population, non-manufacturing employment and personal income are all growing and are contributors to growth in electric consumption;
- By 2010, electric demand will increase by 30 percent in the South Atlantic Census Division with an additional 60,000 MW of capacity needed; and
- Deliveries of natural gas into the South Atlantic region will need to increase by 50 percent by 2010, and annual Southeast pipeline capacity will have to increase by 1 Tcf.

Sufficient infrastructure must be in place so that increased natural gas demand from electric power plants and distribution companies can be served when needed and not subject to delays. Thus, we find that the Patriot project has a justifiable market need.

41. The proposed taps have not, as Ms. Smith and the Coalition allege, inappropriately narrowed the consideration of alternate routes. It is well settled that Congress did not expect agencies to determine for the applicant pipeline what the goals of its proposal should be.¹⁹ In its application, East Tennessee states that in the pre-planning stages of this project several communities along the route it was proposing preferred a pipeline route that would accommodate planned future development. To further the communities' goals of increasing incentives for industry and economic growth in the region, East Tennessee explained that it included ease of future access as a criteria for route determination, and as a result it agreed to develop the Patriot Project pipeline along route areas of anticipated development as designated by these communities. East Tennessee thus proposed to install at its own expense 20 underground pipeline taps at various locations in Rockingham County, North Carolina and the four Virginia counties along the route it was proposing for the project. A number of local governments and business groups, especially in Wythe and Carroll Counties, Virginia, and Rockingham

¹⁸See Southeast Energy Infrastructure Conference, Docket No. AD02-13-000, Transcript (May 9, 2002)

¹⁹See Independence Pipeline Company, 91 FERC ¶ 61,102 (2000).

County, North Carolina, have expressed strong support for the taps and their location along the proposed route. On the other hand, some have expressed strong opposition. The Patrick County Board of Supervisors has consistently opposed routing the pipeline through Patrick County and disputes the need or desire for any taps in the county. Various government officials in Henry County have presented conflicting views on the pipeline route and the taps.²⁰

42. The high level of subscription for the Patriot Project alone warrants its approval; however, the Commission's preliminary determination makes it clear that installation of underground taps along the pipeline represents a potential added benefit to the region from the project because the Patriot Project will bring natural gas service to portions of southwestern Virginia for the first time.²¹ Groups along the proposed route in Virginia and North Carolina believe that the Patriot Project and the taps to be attached to the pipeline are essential for bringing economic development to their region. Without the availability of natural gas service, some believe, there is little chance of attracting new business. The benefits from increased potential access to natural gas from taps along the proposed route in Virginia cannot be quantified with precision because there are as yet no customers at those locations. It is likely that not all the taps will be employed; nevertheless, we believe, along with those who support their installation, that their presence along East Tennessee's pipeline will make locations near the taps more attractive for commercial use and local gas distribution.²² Thus, we continue to believe that the taps proposed by East Tennessee will provide a public benefit to the region, and are an appropriate goal for the Patriot Project. Although there is no support for the project in Patrick County, part of the route that we have determined is the best route from

²⁰The Henry County Board of Supervisors states that it opposes the Patriot Project; however, a resolution of the Board requests that the Commission determine whether the pipeline is needed, assess the impact on landowners and others, and consider a pipeline route through areas that support the pipeline. This order addresses all these issues.

²¹These taps will be located completely underground and merely make it more feasible for East Tennessee to connect a potential local customer to its system after the mainline pipeline is installed.

²²At present, there would be 64,000 Dth a day of currently unsubscribed natural gas capacity available for future use. Existing shippers or new shippers from taps would have the right to nominate gas volumes in accordance with East Tennessee's tariff. If there is more demand than available capacity, East Tennessee could seek authorization from this Commission to expand its system. This is not, however, a matter that can be addressed here.

an economic and environmental perspective will be through Patrick County. Routing the pipeline around Patrick County would deprive the other Virginia counties of natural gas service.

43. In any event, the FEIS considered and analyzed a number of major route alternatives and minor route variations for reducing impact to or avoiding environmentally sensitive areas and population centers. As detailed in the FEIS, and set forth below, Commission staff evaluated two major route alternatives to avoid or reduce environmental impacts in Virginia by moving all or most of the Patriot Extension to North Carolina; two route alternatives that rely on expansion of East Tennessee's existing facilities to decrease the amount of new right-of-way construction; eight route alternatives along existing rights-of-way to reduce impacts to natural resources and to relatively unspoiled viewsheds in forested and mountainous terrain visited by tourists; three route alternatives along road corridor rights-of-way; and one route at the request of a landowner to potentially reduce the amount of forest that would be crossed.²³ We are requiring some route changes (variations) where we find them to be appropriate. However, we find that none of the major route alternatives are environmentally superior to the route proposed by East Tennessee, even if some of the taps are not served.

Sufficiency of Application

44. Ms. Smith argues that the Commission's preliminary determination is based on a "patently" deficient application. The basis for this contention is that the application did not disclose that East Tennessee is affiliated with DENA Wythe, DENA Murray, or the Saltville Storage facility (Saltville) being developed NUI in Saltville, Virginia. Five of the seven Patriot Project shippers, she states, rely on Saltville as a receipt point and two precedent agreements are contingent on the execution of contracts for capacity with Saltville. The Commission, she states, should have addressed the jurisdictional status of the Saltville Storage facility in this proceeding. Ms. Smith avers that the Patriot Project and the Saltville Storage facility are so closely linked that the Commission should consider them together as part of the same project in order to assess the overall rate effect on existing customers.

Response by East Tennessee

²³See Patriot Project Final Environmental Impact Statement, Alternatives, Section 4, pages 4-4 – 4-36.

45. Contrary to Ms. Smith's assertions, states East Tennessee, it is in full compliance with the Commission's regulations concerning disclosure of subsidiaries and affiliates. Neither East Tennessee nor any of its officers or directors owns, controls, or holds with power to vote 10 percent or more of the outstanding voting securities of DENA Wythe, DENA Murray, or Saltville Gas, and none of these three likewise owns, controls, or holds with power to vote 10 percent or more of the outstanding voting securities of East Tennessee. Moreover, neither DENA Wythe nor DENA Murray is engaged in the production, transportation, distribution, or sale of natural gas, or the construction or financing of such operations, and the provisions of Section 157.14(a)(4) are not applicable to those entities. Also, points out East Tennessee, the Commission has recently examined the jurisdictional status of the Saltville Storage facility and determined that the Saltville storage facility will be a Hinshaw pipeline exempt from Commission regulation pursuant to section 1(c) of the NGA.²⁴

Commission Response

46. East Tennessee has fully complied with the Commission's regulations regarding disclosure of affiliations. We are also satisfied that the Saltville Storage facility is a separate stand-alone project, not part of the Patriot Project. On April 11, 2002, the Commission, as noted by East Tennessee, addressed the jurisdictional character of new gas storage facilities being developed jointly in Saltville, Virginia by Duke Energy Gas Transmission and NUI Corp. (NUI) as Saltville LLC. Based on Saltville's representations as to the nature of its proposed operations, the Commission found that, despite the likelihood that Saltville will provide some interstate service, including service for Patriot Project shippers, Saltville's facility will be a Hinshaw facility exempt from the Commission's jurisdiction under section 1(c) of the NGA.²⁵ Since that time, Saltville has received authorization from the Commonwealth of Virginia to construct and operate the storage facility to provide intrastate service to Virginia customers under state-approved rates. On August 23, 2002, Saltville filed an application with this Commission for a limited jurisdiction blanket certificate of public convenience and necessity authorizing

²⁴See Cargill, Inc. v. Saltville Gas Storage Company, L.L.C., 99 FERC ¶ 61,043 (2002).

²⁵The Hinshaw Amendment, NGA section 1(a), states that the NGA shall not apply to a natural gas company engaged in interstate transportation service provided that (1) the company's facilities are located within a single state, (2) all gas supplies are received from another person at or within the boundary of that state, (3) all gas is consumed entirely within that state, and (4) the company's facilities, rates, and services are subject to regulation by the state commission.

Saltville to offer storage and related transportation services to and from its facility to the same extent and in the same manner as intrastate pipelines are authorized to engage in such activities under Section 311 of the Natural Gas Policy Act.²⁶ In that application, Saltville refers to the instant Patriot Project application, and explains that it is discussing service agreements with five of the seven Patriot Project shippers.

Environmental Analysis

47. On October 1, 2001, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement for the Proposed East Tennessee Patriot Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visits (NOI). The NOI was sent to 2,460 individuals, organizations and interested parties, including Federal, state, county, and local agencies; state and local conservation organizations; elected officials (Federal and state representatives and senators); local libraries and newspapers; intervenors in the proceeding; and property owners along the proposed route of the project.

48. The Commission held four public scoping meetings and two public working meetings to provide an opportunity for the general public to learn more about the proposed project and to comment on environmental issues to be addressed in the FEIS. These public scoping meetings were held during October 2001 in Stuart and Wytheville, Virginia, and in Bristol and Chattanooga, Tennessee. During these meetings, attendees from Patrick and Henry Counties, Virginia, requested that input be sought through meetings in their local communities. Public working meetings were subsequently held in Hillsville and Martinsville, Virginia during November 2001.

49. The Commission filed a Draft Environmental Impact Statement (DEIS) with the U.S. Environmental Protection Agency (EPA). A formal notice was published in the Federal Register on April 26, 2002, indicating that the DEIS was available. The Commission mailed the DEIS to 1,387 individuals and organizations, including Federal, state, county, and local agencies; state and local conservation organizations; elected officials (Federal and state representatives and senators); local libraries and newspapers; commentors and intervenors in the FERC proceeding. In accordance with Council of Environmental Quality (CEQ) regulations implementing the National Environmental Protection Act (NEPA), the public was afforded 45 days to comment on the DEIS. Requests were made to FERC to extend the comment period, and subsequently, the

²⁶Docket No. CP02-430-000.

comment period was extended to July 1, 2002. We reviewed and used the comments to prepare the Final Environmental Impact Statement (FEIS) for the Patriot Project.

