

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
103 FERC ¶ 62,151

Transcontinental Gas Pipe Line Corporation

Docket No. CP03-84-
000

ORDER ISSUING CERTIFICATE

(Issued June 17, 2003)

This order grants, subject to certain conditions, the authority requested on April 2, 2003, by Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced docket.

PROPOSAL/DISCUSSION:

Transco proposes to conduct an offset replacement of approximately 1.45 miles of 30-inch pipe on its Mobile Bay Lateral in Mobile County, Alabama, in order to ensure compliance with United States Department of Transportation (DOT) regulations at 49 C.F.R. § 192.611 and maintain certificated service and the safety and reliability of the Mobile Bay Lateral. The replacement will take place in an area recently classified as meeting the DOT Class 3 regulations, as defined at 49 C.F.R. § 192.5(b)(3)(i).

Transco states that due to delivery obligations and outage restrictions, a typical replacement within the existing trench is not feasible. Therefore, the replacement pipeline will be constructed parallel to the existing pipeline, but within its existing right-of-way. Once construction of the offset pipeline has been completed, the existing pipeline will be taken out of service for approximately 2 days while the new pipeline is tied into place. After the new segment is in service, the old segment will be pulled up and restoration and revegetation activities will be completed. This replacement is estimated to cost \$4.0 million.

Transco recognizes that pipeline replacement projects of this magnitude are typically constructed pursuant to either (1) Section 2.55(b) of the Commission's regulations (18 C.F.R. § 2.55(b) - "Replacement of facilities"), or (2) Transco's blanket facilities certificate (18 C.F.R. § 157.208) issued in Docket No. CP82-426 when it is authorized to do so. Transco states that they cannot perform this project pursuant to Section 2.55(b) because the work spaces required for this project will be outside of the Commission's guidelines for use of space in Section 2.55(b) projects (see Appendix A to

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Part 2 of Subchapter A in 18 C.F.R). Also, the gopher tortoise, a listed "threatened" species, occurs in the project area. Under Commission regulations at C.F.R. § 157, Subpart F, Appendix I, when the certificate holder concludes that the proposed project may affect listed species or the critical habitat of such species, the certificate holder may not proceed with the proposed project under the blanket certificate. Consequently, Transco is required to file an application for a certificate of public convenience and necessity for this project.

INTERVENTIONS:

The application was noticed by publication in the Federal Register on April, 17 2003, (68 Fed. Reg. 18,975), with protests or interventions due by May 2, 2003. Timely, unopposed motions to intervene were filed by Consolidated Edison Company of New York, Inc., Philadelphia Gas Works, and Delmarva Power and Light Company. No protests, interventions in opposition or adverse comments were filed.

ENVIRONMENT:

On April 25, 2003, staff issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Mobile Bay Replacement Project and Request for Comments on Environmental Issues (NOI). No responses to the NOI were received.

An environmental assessment (EA) was prepared for Transco's proposal. The EA addresses potential impacts to soils, water resources, wetlands, vegetation, wildlife, threatened and endangered species, land use, cultural resources, and pipeline safety. Two federally listed endangered or threatened species, the gopher tortoise and the eastern indigo snake, may occur in the project area. A biological assessment was sent to the U.S. Fish and Wildlife Service. With the implementation of Transco's Mitigation Plan, the project will not jeopardize the continued existence of these species.

A total of 1.6 acres of palustrine emergent or scrub-shrub wetlands and 1.4 acres of forested wetlands would be temporarily disturbed. One waterbody, the Island Branch, would be crossed. Seven residences are located within 50 feet of the project's construction work area, and five of these are within 25 feet. Transco would use a nominal 90-foot-wide construction right-of-way to install the new pipeline and to remove the old pipeline near these homes. Transco would place the new pipeline within its existing permanent right-of-way. No new permanent right-of-way is required. This construction plan is acceptable.

Based on the discussion in the EA, it is concluded that if replaced and operated in accordance with Transco's application, supplements filed April 10, May 8, and May 15, 2003, and conditions included in the appendix attached hereto, approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the replacement of facilities approved by this Commission.¹ Transco 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 Transco. Transco shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

FINDINGS:

At a hearing held on the issue date noted above, there was received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein.

The facilities to be replaced consist of a total of approximately 1.45 miles of 30 in diameter pipe, located in Mobile County, Alabama. The area the pipeline traverses has recently been classified as meeting DOT Class 3 regulations been idle for some time, and upon abandonment will be disconnected from adjacent lines and crossover piping between this segment and segment 800-1, pigged, filled with air, capped and abandoned in place.

Since the offset replacement of this segment of the Mobile Bay Lateral will not result in any change in the overall performance of Transco's ability to provide transportation services to its customers and would permit Transco to comply with DOT

¹See, 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).

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Pipeline Safety Regulations, Transco's proposal is in the public convenience and necessity.

Pursuant to 18 CFR 375.308, it is ordered that:

- (A) Upon the terms and conditions of this order, permission for and approval of the offset replacement of Transco's Mobile Bay Lateral pipeline segment totaling approximately 1.45 miles, as described above and in the application, are granted.**
- (B) Transco shall notify the Commission of the date of the replacement within 10 days thereof.**
- (C) Transco shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Transco. Transco shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.**
- (D) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR 385.713.**

**Berne L. Mosley
Director
Division of Pipeline Certificates
Office of Energy Projects**

APPENDIX

1. Transco shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to the staff data requests) and as identified in the environmental assessment (EA), unless modified by these certificate conditions. Transco must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction.
3. **Prior to any construction**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before becoming involved with construction and restoration activities.**
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. 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.

5. Transco shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. This includes any alteration to facility locations filed with the Commission. Approval for all areas must be explicitly requested in writing. All areas shall be clearly identified on the maps/sheets/aerial photographs. All areas must be approved in writing by the Director of OEP **before construction** in or near that area.

This requirement does not apply to minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 30 days of placing the certificated facilities in service**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Transco 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.

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7. **Transco shall use the Commission staff's Upland Erosion Control, Revegetation, and Maintenance Plan and Wetland and Waterbody Construction and Mitigation Procedures (January 17, 2003 versions). If Transco wants to use a variation of these measures, Transco shall file with the Secretary a site-specific justifications for each variance for the review and written approval of the Director of OEP prior to construction.**

8. **Transco shall:**
 - a. **file with the Secretary any comments it receives from the U.S. Fish and Wildlife Service (FWS) on the biological assessment and its conclusions; and**
 - b. **not begin construction activities until:**
 - i. **the staff completes formal consultation with the FWS, if required; and**
 - ii. **Transco has received written notification from the Director of OEP that construction or use of mitigation measures may begin.**

9. **Transco shall develop and implement an environmental complaint resolution procedure. The procedure should provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. Prior to construction, Transco shall mail the complaint procedures to each landowner whose property would be crossed by the project. In the letter to the affected landowners, Transco shall:**
 - a. **provide a local contact that the landowners should call first with their concerns, the letter should indicate how soon a landowner should expect a response;**
 - b. **instruct the landowners that if they are not satisfied with the response to call Transco's Hotline, the letter shall indicate how soon a landowner should expect a response; and**
 - c. **instruct the landowners that if they are still not satisfied with the response from Transco's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.**

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In addition, Transco shall include in bi-weekly status reports a copy of a table that contains the following information for each problem/concern:

- a. the date of the call;**
- b. the identification number from the certificated alignment sheets of the affected property;**
- c. the description of the concern/problem; and**
- d. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.**