50. During the DEIS public comment period (April 26, 2002 to July 1, 2002), the Commission held five public comment meetings in Virginia and Tennessee. These meetings provided interested groups and individuals the opportunity to present oral comments on the environmental impacts described in the DEIS. The public comment meetings were held in Martinsville, Stuart, and Hillsville, Virginia, and Signal Mountain, and Bristol, Tennessee. We received additional verbal comments from the Blue Ridge Coalition and other interested persons at a public meeting in Washington D.C. on August 22, 2002.

51. On September 23, 2002, the Commission issued the FEIS. Notification was published in the Federal Register by the EPA on September 30, 2002. The Commission mailed copies of the FEIS to the approximately 2,885 government agencies, groups, and individuals on the environmental mailing list for the project. As part of the FEIS, Commission staff included the public comments received on the DEIS, as well as the staff responses to these comments. The numerous comments received were instrumental in revising and refining the analysis presented in the DEIS. The following discussion summarizes some of the more significant topics addressed in the FEIS.²⁷

52. Issues identified in the public comment meetings included need for the project, eminent domain, dissatisfaction with the company, loss of land use, decreased property values, construction method for the New River crossing, co-location concerns, blasting and its impact on water wells, springs, groundwater, water quality, protective measures for cemeteries, alternatives, pipeline reroutes, noise, safety, adverse effects on tourism, and environmental justice.

53. Construction and operation of the proposed project would not significantly alter geologic conditions. The primary impacts on geologic resources would be associated with blasting activities during construction. Rock excavation or blasting may be required to excavate bedrock at some locations during construction of the pipeline. Several

²⁷The Virginia DEQ requests that it be given until November 8, 2002 to file comments on the FEIS. The Virginia DEQ incorrectly believes that it has 30 days to review the FEIS following publication of the Notice of Availability in the Federal Register. There is no provision for a formal period for commenting on the Final EIS; once the Commission issues its order in this proceeding, interested parties have 30 days in which to seek rehearing of that order, which is based in part on the FEIS.

commentors have expressed concerns about the impact of blasting on water table, aquifers, and wells along the Patriot Extension in the affected areas. All blasting activities would be conducted in accordance with East Tennessee's engineering and environmental specifications, as well as applicable local, state, and Federal requirements governing the use of explosives. These measures are designed to protect structures within 150 feet of the blasting zone that could be damaged by blasting activities. Any damage to structures would be repaired by East Tennessee. The potential impacts of blasting are discussed in section 3.1.1.2 of the FEIS. We are requiring East Tennessee to provide notice to landowners one week prior to blasting and confirm notice at least 24 hours before blasting. East Tennessee is also required to conduct pre- and post blasting surveys for structures, including wells and utilities, within 150 feet of the construction work area. The FEIS concludes that if the project is constructed in accordance with the recommended mitigation measures and with the implementation of East Tennessee's Erosion and Sedimentation Control Plan (E&SCP) blasting activities would not cause a significant impact on geologic resources, wells, or structures.

54. Construction of the proposed Patriot Project could affect groundwater resources; however, most potential impacts would be avoided or minimized by implementation of East Tennessee's E&SCP as modified in Section 3.3. These measures are designed to protect wells and water quality. Any damage to wells associated with blasting and construction would be repaired by East Tennessee. In general, trench excavation would be restricted to a depth of approximately 7 feet and would intersect the water table in low-lying areas. Shallow aquifers could experience minor disturbances from changes in water flow and recharge caused by clearing, grading, trenching, and blasting. These impacts would be temporary and minor and would not significantly affect groundwater supplies.

55. The proposed project would cross three major waterbodies (over 100-foot wide) using horizontal directional drill (HDD) method. Explanation regarding the New River and State Park crossings is provided below in our discussion of the Virginia DEQ's comments on the FEIS.

56. Hydrostatic test withdrawals and discharges would be conducted in accordance with the Commission's Wetland and Waterbody Construction and Mitigation Procedures and permit requirements of other government agencies to maintain downstream uses and minimize impacts to water quality and aquatic resources. During the permitting process, the U.S. Army Corps. of Engineers (COE), National Park Service (NPS), and state regulatory agencies may require that East Tennessee implement additional mitigation measures that are more restrictive than those specified in Section 3.3.

57. The proposed Patriot Project would impact about 12.6 acres of wetlands. Aboveground facilities would not impact wetlands. Construction would not result in any permanent loss of wetland habitat, but there would be a permanent conversion of 4.5 acres of forested wetland to emergent or scrub-shrub wetland habitat. East Tennessee would mitigate for permanent wetland losses in accordance with COE requirements. All construction and restoration in wetlands would be conducted in accordance with East Tennessee's E&SCP and our recommendations. During the permitting process, COE, state and local regulatory agencies may require that East Tennessee implement additional mitigation measures. We are requiring East Tennessee to file its final wetland plan and COE permit, including mitigation conditions and stipulations, with the Secretary in accordance with the recommendations in Section 3.4 of the FEIS.

58. Eleven federally-listed endangered or threatened species, and seven state-listed species have been identified with the potential to occur in the vicinity of the proposed project based on consultation with the U.S. Fish and Wildlife Service (FWS), the Tennessee Wildlife Resources Agency (TWRA), the Tennessee Department of Environment and Conservation Division of Natural Heritage (TNDH), the Virginia Department of Game and Inland Fisheries (Virginia DGIF), the North Carolina Department of Environment and Natural Resources (NCDENR), and the North Carolina Wildlife Resources Commission (NCWRC). Surveys were requested by FWS and state resource agencies and conducted by East Tennessee for nine federally-listed species. The results of consultation and surveys to date for federally-listed species are that there would be no effect on four species (little-wing pearl mussel, tan riffleshell, smooth coneflower, and Eggert's sunflower), and the project would be unlikely to adversely affect four species (Indiana bat, gray bat, small whorled pogonia, and large-flowered skullcap). A determination regarding three other species (bog turtle [southern population], James River spiny mussel, and small-anthered bittercress) has not yet been made because additional surveys are pending and cannot be completed until spring 2003 because of survey time windows for certain species. Further, surveys have not been completed because resource agencies have requested surveys of additional areas, and because East Tennessee has not obtained access from some landowners. During informal consultation (telephone conversations between FWS, Gloucester, Virginia field office, and Commission staff, on October 10 and 16, 2002) FWS stated that in the absence of complete surveys it is premature to do a biological assessment. Therefore, Commission staff will prepare a BA for the FWS with a request for formal consultation, if needed, upon completion of the required surveys, or as soon as otherwise possible. The FEIS recommends that East Tennessee not begin any construction until consultation with FWS is completed.

59. The Patriot Project would affect a total of 2,707.1 acres of land during construction. Of this land, about 42 percent is agricultural land, 34 percent is forest land, 15 percent is open space, 4 percent is commercial/industrial, and 4 percent is residential. Most of this land would be allowed to return to previous uses after construction is complete. Construction and operation of the new aboveground facilities would permanently affect 27.9 acres.

60. Construction would occur within 50 feet of 282 residences along the proposed Patriot Project with 254 of the residences along the Mainline Expansion. Construction would occur within 25 feet of 202 residences, with 185 of those along the Mainline Expansion. Temporary impact during construction in residential areas could include: inconvenience caused by noise and dust from construction equipment and trenching of roads and driveways; noise and damage to septic systems and wells associated with blasting, increased localized traffic; and removal of trees, shrubs, and other screening between residences and adjacent rights-of-way. The FEIS recommends that East Tennessee reduce the construction right-of-way width in areas with residences within 50 feet. East Tennessee would develop site-specific construction plans for residences located within 25 feet of the construction work areas. The FEIS recommends that these site-specific plans be filed as soon as possible with the FERC for its review and written approval.

61. The proposed project would cross the Blue Ridge Parkway, the Appalachian National Scenic Trail, Tennessee Valley Authority lands, and the New River Trail State Park. Commission staff and East Tennessee have been consulting with the agencies managing these lands to mitigate properly for potential impacts to recreation including access and viewsheds. NPS, U.S. Forest Service, and TVA reviewed the DEIS and their comments have been addressed to ensure that appropriate mitigation measures are incorporated including timing restrictions and use of directional drilling. Section 3.8.3.2 of the FEIS discusses more details of the Blue Ridge Parkway and the Appalachian National Scenic Trail.

62. Visual impacts would be greatest in forested areas and at the aboveground facilities. In forested areas, the pipeline would follow the existing right-of-way along the Mainline Expansion and a new corridor would be cleared for most of the Patriot Extension in Virginia and North Carolina. At high visibility locations, such as the Blue Ridge Parkway, East Tennessee proposes to use HDD so there would be no visible evidence of the pipeline installation across the Parkway. One of the five new compressor stations (CS 3303) would be located in a planned industrial area, and two would be screened by existing forest (CS 3108 and CS 3212). The FEIS recommends visual screening for two stations (CS 3105 and CS 3306).

63. Air emissions during construction of the Patriot Project would be short-term and intermittent. These emissions are not expected to have any long-term impacts on air quality. The air emissions associated with operation of the proposed project are expected to comply with Federal, state, and local ambient air quality regulations.

64. Noise would be generated during construction of the Project within the right-of-way and the compressor station sites. Noise associated with construction would be intermittent and temporary. The noise attributable to the operation of the modified and new compressor stations is not expected to exceed an L_{dn} of 55 dBA at the nearest noise sensitive area (NSA) when operated in accordance with the recommendations identified in this FEIS, except for modified CS 3308 and CS 3309. The FEIS recommends modifications to those stations so that there is no net increase in existing noise level. The FEIS also recommends that East Tennessee conduct noise surveys within 60 days of installation of new compressor facilities, and install additional controls if the noise levels exceed target levels (55 dBA or no net increase).

65. East Tennessee's cultural resource consultants performed archaeological investigations for the Mainline Expansion and the Extension, including the Henry County Power Lateral, after consulting with the state historic preservation officer (SHPO) for each state. East Tennessee's consultants identified a total of 77 archaeological sites and 19 architectural resources. Of these, East Tennessee's consultants recommended 27 archaeological sites and 5 architectural resources identified during the survey as potentially eligible for listing in the National Register of Historic Places (NRHP). Commission staff has reviewed these surveys. When project plans are finalized, those resources which cannot be avoided will require further research to determine the significance of the resources and the effects of the project on those resources. Treatment plans will be developed in consultation with the appropriate SHPO and the Advisory Council on Historic Preservation (ACHP) to assure that any adverse effects of project construction will be mitigated. Typically, such treatment plans involve modifying construction methods to reduce impact to the resource and/or scientific recovery and recording of information which might be lost as a result of project construction.

66. The FEIS recommends that construction be deferred until the FERC and SHPOs have reviewed and approved all cultural resource surveys and treatment plans, and have determined the effects of the project on any properties eligible for listing in the NRHP.

67. The FEIS evaluates a no action or postponed action alternative, a project system alternative, major route alternatives, route variations, and aboveground facility

alternatives. The FEIS concludes that the no action and the postponed alternative would not satisfy the objectives of this project. The FEIS does not consider any system alternatives because no viable system alternatives could be identified. As detailed in the FEIS, Commission staff evaluated 13 major route alternatives, but after careful analysis, including multiple site visits, does not recommend adoption of any of them. The FEIS also analyzed eight route variations and recommends adoption of two of them (South Fork Holston River and Reed Creek Variations). Four aboveground compressor station site alternatives and two interconnect site alternatives were also evaluated and rejected.

68. One of the major route alternatives (the AEP Powerline Route Alternative) which the FEIS does not recommend is a route north of the proposed route along the American Electric Power (AEP) powerline from Jackson Ferry to Axton, Virginia. The FEIS explains that this route is somewhat longer, crosses more waterbodies, would increase impacts to residences, and disturbs more acres of wetlands. Another major route alternative south of the proposed route (the Sunnyside to Eden Route Alternative) is likewise longer than the proposed route and would increase impacts to forest lands and residences. Neither route is superior to the proposed route from an environmental standpoint, even if service to the proposed tap locations is not considered. Both alternative routes, however, would in addition not be able to meet a project objective of serving designated locations in southwestern Virginia via proposed taps to the extension pipeline without constructing laterals that would significantly increase the impact on the environment.

Late-filed Comments to the DEIS

69. Several parties filed comments to the DEIS after the July 1, 2002 due date and too late to be included in the FEIS.

70. Shirley Holland alleges that East Tennessee has conducted surveys on property without permission from the landowners and she urges that this Commission address the situation and require East Tennessee to cease surveying property until it provides the Commission with signed, written permissions from the landowners. Ms. Holland attaches a list of 36 properties which she asserts have been surveyed without landowner permission. Gregory Seibert, one of the landowners on Ms. Holland's list states that agents of East Tennessee have placed survey stakes on his land despite posted "no trespassing" signs. John and Laura Cobler, on the other hand, whose property also appears on Ms. Holland's list, indicate that their property has not been surveyed and state that they and 27 others have received a summons to appear in the United States District

Court for Western Virginia regarding such survey permission.²⁸ The Coblers question how a complete environmental study can be performed if property has not been properly surveyed. They do state, however, that a nearby landowner gave the pipeline permission to walk over the property, but they question whether this constitutes a survey.

71. East Tennessee acknowledges that it may have surveyed land without permission in early stages of the Patriot Project, attributing these errors in part to inaccurate tax records or maps. East Tennessee states that it has reviewed its survey and acquisition procedures and has tried to work with landowners to obtain permission. It urged landowners who believe that East Tennessee agents have entered land without permission to contact East Tennessee regarding the problem so that immediate corrective action can be taken.

72. There also appears to be some confusion in this proceeding among some landowners regarding who may have given oral or written permission to East Tennessee to enter their land, or exactly for what purpose they may have granted any such permission. At least in some instances, as noted by the Coblers, East Tennessee has instituted court proceedings seeking permission to conduct surveys where such permission has thus far not been forthcoming.

73. Entry to land is a local matter outside the jurisdiction of this Commission. In instances where landowners believe that East Tennessee has entered land without permission or has exceeded the scope of the permission granted, they should contact East Tennessee, or, if they cannot resolve the question, pursue the matter in court. Issuance of the certificate in this order, in any event, permits East Tennessee to acquire land for the pipeline by eminent domain, if it cannot reach agreement with the owner of land authorized.

74. The fact that East Tennessee has not yet been able to conduct formal engineering surveys or complete environmental studies does not preclude the Commission from issuing a certificate approving a pipeline project. The Commission in this order is approving the project and the general route, but not the final route delineation. Our approval of the route is still subject to the satisfaction of numerous conditions attached to this order regarding such matters as completion of environmental studies, consultation and/or approval by various state and Federal agencies regarding various aspects of the

²⁸East Tennessee has sought permission in the United States District Court for the District of Western Virginia enter upon various properties along the proposed pipeline route to make preliminary surveys. See Case No. 4:02CV00064.

project, construction procedures, and the like before the Director of the Commission's Office of Energy Projects will give final construction approval for a segment of the pipeline route. There could be variations in the specific route of the pipeline depending on these factors. Actual construction permission will not be granted for any particular portion of the pipeline route until all pertinent studies are completed and the conditions met.

75. Mr. Cobler has also expressed concern that the pipeline may interfere with future logging operations on portions of his property because of the heavy weight of his logging equipment that would need to cross over the pipeline. Mr. Cobler is concerned about the possibility of losing access to parts of his property during construction, or that movement of heavy equipment (such as equipment used for farming and logging) over the pipeline after the installation would pose a safety hazard or would not be permitted. There would not be any restrictions for crossing the pipeline with standard passenger vehicles, farm equipment, and small dozers or similar equipment. However, there would be some restrictions for heavy equipment such as log skidders or log trucks. Department of Transportation regulations require that East Tennessee ensure adequate cover or other forms of protection. We will add a certificate condition that East Tennessee consult with Mr. Cobler and other landowners in the same situation regarding the need for additional cover or protection where East Tennessee's construction activities and pipeline facilities cross logging roads.

76. Mr. Seibert also objects to the compensation being offered by East Tennessee for crossing his property. He also suggests that the project should make use of highways and other existing rights-of-way instead of crossing his property. Mr. Seibert does not have to accept what he believes is an unfair offer for his property. If he and East Tennessee cannot agree on a purchase price for land authorized under the certificate authorized here, a court will set the price found appropriate under state law in an eminent domain proceeding under section 7(h) of the NGA. The Commission has considered and rejected a number of suggested alternate routes, and adopted other suggested alternatives, including the use of highways and rights-of-way for the project as discussed in detail in section 4 of the FEIS.

77. The Friends of Claytor Lake, Inc., request that the Commission conduct further environmental review of the potential impacts of the Patriot Project on the New River and the New River Trail State Park. The organization explains that Claytor Lake, which is located in Pulaski County, Virginia, is a 4,500-acre manmade source of drinking water and recreation located downstream of the proposed location of the Patriot Project pipeline route in Pulaski County, Virginia. Henry and Jane Bolduc also express concern over the impacts of the DENA Wythe electric plant and the Patriot pipeline project on

New River water supply. This Commission has no jurisdiction over matters relating to construction or operation of the DENA Wythe electric plant, but the plant will require appropriate approval by Virginia DEQ. Prior to placing the pipelines into service, segments of the new pipeline would be hydrostatically tested to ensure structural integrity. The public expressed concern about the withdrawal of water from the New River. East Tennessee plans to withdraw a total of 2,543,000 gallons of water from four streams including the New River to conduct hydrostatic testing of pipeline segment 1. This testing is short term and will have no lasting impact on water supply. As explained above, the FEIS addresses impacts from the pipeline project on both the river and the park in sections 3.3 and 3.8, and the Commission is imposing conditions in this order recommended in the FEIS regarding pipeline crossing of both.

78. The Virginia Horse Council filed a comment in this proceeding for the first time on September 27, 2002, five months after issuance of the DEIS. The Horse Council alleges that the DEIS was incomplete because it did not explain specifically that the planned exit hole of the HDD under the New River and the pipeline itself would run through a State Park equestrian campground currently being constructed. The Horse Council also asserts that the DEIS did not provide details regarding the project's impact on the New River or the park.

79. While the DEIS and the just issued FEIS do not specifically address an equestrian campground, the DEIS and the FEIS clearly discuss the intended crossing point of the New River, and that the proposed pipeline would be routed under the New River Trail State Park. The FEIS, moreover, explains that the State Park is planning to construct a campground, and that East Tennessee has realigned the proposed route in the area after consultations with Park officials.²⁹ The Horse Council has not explained why it believes that the existence of the pipeline would interfere with the existence or operation of the campground, and in fact, as explained above, use of HDD will avoid all impacts to the Park. Issues related to the New River Crossing and the New River Trail State Park are discussed in more detail below with respect to the Virginia DEQ's comments on the FEIS.

80. The Patrick County Board of Supervisors filed a comment stating that county residents are experiencing significant water supply problems and a high number of replacement wells are having to be drilled, a situation that is aggravated by a severe drought. The Board of Supervisors contends that blasting, trenching, and other ground disturbances for pipeline construction may cause seismic shifting of underground

²⁹FEIS, section 3.8.3.2 Site Specific Impact, pages 3-102 and 103.

structures resulting in the failure of wells and springs, and may cause incurable damage to an unstable and declining groundwater supply. Should the Commission approve construction of the proposed pipeline, the Board of Supervisors requests that the Commission require monitoring of all wells located within two miles of the pipeline route, and require East Tennessee to set aside a bond sufficient to cover the cost of any damages from the pipeline, construct public water treatment facilities required to provide a safe and dependable source of water to the county, and to fund a more specific ground water impact study. E. Fulton Clark and Barbara C. Baughan also request the Commission to consider the current drought in Virginia, and the impact that construction of the Patriot pipeline would have on Patrick County water resources.

81. As noted above, Section 3.3 of the FEIS addresses the impact of the project on surface waters in the project area through which the pipeline will run, explaining that so long as the pipeline is constructed in accordance with East Tennessee's E&SCP and the additional conditions that we are including in this order, there should be no significant impact to any waterbodies crossed by the project. The FEIS also explains that these measures should also protect wells and water quality. The pipeline trench cannot affect the flow of groundwater to wells because all aquifers are below trench level. The flow of springs could be affected, but the impact would be minimized by the use of trench breakers. Trench breakers would also avoid any possibility that significant areas could be drained. Blasting fracture will not extend beyond the immediate vicinity of the trench and therefore will not have a significant effect on groundwater flow. Moreover, there is little potential for damage due to shaking. Blasting for pipelines routinely takes place in close proximity to structures with no adverse effects. However, the monitoring of wells and structures pre- and post blasting will provide for mitigation of potential impacts. Our experience has shown that monitoring to a distance of 2 miles is unnecessary.

82. We cannot predict the duration of the drought, and we do not know how Patrick County is addressing specific drought issues. While East Tennessee's construction activities could impact water resources, we believe that the environmental conditions attached to this order are sufficient to address any reasonably foreseeable water problems in Patrick County. Thus, the relief requested by the Patrick Board of Supervisors is unnecessary and excessive. Moreover, pipeline companies are responsible for damages that result from construction of the pipeline facilities, and the Commission has no concern that a large, established pipeline company like East Tennessee will not be able to provide compensation for any construction-related property damage.

Comments on the FEIS

83. The Virginia DEQ,³⁰ the EPA, and the Tennessee Historical Commission filed comments on the FEIS.

84. The Virginia DEQ expresses concern over the impact of the Patriot Project on the New River and the New River Trail State Park (State Park).³¹ It states that the State Park is a popular recreation facility, and that the New River Trail, itself, has been designated a National Millennium Legacy Trail and a National Recreation Trail, and has been recognized as eligible for the National Register of Historic Places. The Virginia DEQ is apprehensive that the proposed pipeline crossing and the nearby proposed DENA Wythe power plant that the pipeline would serve have the potential to degrade the characteristics of the area, impact the recreation opportunities in the area, diminish the substantial contribution the State Park makes to the local economy, and impede the ability of the Commonwealth to manage the State Park in a responsible manner.

85. The Virginia DEQ contends that alternative locations for the pipeline and the power plant need to be developed so that neither project is within the viewshed of the State Park and that no lighting or noise resulting from either project has an impact on the area. Regulation of the DENA Wythe power plant and the siting of the power plant are not within the jurisdiction of this Commission. The siting of the proposed electric power plant is a state responsibility. However, in Algonquin Gas Transmission Company (Algonquin),³² the Commission adopted a four-factor test used by COE to determine whether there is sufficient federal control and responsibility over a project as a whole to warrant environmental analysis of portions of the project outside of the Commission's

³⁰The Virginia Department of Conservation and Recreation (Virginia DCR) filed separate comments; however, the Virginia DEQ states that the DEQ is the state agency responsible for coordinating the Commonwealth of Virginia's comments in this proceeding. The comments of Virginia DCR and those of other Virginia state agencies are appended as part of the DEQ's response.

³¹The Virginia DEQ notes that the New River is 450 feet wide at the point of the proposed pipeline's river, not 40 feet, as stated in the FEIS. The river is in fact 450 feet wide at the point. The 40-foot description was a typographical error. Appendix E-1 of the FEIS cites the correct width of 450 feet. Commission staff have visited the site and are aware of the actual length of the proposed crossing.

³²59 FERC ¶ 61,255 (1992).

direct sphere or responsibility.³³ The FEIS addressed the Algonquin four-factor test, and concluded that Federal control and responsibility is not sufficient to warrant extension of this Commission's environmental review to include the nonjurisdictional facilities.³⁴ We agree with that conclusion. The proposed DENA Wythe power plant constitutes a significant portion of the overall projects involved with the proposed project. We find that there is insufficient Federal control and responsibility over the proposed DENA Wythe power plant (or the two other nonjurisdictional power plants the Patriot project would serve) to warrant environmental analysis of portions of the project outside the Commission's direct sphere of responsibility.

86. To provide service to the proposed DENA Wythe power plant, the Patriot pipeline will cross the New River and the State Park. The Virginia DEQ expresses concern regarding the depth of the pipeline, weight limitations on vehicles driving over the pipeline, storage and use of hazardous material near the public water supply, and safety impacts. We share the Virginia DEQ's concern for this area; nevertheless, we are confident that the pipeline itself would have no adverse impact on the New River or the State Park, or an impact on recreational activities in the State Park. As set forth in the environmental conditions attached to this order, we are requiring East Tennessee to cross under the river, the State Park campground, and the New River Trail by horizontal directional drill (HDD). Any specific HDD plan the Commission approves will provide that there will be no surface disturbance or any clearing within the State Park property. The entry and exit holes would be located outside the boundaries of the State Park. The pipeline would be located approximately 25 feet under the river bed. After it reaches the river bank, the pipeline would rise gradually under the State Park until it reaches normal pipeline depth outside the State Park. The depth of the pipeline under the State Park would range from 40 feet as it leaves the river to 15 feet as it moves under the State Park away from the river. The pipeline would be at least 15 feet deep at any point where it crosses under State Park property. Neither the existence of the campground, nor use of

³³Under this test the Commission evaluates the following: (I) whether or not the regulated activity comprises merely a link in a corridor type project (for example, a transportation or utility transmission project); (ii) whether there are aspects of the nonjurisdictional facility in the immediate vicinity of the regulated activity that uniquely determine the location and configuration of the regulated activity; (iii) the extent to which the entire project would be within the Commission's jurisdiction; and (iv) the extent of cumulative Federal control and responsibility.

³⁴See Patriot Project FEIS, Section 1.5, pages 1-11 – 1-12.

HDD under the campground³⁵ would necessitate additional safety requirements. The Virginia DEQ recommends that HDD drilling begin on the opposite side of the New River from the State Park and extend beyond the far side of the park. The approved HDD configuration satisfies this recommendation.

87. If HDD is not successful at the proposed crossing site, we are requiring East Tennessee to examine alternative locations up or down river for an HDD. We have clarified environmental condition 22 in the appendix to this order to explain that, if the HDD at the proposed location is not successful, an alternate HDD site must be identified. The new HDD site will be subject to review and receive written approval by the Commission's Director of the Office of Energy Projects. The order, moreover, as a safeguard, requires that East Tennessee complete the crossing of the New River, and the State Park and associated areas, by HDD before beginning construction of any other facilities within a designated four-mile exclusion zone.

88. Nevertheless, we are adopting certain recommendations of the Virginia DEQ as a new condition in this order. We believe that this condition will further insure that there will be no damage to the New River or the State Park from this pipeline project. This condition, which is set forth in the appendix to this order, will require East Tennessee to develop a construction and maintenance plan for the New River Trail State Park area in coordination with the Virginia DEQ, the Virginia DCR, and the COE.

89. The Virginia DEQ and Virginia DCR also expressed concern regarding karst terrain. East Tennessee has already agreed to adopt the Virginia DCR's recommendations concerning karst areas. Sections 3.1.4.1 and 2 of the FEIS address this issue.

90. The Virginia DEQ states that there are seven areas it designates as conservation sites located within one-half mile of the Patriot Project extension, containing what Virginia considers natural heritage resources.³⁶ The Virginia DEQ recommends that all potential impacts to all natural heritage resources from the proposed pipeline be assessed and various protective measures taken. These conservation sites have no Federal or state regulatory protection status, and there are no legal restrictions on land use practices within them. Sections 3.2, 3.3, 3.6, and 3.7 of the FEIS discuss mitigation measures and

³⁵The campground is approximately 500 feet wide.

³⁶The Virginia DCR defines natural heritage resources as the habitat of rare, threatened, or endangered species, unique or exemplary natural communities, and significant geologic formations.

related recommendations related to seven of the 23 natural heritage resources identified by the Virginia DCR. Five Federally-listed or state-listed endangered or threatened species which are also natural heritage resources are explicitly discussed in section 3.7 of the FEIS. The remaining 11 named natural heritage resources are rare and have no legal status, and both FWS and the Virginia Department of Game and Inland Fisheries (Virginia DGIF) have indicated that there is no requirement for field surveys related to them. In a letter dated February 20, 2002, the Virginia DGIF stated that no further coordination is necessary for species with no legal designation. Therefore, the remaining species identified by the Virginia DCR were not considered in the FEIS. However, to assist in addressing Virginia's concerns, we are adding a new condition in the appendix to this order requiring East Tennessee to coordinate with the Virginia DCR and the Virginia DEQ to minimize impact to these conservation sites and the associated natural heritage resources identified by the Virginia DCR.

91. In comments on the FEIS submitted October 28, 2002, the EPA asserts that the FEIS provides no data on the impacts of the Greenbrier Project, another pipeline project proposed for southwestern Virginia, and only theoretically addresses the impact of that project. We disagree. As discussed above, we have considered the cumulative impact on the environment from other current or planned construction projects in the same vicinity and timeframe as the Patriot Project. The FEIS addresses the combined impacts of the Patriot Project and the Greenbrier project on the environment in some detail, and we believe that construction of the Patriot and Greenbrier Projects, subject to appropriate mitigation conditions set forth in the appendix to this order, should result in no significant cumulative impacts.

92. The EPA recommends that the Commission provide more detail regarding the cumulative impacts of the two pipeline projects. Set forth immediately below is a table we have prepared showing the potential cumulative impacts of the Patriot and Greenbrier pipelines in the three counties through which they would pass near each other. The table identifies the affected environmental parameters for Henry and Pittsylvania Counties, Virginia, and Rockingham County, North Carolina.

TABLE				
Cumulative Impacts of the Patriot and Greenbrier Pipeline Projects in Henry and Pittsylvania Counties, Virginia and Rockingham County, North Carolina				
Environmental Factor	Units	Patriot Project	Greenbrier Pipeline Project	Total

TABLE				
Cumulative Impacts of the Patriot and Greenbrier Pipeline Projects in Henry and Pittsylvania Counties, Virginia and Rockingham County, North Carolina				
Total Length	miles	32.4	29.3	61.7
Length Parallel to Existing Corridor	miles	2.4	12.8	15.2
Total Land Affected During Construction	acres	392.6 ^a	266.4 ^b	659.0
Residences and Structures within 50 Feet	number	8	0	8
Perennial Waterbodies Crossed	number	58	43	101
Wetlands Affected During Construction	acres	5.4 ^b	1.9 ^b	7.3
Forest Lands Affected During Construction	acres	313.3 ^a	204.9 ^b	518.2
^a Acres calculated using a 100-foot-wide right-of-way.				
^b Acres calculated using a 75-foot-wide right-of-way.				

93. The EPA also recommends that this Commission, and the respective Patriot and Greenbrier applicants coordinate their projects to minimize the overall impacts. Also, as set forth above, the FEIS describes why this is not feasible. The FEIS explains that the two projects are designed to serve different customers, and that the projects have different construction timetables and customer in-service dates. This Commission, moreover, as an independent regulatory agency, does not propose projects; rather, pipeline companies propose projects and we evaluate whether the proposal is in the public interest under the NGA. In accordance with NEPA, we have evaluated the environmental impacts associated with the proposal before us, and for the reasons set forth in the FEIS and this order we find them to be acceptable, subject to mitigation conditions.

94. The EPA contends that the Commission should address all reasonable impact parameters of all the route alternatives it considers to justify a conclusion that one route is superior to another. We disagree. Our responsibility is to evaluate the environmental impacts from a proposal before the Commission, including reasonable alternatives to that proposal. That does not require a detailed analysis of every alternative proposed. Once we determine that a suggested alternative is not viable and have explained our reasoning for this determination, there is no reason to conduct further review.

95. With respect to the electric power plants that would be served by the Patriot pipeline, the EPA contends that although the FEIS addresses these electric projects, it supplies no quantifiable data on the actual impacts of these projects. The EPA suggests that the Commission should address the effect of emissions from the power plants on air quality and visibility in several National parks and another recreation area in Virginia. The FEIS acknowledged that the new electric generation facilities would increase air emissions; however, the FEIS explained that these effects would be mitigated because the the new plants would have full emission controls, the new gas-fired power generation may offset coal-fired electric generation, and, in the absence of natural gas fuel, alternative energy sources would have to be used to satisfy projections for energy demand in the region.³⁷ In any event, the DENA Wythe and Henry County power plants must receive air quality permits from the Virginia DEQ before they may commence operations. We believe that the Virginia agency is better positioned to examine and evaluate the acceptable level of air emissions from state-regulated facilities in its State.

96. The EPA states that in addressing the site of the proposed compressor station 3212 Sequatchie County, Tennessee, the FEIS should have addressed more specifically the concerns of the Kell Road Coalition in opposition to the site, and why the county government supported the proposed site. Section 4.5.1.1 of the FEIS provides a detailed analysis of the proposed site and two alternative sites. EPA asserts that the FEIS should have indicated whether the proposed site involved wetlands. As the FEIS explains, the Kell Road Coalition expressed safety concerns related to schools and a recreation complex in the vicinity. The FEIS noted that the proposed site is nearly one mile from the schools and the recreation complex across a valley and would be surrounded by a permanent forested buffer. The schools and recreation complex are well beyond the distances that would suggest any significant safety hazard. A letter submitted by the Sequatchie County Executive on December 19, 2001, expressed support for the proposed location of compressor station 3212 based on enhancing natural gas distribution in the region to maintain current business and support growth, and generating tax revenue. No

³⁷See FEIS, section 3.9.1.4, Air Emissions, at p. 1-115 and 1-116.

wetlands have been identified at the site. We agree with the conclusion of the FEIS that the proposed site is environmentally acceptable and superior to the alternate sites.

97. EPA also avers that the FEIS discussion on contaminated sediment and impaired waterbodies should be expanded. We believe that the FEIS adequately addresses the issue of contaminated sediments in section 3.3.2. EPA contends that crossing of impaired waterbodies could result in habitat alteration in terms of stream channelization or disturbance of in-stream habitat and streambank riparian vegetation, and asserts that crossing methods for each impaired stream should be provided. The FEIS identifies stream crossing methods for each of the impaired waterbodies in Appendix E-1. After construction, East Tennessee would restore stream banks in accordance with our Wetland and Waterbody Construction and Mitigation Procedures. In addition more stringent requirements may be imposed in permits issued by COE and the individual state. Pipeline installations though do not modify stream channels and any impact to in-stream habitat and riparian vegetation would be temporary. EPA is also concerned about sidecasting of spoil in the stream. East Tennessee is not planning to sidecast spoil in the streams.³⁸

98. The EPA recommends that a summary table for wetland acreage values and totals be included in the certificate. Appendix E-2 of the FEIS identifies wetland acres affected by wetland types during construction and operation of the Patriot Project. Regarding the functional analysis of the wetlands along the right-of-way, COE has been a NEPA cooperating agency with FERC on this project. Each of the COE district offices would issue a section 404 permit and each state would issue a section 401 permit. COE and the states may require a functional analysis of wetlands along the right-of-way as part of their permit requirements.

99. The EPA acknowledges that Commission policy of requiring a noise level of 55 dBA or less at the nearest noise sensitive area (NSA) is reasonable for existing conditions, but it suggests that the Commission should modify its policy to require this noise level to be maintained at the compressor station property line to accommodate any future NSA that may locate closer to the property line. The Commission adopted the 55 dBA standard for existing NSAs because it adequately protects the public from existing outdoor activity interference and annoyance in residential areas. We do not believe that speculating on future development near compressor stations is warranted or necessary.

³⁸See FEIS, at p. M-510.

100. The EPA avers that the FEIS does not adequately address the impact of the pipeline project on potential pockets of minority and low income populations along the proposed pipeline right-of-way. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, requires that specified Federal agencies shall make achieving environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minorities and low-income populations. Executive Order 12898 applies to the agencies specified in section 1-102 of the order.³⁹ This Commission is not one of the specified agencies and the provisions of Executive Order 12898 are not binding on this Commission. The Commission has explained in other proceedings, that, as a general proposition, siting of natural gas pipelines between two fixed end points is based primarily on the needs of customers, and environmental and engineering factors without regard to the demographic characteristics of the population located along a proposed route.⁴⁰ We have nonetheless examined East Tennessee's proposed Patriot Project to insure that it does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations.

101. Using statistics collected by the U.S. Department of Commerce regarding low income and minority groups, the FEIS compared the low income and minority populations in the counties through which the proposed pipeline would run with the populations of these same groups in counties immediately adjacent to these counties. The FEIS explained that none of the counties crossed by the project meet the EPA's minority or low income criteria, and concluded that construction and operation of the proposed pipeline facilities would not have a disproportionate adverse human health or environmental effects or any minority or low income communities.

102. The FEIS did not, as the EPA suggests it should have, break the Department of Commerce statistics down into even smaller units of population concentration, nor do we find that it was necessary to do so. Commission staff conducted site visits all along the proposed pipeline route, and did not identify any such concentrations on those visits. Moreover, the FEIS explains that the proposed pipeline route would cross mostly rural areas, with little impact on highly populated areas. In cases where the proposed route would be within 50 feet of a residence, special construction procedures or techniques would be employed; where the route would be within 25 feet of a residence, a site

³⁹See Millennium Pipeline Company, L.P., 97 FERC ¶ 61,292 (2001).

⁴⁰See Horizon Pipeline Company, L.L.C., 96 FERC ¶ 61,053 (2001).

specific plan would be developed to minimize impacts on those residences. These measures apply regardless of the income or minority status of the resident.⁴¹

103. Most of the residences that are located within 25-50 feet of the proposed pipeline corridor are along the Patriot Expansion portion of the project in which East Tennessee proposes to construct pipeline looping, replacements, or uprates of its existing system.⁴² Most of this construction activity would take place within East Tennessee's existing easement. The 25-50 foot distance, moreover, refers to the distance of a residence from the edge of the construction right-of-way, and not from the pipeline itself. It is the established policy of this Commission to site pipelines along existing corridors wherever feasible. Distance from residences is one of many environmental parameters that are evaluated along with engineering concerns. The placement of the pipeline for this project, moreover, will meet U.S. Department of Transportation, Office of Pipeline Safety standards.

104. The Tennessee State Historic Preservation Officer (SHPO) reviewed Tennessee's September, 2002 reports on archaeological evaluations of sites which are located within the project's area of potential effect. In a letter filed October 15, 2002, the SHPO advised that the project may adversely effect properties eligible for listing in the National Register of Historic Places. Prior to authorizing construction, we will develop and execute a memorandum-of-agreement pursuant to 36 C.F.R. § 800.6(b)(iv) to assure resolution of issues related to potential adverse effects to historic properties from the Patriot Project.

105. The Blue Ridge Coalition (Coalition) filed comments to the FEIS on November 12, 2002. The Coalition asserts that the Patriot FEIS overstates the length of the AEP Powerline Route Alternative (AEP Alternative). The FEIS determined that the AEP Alternative was somewhat longer than the proposed route. The Coalition, based on comparison with the route alignment proposed for the Greenbrier project, maintains that the AEP Alternative is actually shorter than the combined Patriot Extension and Henry County Power lateral (HCP-lateral). We disagree. We have reviewed the mileage calculations stated in the FEIS and believe the route information as discussed in the FEIS and this order is accurate. The Coalition's analysis using the Greenbrier project's proposed route is not a true comparison because it is based on different mileposts and

⁴¹See FEIS, section 3.11 Socioeconomic Conditions - Environmental Justice, at p. 3-143.

⁴²We note that only 17 out of 282 residences located within 50 feet of the proposed pipeline are not within East Tennessee's existing pipeline right-of-way.

pipeline segments than used in the FEIS for the AEP Alternative and the proposed Patriot Extension (including the HCP-lateral). Following a portion of the proposed Greenbrier route east of Floyd, Virginia identified by the Coalition could potentially shorten the length of our studied alternative in this region; however, the proposed Patriot Extension would still be shorter than either alternative following the AEP powerline corridor. Moreover, as discussed in the FEIS, the difference in length between the proposed route and the AEP Alternative is only one factor in evaluating whether the AEP Alternative is environmentally superior to the proposed route.

106. The Coalition also asserts that the FEIS inflates the environmental impacts of the AEP Alternative by taking insufficient advantage of the existing AEP powerline right-of-way (ROW). The Coalition states that the FEIS describes only a 20-foot overlap of the AEP ROW for pipeline construction compared with the Greenbrier Project which will employ a 50-foot overlap. Employing the wider Greenbrier overlap, contends the Coalition, would greatly reduce the amount of greenfield acreage affected by the Patriot Project. Examination of the Greenbrier proposal and alignment sheets shows that Greenbrier's route does not use a continuous overlap of the two powerlines because of terrain or other obstacles. It deviates from the powerline for about 25 percent of the route. The proposed Greenbrier route overlaps those powerlines for about 72 percent of its length in this area. Therefore, areas which have not been previously affected would be disturbed. In addition, since powerlines can run from ridge top to ridge top, the "valley" between the ridges may have little or no disturbance (powerlines are high and above the tree line). Consequently the alignment following the AEP powerline would affect more "greenfield acres" than BRC's comparison suggests. We believe that the FEIS accurately describes the environmental impacts of this project along the AEP ROW.

107. The Coalition also suggests that requiring the Patriot and Greenbrier projects to share a single pipeline along the AEP powerline would substantially reduce cumulative environmental impacts in the region. As explained above in responding to EPA's comments, this Commission's responsibility is to evaluate proposals submitted to this body for consideration under the requirements of the NGA. The parties have not submitted a proposal for a single, joint pipeline, and we have found the potential cumulative impacts from the two proposals to be within acceptable limits if constructed in accordance with appropriate mitigation conditions.

Conclusions

108. **Based on information provided by East Tennessee and developed from data requests; field investigations; literature research; alternative analysis; comments from**

Federal, state, and local agencies; and input from public groups and individual citizens, the FEIS concludes that construction and operation of the Patriot Project, as amended, would result in limited adverse environmental impacts. As part of its review, Commission staff developed mitigation measures that it believes would appropriately and reasonably reduce and compensate for environmental impacts resulting from construction and operation of the Patriot Project. Previous review of the facilities in Docket No. CP01-375-000 (TVA Project) developed mitigation measures relevant to the facilities now incorporated into the Patriot Project and the FEIS by amendment. The Commission has reviewed the information and analysis contained in the FEIS regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the FEIS and find that the Patriot Project, as amended, if constructed and operated in accordance with the recommended and proposed environmental mitigation measures, is environmentally acceptable. Therefore, we are including the environmental mitigation measures recommended in the FEIS as conditions to the certificate issued to East Tennessee. These conditions are set forth in the appendix to this order.

109. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of the certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁴³

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued to East Tennessee under section 7 (c) of the NGA authorizing the construction and operation of the

⁴³See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

Docket No. CP01-415-000, et al.

- 43 -

facilities described in this order, and more fully described in the March 27, 2002 preliminary determination and in the application and the amendment thereto, and as conditioned herein, and subject to the environmental conditions set forth in the appendix.

(B) Permission and approval of East Tennessee's request to abandon facilities under section 7(b) of the NGA, as described and conditioned herein, and as more fully described in the application and the amendment, are granted.

(C) East Tennessee shall maintain separate books, accounts, and records for transportation provided under negotiated rates and for transportation provided under cost-based rates.

(D) East Tennessee shall file, not less than 30 days, nor more than 60 days, prior to its proposed effective date, tariff sheets consistent with its pro forma tariff sheets.

(E) The authorizations granted above are conditioned on East Tennessee's compliance with Part 154 and paragraphs (a), (c), (e), and (f) of Section 157.20 of the Commission's regulations.

(F) Construction of the facilities authorized herein shall be completed and made available for service by January 1, 2005 in accordance with Section 157.20(b) of the Commission's regulations.

(G) East Tennessee must file executed firm contracts equal to the precedent agreement level of service for each construction phase prior to beginning construction activity for that phase.

(H) The requests for rehearing and stay by Barbara Smith of the March 27, 2002 preliminary determination, the motion by the Blue Ridge Coalition for an extension of time in which to file a request for rehearing, the requests for clarification or rehearing of the May 28, 2002 tolling order by the Blue Ridge Coalition, and the request by the Virginia Department of Environmental Quality to delay issuance of the FEIS, are denied.

(I) The certificate issued East Tennessee in Docket No. CP01-375-000 (TVA Project) is vacated.

By the Commission

(S E A L)

Docket No. CP01-415-000, et al.

- 44 -

Linwood A. Watson, Jr.
Deputy Secretary

APPENDIX

As recommended in the FEIS, this authorization includes the following conditions:

1. East 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 impact statement (EIS), unless modified by this Order. East Tennessee shall:
 - a. Request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. Justify each modification relative to site-specific conditions;
 - c. Explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. Receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. The modification of conditions of this Order; and
 - b. The design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions, as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. Prior to any construction, East Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the FEIS, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations. As soon as they are available, and before the start of construction, East Tennessee shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. East Tennessee shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access, and other areas that will be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species will 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 route variations required herein 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 can affect sensitive environmental areas.
6. **Within 60 days of the acceptance of this Certificate and before construction begins**, East Tennessee shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how East Tennessee will implement the mitigation measures required by this Order. East Tennessee must file revisions to the plan as schedules change. The plan shall identify:
- a. How East Tennessee will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. The number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. Company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. What training and instructions East 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 the training sessions;
 - e. The company personnel (if known) and specific portion of East Tennessee's organization having responsibility for compliance;
 - f. The procedures (including use of contract penalties) East Tennessee will follow if noncompliance occurs; and

- g. For each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) The completion of all required surveys and reports;
 - (2) The mitigation training of onsite personnel;
 - (3) The start of construction; and
 - (4) The start and completion of restoration.

- 7. East Tennessee shall employ one or more environmental inspectors per construction spread and two per spread on the Patriot Extension. The environmental inspectors shall be:
 - a. Responsible for monitoring and ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. Responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. Empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. A full-time position, separate from all other activity inspectors;
 - e. Responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and
 - f. Responsible for maintaining status reports.

- 8. East Tennessee shall file updated status reports with the Secretary on a **weekly** basis **until** all construction-related activities, including restoration and initial permanent seeding, are complete. On request, these status reports will also be provided to other Federal and state agencies with permitting responsibilities. Status reports shall include:

- a. The current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. A listing of all problems encountered and each instance of noncompliance observed by the environmental inspectors during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies);
 - c. Corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. The effectiveness of all corrective actions implemented;
 - e. A description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. Copies of any correspondence received by East Tennessee from other Federal, state or local permitting agencies concerning instances of noncompliance, and East Tennessee's response.
9. East Tennessee must receive written authorization from the Director of OEP **before commencing service** for each component of the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, East Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. That the facilities have been constructed/abandoned/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 East Tennessee has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented,

if not previously identified in filed status reports, and the reason for noncompliance.

11. East Tennessee shall hire and fund a third-party contractor to work under the direction of the Commission staff for the sole purpose of monitoring compliance with the environmental conditions provided in Section 5.0, and all mitigation measures proposed by East Tennessee. East Tennessee shall develop a draft monitoring program and obtain proposals from potential contractors to provide monitoring services, and file the program and proposals with the Secretary **for review and approval by the Director of OEP**. The monitoring program shall include:
 - a. the employment by the contractor of one to two full-time on-site monitors per construction spread;
 - b. the employment by the contractor of a full-time compliance manager to direct and coordinate with the monitors, manage the reporting system, and provide technical support to the FERC staff;
 - c. a systematic strategy for the review and approval by the contract compliance manager and monitors of variances to certain construction activities as may be required by East Tennessee based on site-specific conditions;
 - d. the development of an internet website for posting daily or weekly inspection reports submitted by both the third-party monitors and East Tennessee's environmental inspectors; and
 - e. a discussion of how the monitoring program can incorporate and/or be coordinated with the monitoring or reporting that may be required by other Federal and state agencies.
12. Once landowner permission is granted, East Tennessee shall complete field surveys and revise tables listing access roads, temporary workspaces, waterbodies, wetlands, and residences within 50 feet of the construction work area. East Tennessee shall file these revised tables as part of its implementation plan with the Secretary **for review and written approval by the Director of OEP prior to construction**.
13. East Tennessee shall provide notice to landowners one week prior to blasting, with confirming notice at least 24 hours before blasting.

14. East Tennessee shall conduct, with landowner permission, pre- and post-blasting surveys for structures, including wells and utilities, within 150 feet of the construction work area where blasting is required.
15. East Tennessee shall install temporary erosion controls immediately after initial disturbance of the soil and implement this provision after vegetative clearing but prior to grading or excavation.
16. East Tennessee shall revise its E&SCP to include compaction testing of topsoil and subsoil in residential areas disturbed by construction activities using the same methods used in agricultural areas. East Tennessee shall file its revised E&SCP with the Secretary for **review and written approval by the Director of OEP, prior to construction.**
17. East Tennessee shall revise its E&SCP to include vegetation monitoring of the construction work areas for at least two growing seasons. East Tennessee shall file its revised E&SCP with the Secretary for **review and written approval by the Director of OEP prior to construction.**
18. Prior to construction, East Tennessee shall file with the Secretary the location by milepost of all private wells within 150 feet of pipeline construction activities. East Tennessee shall conduct, with the well owner's permission, pre- and post-construction monitoring of well yield and water quality for these wells. Within 30 days of placing the facilities in service, East Tennessee shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved. In addition, East Tennessee shall replace any potable water supply system that it damages during construction and cannot repair to its former capacity and quality. East Tennessee shall identify in its report to the Secretary all potable water supply systems damaged by construction and how they were repaired.
19. Prior to commencing construction, East Tennessee shall file with the Secretary a revised SPCC Plan which prohibits the storage of hazardous materials within a 200-foot radius of private potable water supply wells, and a 400-foot radius of community and municipal water supply wells (if any are identified). If it is not feasible to comply with these requirements, East Tennessee shall file with the Secretary a list of site-specific locations where it is not feasible and provide a justification of why it is not feasible for **review and written approval of the Director of OEP prior to construction.**

20. East Tennessee shall complete consultation with COE-Virginia, Virginia DEQ, Virginia DGIF, The Virginia DCR, and VAMCR to determine the appropriate waterbody construction methods, mitigation, and restoration measures for waterbodies in Virginia, and ensure that these methods satisfy our Procedures. East Tennessee shall file its final waterbody crossing plan for Virginia with the Secretary prior to construction.
21. East Tennessee shall complete the crossing of the New River and the New River Trail State Park and associated areas by HDD, including access roads and extra workspace necessary for the HDD, before beginning construction of any other facilities between MPs S1+8.0 (SR 752) and MP S1+12.4 (SR 607) on the Patriot Extension. East Tennessee may not initiate non-HDD related construction within this exclusion zone until the Director of OEP issues written authorization to proceed. East Tennessee shall develop the directional drill failure criteria in consultation with COE, Virginia DEQ, the directional drill consultant, the drill contractor, and the New River State Park. East Tennessee shall file the criteria with the Secretary for **review and written approval of the Director of OEP prior to beginning the HDD of the New River.**
22. If East Tennessee cannot successfully use HDD at the proposed crossing of the New River and the New River Trail State Park, East Tennessee shall provide an analysis of rerouting the pipeline across the New River at a location where geotechnical investigations indicate HDD will be more feasible. This analysis shall include environmental, engineering, and economic analysis of the reroute within the exclusion zone (MP S1+8.0 to S1+12.4).

East Tennessee shall file all analysis and agency recommendations with the Secretary for **review and written approval by the Director of OEP prior to initiating construction** within the exclusion zone.
23. East Tennessee shall develop a construction and maintenance plan for the crossing of the New River Trail State Park area, in coordination with the New River Trail State Park, appropriate state agencies, and the COE. East Tennessee shall file this plan and all related consultation with the Secretary. The crossing plan shall include the following:

- a. a scale drawing showing the New River Trail State Park facilities, boundaries, and the pipeline facilities proposed within and adjacent to New River Trail State Park;
- b. size, acres, and land use of all areas that would be disturbed during construction including temporary work areas and access roads;
- c. depth to which pipeline would be buried;
- d. how East Tennessee plans to provide protection and restoration/replacement, if required of water supply;
- e. areas where hazardous materials would be stored and a site specific Spill Prevention, Control and Countermeasures Plan for the park property;
- f. use of heavy vehicles over the pipeline;
- g. construction schedule in consultation with the New River Trail State Park;
- h. Virginia DEQ-approved site specific erosion and sediment control plan for the park;
- I. plan to mitigate noise, light, and visual impacts from the HDD; and
- j. any other mitigation measures it would use to minimize impact to the New River Trail State Park.

East Tennessee shall file the above information **for review and written approval by the Director of OEP prior to initiating construction** within the exclusion zone.

24. East Tennessee shall provide detailed, site-specific construction plans (including scaled drawings identifying all areas to be disturbed by construction) for all waterbodies that will be crossed using HDD including South Fork of the Holston River, New River, Smith River, Reed Creek, and Rich Creek. East Tennessee shall file the plans concurrently with its permit application to COE and other appropriate state agencies. East Tennessee shall file these site-specific plans with the Secretary for **review and written approval by the Director of OEP prior to construction.**

25. East Tennessee shall develop a site-specific contingency plan for each HDD crossing in the event HDD is determined to not be feasible at the site (except for the New River crossing, which requires HDD). The site-specific contingency plan shall identify the potential impacts to the waterbody, including aquatic resources associated with using another crossing method. The information shall be filed with the Secretary for **review and written approval by the Director of OEP prior to construction** and at the same time as the revised crossing plans are filed with COE and other permitting agencies.
26. East Tennessee shall file the results of the consultation with EPA and any EPA required testing of Mud Creek sediments with the Secretary for **review and written approval by the Director of OEP prior to construction**.
27. East Tennessee shall notify the appropriate water supply agencies for any public drinking water intakes within 3 miles downstream of any waterbody crossing at least 48 hours prior to start of instream work. East Tennessee shall coordinate the construction schedule of anticipated instream construction activity with the local water supply agency.
28. East Tennessee shall file the results of consultation with NPS regarding the crossing methods for the Big Reed Island Creek, Dan River, and Smith River, including any suggested mitigation measures with the Secretary for **review and written approval by the Director of OEP prior to construction**.
29. East Tennessee shall modify its E&SCP to incorporate Sections V.B.2.e., V.B.3.d., V.B.3.f., V.C.4, VI.C.1.d., VI.C.2.j., VI.D.2., VI.E.3., and VII.D.3 of our Procedures as summarized in table 3.3.2-6. In addition, East Tennessee shall revise its SPCC Plan to include measures for storing hazardous materials within 100-feet of waterbodies and wetlands that vary from our Procedures (VI.C.2.h). East Tennessee shall file its revised E&SCP including all items provided in table 3.3.2-6, and the revised SPCC Plan with the Secretary for **review and written approval by the Director of OEP prior to construction**.
30. East Tennessee shall complete wetland delineations for the areas of the proposed route where landowners have not previously given access once they are allowed access. East Tennessee shall file outstanding wetland delineation reports, and revised alignment sheets showing wetland boundaries for all wetlands delineated, with the Secretary for **review and written approval by the Director of OEP prior to construction**.

31. East Tennessee shall consult with COE-Virginia district office and Virginia DEQ to determine appropriate wetland construction methods, mitigation and revegetation measures, any off-site mitigation needs, and ensure that these methods satisfy our Procedures. East Tennessee shall file its final wetland plan and permit including conditions and stipulations with the Secretary prior to construction.
32. East Tennessee shall consult with Virginia DEQ and NCWRC to determine appropriate seed mixes for wetland and upland habitats and appropriate maintenance measures to protect wildlife habitat (see Section 3.6).
33. East Tennessee shall continue its consultations with NCDENR and NCWRC to determine if mitigation measures are appropriate to minimize impacts to the City Park Smith River Slopes SNHA and the Fitzgerald Woodlands. East Tennessee shall file the results of this consultation with the Secretary for **review and written approval by the Director of OEP prior to construction.**
34. East Tennessee shall coordinate with the TNDNH, Virginia DGIF, and NCWRC to verify the seasonal construction restrictions for specific stream crossings, especially for state-designated and coldwater streams if they are more restrictive than our Procedures. East Tennessee shall file copies of consultation with the Secretary for **review and obtain written approval from the Director of OEP prior to construction.**
35. East Tennessee shall prepare a schedule identifying when trenching or blasting will occur within each waterbody greater than 10 feet wide, or within any coldwater fishery. East Tennessee shall file the schedule with the Secretary within 30 days of the acceptance of the Certificate and revise it as necessary to provide at least 14 days advance notice. East Tennessee must provide at least 48 hours advance notice for changes within the 14-day period.
36. East Tennessee shall complete field surveys for the bog turtle (southern population), and provide survey results and proposed mitigation to Virginia DCR, Virginia DGIF, and FWS. East Tennessee shall consult with Virginia DCR, Virginia DGIF, and FWS to determine the appropriate measures to minimize Project impacts to the bog turtle. East Tennessee shall file the results of field surveys and agency consultation with the Secretary for **review and written approval by the Director prior to construction.**

37. East Tennessee shall not begin any construction or implement conservation measures until:
 - a. East Tennessee has filed all survey reports for the bog turtle (southern population), James River spiny mussel, and small-anthered bittercress;
 - b. We receive comments from the FWS regarding the effects of the proposed Project on the federally-listed species discussed above;
 - c. We complete consultation with the FWS on the federally-listed species discussed in Section 3.7.1 in accordance with Section 7 of the ESA; and
 - d. East Tennessee has received written notification from the Director of OEP that construction or use of mitigation may begin.
38. East Tennessee shall file documentation of Virginia DCR consultation on implementation of the E&SCP and construction timing restrictions between April 1 and July 31 will minimize impacts to loggerhead shrike. If concurrence is not filed, East Tennessee shall consult with Virginia DCR to determine the appropriate mitigation to minimize impacts to loggerhead shrike. Virginia DCR concurrence or the results of the consultation with Virginia DCR shall be filed with the Secretary for **review and written approval by Director of OEP prior to construction.**
39. East Tennessee shall consult with FWS and the appropriate state agencies to determine the need for any additional mitigation measures to reduce impact to the Tennessee dace, and file comments with the Secretary for **review and written approval by the Director of OEP prior to construction.**
40. East Tennessee shall consult with FWS, Virginia DGIF, VAMRC, Virginia DCR, and Virginia DEQ regarding construction timing restrictions for orangefin madtom, and file comments with the Secretary for **review and written approval by the Director of OEP prior to construction.**
41. East Tennessee shall consult with the Virginia DCR and the Virginia DEQ to develop mitigation measures that would minimize impact to Natural Heritage Resources and file copies of its consultation and proposed mitigation measures with the Secretary prior to construction.

42. East Tennessee shall file a description of all access road modifications, including extensions and any new access roads. East Tennessee shall file a revised list of access roads identifying current condition and status (new or existing), modifications including extensions, and whether the roads are temporary or permanent, with the Secretary for **review and written approval by the Director of OEP prior to construction.**
43. East Tennessee shall make every effort to complete final cleanup and restoration of an area 10 days after backfilling the trench in that area.
44. East Tennessee shall dispose of excess bulk rock beyond the trench and stumps by burial in the right-of-way or other construction work areas only after securing written landowner approval. If landowner approval cannot be obtained, excess bulk rock and stumps shall be disposed in approved off-site disposal areas.
45. East Tennessee shall provide a plan for notification of property owners and residents whose property is traversed or who live in residences located within 50 feet of the existing pipeline to be tested, about the uprate hydrostatic test activities. The notification shall include all landowners and residents within 50 feet of the pipe along Uprates B, C, 2, and L and at the Tennessee River crossing on Uprate D. The plan shall provide for an initial notification to be made approximately 3 to 4 weeks prior to the anticipated test date. East Tennessee shall give the property owners and residents a brief explanation of how and when the test will be done, and what activities, if any, may be required on their property. Property owners shall also be provided with the name and toll free Patriot Hotline telephone number of East Tennessee for further contacts. As a precautionary measure, the landowners shall be notified again at least 48 hours before the test begins. They shall also be asked to avoid activities on the right-of-way during the test. They shall be compensated by East Tennessee for any damages resulting from activities related to the test. East Tennessee shall file the hydrostatic test notification plan with the Secretary for **review and written approval by the Director of OEP prior to construction.**
46. East Tennessee shall develop a site-specific construction plan in consultation with South Doyle High School authorities. The plan shall describe the construction schedule; all safety precautions and measures to be implemented; how access to the school will be maintained, and all restoration measures. East Tennessee shall file this plan, along with a copy of its consultation, with the Secretary for **review and written approval by the Director of OEP prior to construction.**

47. East Tennessee shall consult with the Blountville Methodist Church and Beulah Baptist Church officials to coordinate the construction schedule and provide access to the two churches. East Tennessee shall file this information with the Secretary for **review and written approval by the Director of OEP prior to construction.**
48. East Tennessee shall develop a site-specific construction plan in consultation with Tri Cities Christian School authorities. The plan shall describe the construction schedule; safety precautions and measures to be implemented; how access to the school will be maintained; and all restoration measures. East Tennessee shall file this plan, along with a copy of its consultation, with the Secretary for **review and written approval by the Director of OEP prior to construction.**
49. East Tennessee shall limit the width of the temporary construction right-of-way outside the powerline right-of-way to 60 feet in the following forested areas:

MP S3+9.0 to MP S3+9.3	MP S4+6.86 to MP S4+7.59
MP S3+10.1 to MP S3+12.5	MP S4+7.9 to MP S4+8.3
MP S3+12.6 to MP S3+15.63	MP S4+8.6 to MP S4+9.94

East Tennessee shall revise applicable alignment sheets and file them with the Secretary for **review and written approval by the Director of OEP prior to construction.**

50. East Tennessee shall update its E&SCP to include the following measures for all residences within 50 feet of the construction right-of-way:
- a. limit construction work hours to daylight hours except on rare occasions, when construction activities may extend beyond daylight hours to allow completion of an activity, such as backfilling an open trench, which can be a safety issue if not completed; or for HDD which may require continuous operation to avoid HDD failure;
 - b. backfill or cover open trenches at the end of each work day;
 - c. avoid opening the trench until the pipe is ready for installation, backfill immediately after installation is complete, and restore immediately after each section is complete;

- d. maintain access to residences;
 - e. control fugitive dust along construction areas; and
 - f. sweep or wash any dirt off the streets at the end of each work day
51. East Tennessee shall file the landowner complaint resolution form, landowner notice, and weekly status report table with the Secretary for **review and written approval by the Director of OEP prior to construction.**
52. East Tennessee shall identify the location of each septic system during easement acquisition and through discussions with individual landowners. Wherever possible, the septic systems and leach field shall be avoided. Where avoidance will not be feasible, and a system is temporarily disrupted during construction, East Tennessee shall provide alternate facilities for the landowner. If a system is damaged or adversely affected during construction, East Tennessee shall promptly repair or replace the system so they can return to full working service at the same time the trench is backfilled, and include the incident in the weekly status report.
53. East Tennessee shall limit all construction activities to its existing permanent easement in residential areas identified in table 3.8.2.2-1. East Tennessee shall provide justification for site-specific locations where it believes it is infeasible to reduce the construction right-of-way to the 50-foot-wide permanent easement. East Tennessee shall revise photoalignment sheets to document the realignments to the route in the locations identified in table 3.8.2.2-1. This information shall be filed with the Secretary for **review and written approval by the Director of OEP prior to construction.**
54. East Tennessee shall reduce impacts on residences by either switching the spoil side (35 feet) and work area side (65 feet) so that the spoil side is closest to the residence, or use the stovepipe construction method at the locations listed below:
- | | |
|--------|-----------------|
| Loop C | MP 3301-2+1.51 |
| | MP 3301-2+1.74 |
| Loop 4 | MP 3308-2+2.78 |
| | MP 3308-2+3.59 |
| | MP 3308-2+11.67 |
| | MP 3308-2+13.92 |
| Loop 5 | MP 3310-2+1.75 |

- MP 3310-2+5.07
MP 3310-2+5.14
- Loop 7 MP 3314-2+3.91
MP 3314-2+4.31
MP 3314-2+5.35
MP 3314-2+6.74
MP 3314-2+8.38
- Re-lay B MP 3311-1+9.60
55. Prior to construction, East Tennessee shall provide each landowner affected by construction with a final Construction Alignment Sheet showing the construction work area and pertinent information about how the Patriot Project will be constructed and restored on their property and file a copy with the Secretary.
56. East Tennessee shall revise its alignment sheets to show the reduced construction right-of-way widths at MP 3301-2+8.82, MP 3308-2+3.63, and MP 3308-2+18.50. East Tennessee shall file the revised alignment sheets with the Secretary for **review and written approval by the Director of OEP prior to construction.**
57. East Tennessee shall maintain access between the two business structures near MP 3308-2+9.75 during construction and develop a site-specific plan in consultation with the landowner and file a copy of the plan with the Secretary for **review and approval by the Director of OEP prior to construction.**
58. East Tennessee shall consult with Primland Inc. to determine construction timing across the property to minimize impacts on recreational hunting and outdoor activities. The results of this consultation shall be filed with the Secretary prior to construction.
59. East Tennessee shall leave a buffer of mature vegetation in place to visually screen CSs 3108 and 3212. East Tennessee shall develop a tree screening plan that defines trees to be cleared, trees to be retained, and areas of new landscaping. The tree screening plan shall be filed with the Secretary for **review and written approval by the Director of OEP prior to construction.**
60. East Tennessee shall develop landscaping plans for CSs 3105 and 3306 that address concerns about visibility of the facilities from roads and nearby residences. The plans shall be filed with the Secretary for **review and written approval by the Director of OEP prior to construction.**

61. East Tennessee shall file a noise survey with the Secretary no later than 60 days after placing the authorized unit(s) in service at CS 3104, CS 3105, CS 3107, CS 3108, CS 3110, CS 3212, CS 3302, CS 3303, CS 3306, CS 3311, and CS 3313. If the noise attributable to the operation of the authorized unit(s) at the stations at full load exceeds an L_{dn} of 55 dBA at any nearby NSA, East Tennessee shall install additional noise controls to meet that level within one year of the in-service date. East 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 East Tennessee installs the additional noise controls.
62. East Tennessee shall file a noise survey with the Secretary no later than 60 days after placing the authorized unit(s) in service at CS 3206, CS 3217, CS 3308, and CS 3309. If the noise attributable to the operation of the authorized unit(s) at the stations at full load exceeds the previously measured L_{dn} in the application at any nearby NSA, East Tennessee shall install additional noise controls to meet that level within one year of the in-service date. East Tennessee shall confirm compliance with this requirement by filing a second noise survey with the Secretary no later than 60 days after East Tennessee installs the additional noise controls.
63. East Tennessee shall take all reasonable steps to meet the estimated L_{dn} at new CS 3105 and CS 3212 to minimize compressor station noise levels.
64. East Tennessee shall design modifications to the proposed standby units at CS 3311 to include additional noise controls. The proposed design shall be filed for review and written approval by the Director of OEP prior to returning these existing units to service. The noise attributes on the standby units shall not exceed an L_{dn} of 55 dBA at any nearby NSA. East Tennessee shall file a noise survey with the Secretary no later than 60 days after the initial operation of these units.
65. East Tennessee shall consult with the appropriate Federal or state agencies to determine whether the junkyard at MP 5.3 on Loop 3 requires investigation for hazardous waste and what mitigation shall be employed to minimize impact during construction. Any abandoned hazardous waste materials discovered during construction shall not be disturbed and shall be promptly reported to the respective state authorities or the EPA.
66. East Tennessee shall defer construction and use of the proposed project facilities together with the use of related ancillary areas for staging, storage, and temporary work areas and new or to-be-improved access roads until:

- a. East Tennessee files with the Secretary all additional required cultural resource inventory and evaluation reports, and any necessary treatment plans;
- b. East Tennessee files the appropriate SHPO and any other appropriate parties' comments on all cultural resource requests, investigation reports, and plans;
- c. The ACHP has been given an opportunity to comment if any historic properties will be affected; and
- d. The Director of OEP reviews and approves all cultural resource reports and plans, and notifies East Tennessee in writing that they may proceed with mitigation programs or construction.

All material filed with the Secretary 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."

67. East Tennessee shall cross the South Fork of the Holston River using the South Fork Holston River Route Variation and a horizontal directional drill. East Tennessee shall consult and coordinate with TVA and TWRA regarding this crossing location and develop site-specific construction and contingency plans for the South Fork Holston River Route Variation. The plan shall also identify how it will reduce construction noise during a directional drill, and include projected daytime and nighttime noise levels at nearby residences and mitigation measures that will be used to minimize noise at the residences if the noise levels will exceed an L_{dn} of 55 dBA at any residence. East Tennessee shall file the results of its consultation and the site-specific plan with the Secretary for **review and written approval by the Director of OEP prior to construction.**
68. East Tennessee shall incorporate the Reed Creek Route Variation in place of the proposed route between MP S1+3.0 and MP S1+4.1. East Tennessee shall file with the Secretary the revised alignment sheets and site-specific construction and contingency plans for the Reed Creek Route Variation for **review and written approval by the Director of OEP prior to construction.**

Docket No. CP01-415-000, et al.

- 63 -

69. East Tennessee shall determine, in consultation with Mr. Cobler and other landowners with logging operations, the need for additional cover or other forms of protection where East Tennessee's construction activities cross logging roads.