

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
105 FERC ¶ 61,049

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

Eastern Shore Natural Gas Company

Docket No. CP03-80-000

ORDER ISSUING CERTIFICATE

(Issued October 8, 2003)

1. On April 1, 2003, Eastern Shore Natural Gas Company (Eastern Shore) filed an application under Section 7(c) of the Natural Gas Act (NGA) for authority to construct and operate certain pipeline and measurement facilities in Pennsylvania and Delaware. Approval of this proposal will serve the public interest by allowing Eastern Shore to provide additional firm transportation capacity and enhance system reliability with minimal adverse impact. Accordingly, the requested authorization is granted.

Background and Proposal

2. Eastern Shore is a natural gas company subject to the jurisdiction of the Commission. Natural gas is received into Eastern Shore's system at interconnections with Transcontinental Gas Pipe Line Corporation (Transco) and Columbia Gas Transmission Corporation (Columbia) in southeastern Pennsylvania and is currently delivered for the account of various customers at points within the States of Delaware, Maryland, and Pennsylvania.

3. Eastern Shore proposes to construct and operate facilities as part of its long-term program of upgrading and expanding its system in order to accommodate existing transportation customers and market growth. Eastern Shore has filed modest expansion projects annually for the last 5 years. In this latest expansion proposal, Eastern Shore proposes to do work in three phases, with facilities to be placed in service by November 1, 2003, November 1, 2004, and November 1, 2005. Cumulatively, the project would add a total of 15,100 dekatherms (dt) to Eastern Shore's capacity on a peak day.

4. Phase I involves the upgrading of the Parkesburg M&R Station in Chester County, Pennsylvania. The Parkesburg Station is located at an interconnection

between Eastern Shore's facilities and those of Transco, and the station is owned and operated by Transco. The upgrade is required to increase the station capacity. Eastern Shore has been informed by Transco that an engineering evaluation by Transco showed that volumetric receipts at the station will exceed the existing station capacity by November 2003. The cost of the proposed Phase I upgrade is estimated at \$1,228,590. Eastern Shore states that all construction and permitting will be completed by Transco and that Eastern Shore will reimburse Transco for all costs associated with the upgrade project.¹

5. In Phase II, Eastern Shore proposes to construct and operate 2.7 miles of 16-inch mainline looping in Chester County, Pennsylvania. The cost of the proposed pipeline looping is estimated at \$2,863,195.

6. In Phase III, Eastern Shore proposes to construct and operate 3.0 miles of 16-inch mainline looping and a pressure control station adjacent to Eastern Shore's existing right-of-way in New Castle County, Delaware. The cost of the proposed looping is estimated at \$4,432,256.

7. Instead of the year-to-year approach Eastern Shore has taken with the past 5 system expansions, Eastern Shore requested that its customers evaluate their incremental capacity requirements for the next 3 heating seasons, commencing November 1, 2003, 2004, and 2005, in order to develop a longer-term plan that would take advantage of economies of scale, optimize system design and minimize environmental impacts. In keeping with this longer-term plan, Eastern Shore conducted an open season from May 1 through May 31, 2002, with several extensions. The result was that Eastern Shore has executed precedent agreements with four customers for ten years of firm transportation services (Delmarva Power and Light Company - 3,000 dt/d, Chesapeake Utilities Corporation-Delaware Division - 7,200 dt/d, Chesapeake Utilities Corporation-Maryland Division - 900 dt/d, and PECO Energy Company - 4,000 dt/d). This represents full subscription of the additional capacity which the proposed construction would provide.

8. Eastern Shore proposes to charge its existing Part 284 Rate Schedule FT transportation rate as an initial rate to the firm shippers which have subscribed to the proposed incremental capacity. Since estimated revenues from the new firm service will exceed the estimated cost of service for the facilities, Eastern Shore asserts that existing customers will not be adversely affected. Eastern Shore requests a

¹Transco may perform this upgrade under the authority of its Section 157 Subpart F blanket certificate.

preliminary determination that the cost of the project qualifies for rolled-in rate treatment, and cites system benefits, stating that the proposal would enhance system reliability and flexibility without any adverse rate impact. The application includes a 10-year cost and revenue study which projects that for each of the first 10 years of the operation of the expansion facilities anticipated revenues would exceed the anticipated cost of service.

Notice and Interventions

9. Public notice of Eastern Shore's application was published in the Federal Register on April 16, 2003 (68 Fed. Reg. 18,605), with comments, protests, and interventions due on or before May 1, 2003. Delmarva Power and Light Company, PECO Energy Company, and NUI Utilities, Inc. (Elkton Gas Service Division), filed timely motions to intervene in response to the application.² On May 1, 2003, Easton Utilities Commission of Easton, Maryland (Easton) filed a motion to intervene and request for issuance of conditions. No other protests or interventions in opposition were received. Easton's request for conditions is discussed below.

Discussion

10. Since the proposed construction and operation of proposed facilities involve the transportation of natural gas in interstate commerce, such proposal is subject to the Commission's jurisdiction under Section 7 (c) of the NGA.

Certificate Policy

11. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.³ The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to

²Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.

³Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC ¶ 61,227 (1999), Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (2000).

the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the new construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public evidence to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

13. We believe that Eastern Shore has satisfied the threshold no subsidy requirement. In its application, Eastern Shore included a 10-year cost and revenue study which shows that the estimated annual cost of service for the additional facilities over the 10 years of the contracts will range from \$258,235 for the first year to \$1,344,849 for the tenth year, as compared to estimated annual revenue ranging from \$588,776 for the first year to \$2,121,074 for the tenth year.⁴ The study shows that the total cost of service for 10 years is estimated at \$13,416,976 compared to total revenues of \$18,819,276. Thus, Eastern Shore's cost and revenue analysis demonstrates a positive rate impact during the 10 years that the capacity is contracted for, both on a cumulative basis and in each individual year, showing that the annual revenues generated by the construction of additional capacity will exceed the annual cost of service over the 10 years by \$5,402,300.

14. In addition to enabling Eastern Shore to meet the increased market requirements of its customers, the project will also provide certain system benefits.

⁴The study presumes full subscription of the incremental capacity for 10 years based on the precedent agreements and that the shippers will pay Eastern Shore's maximum Part 284 rates.

Eastern Shore's system consists of two roughly parallel north-south integrated mainlines, known as the Hockessin Line (the eastern line) and the Parkesburg Line (the western line). The proposal would increase reliability by increasing the design day capacity of the Parkesburg Line, which is considered the more reliable of Eastern Shore's two mainlines and would enhance system reliability by increasing end-of-design-day linepack, which would result in higher pressures throughout the system.

15. We also find that the project will have minimal adverse impact. Since the proposal will result in a net revenue benefit to the system, Eastern Shore's existing customers will not be impacted. Further, as discussed more fully below, the proposed facilities are designed to perform the proposed services without degradation of service to existing customers. In fact, the project will enhance system reliability to the benefit of all customers. The project will not have an adverse impact on other pipelines and their captive customers, since the proposed facilities will be used to provide increased service requested by existing LDC customers of Eastern Shore.

16. The proposed construction would have minimal impact on landowners because the proposed facilities will be installed on, or immediately adjacent to, an existing Eastern Shore right-of-way in which Eastern Shore now owns and operates an 8-inch transmission pipeline. No comments have been filed by landowners. We find, subject to Eastern Shore's compliance with the conditions set forth herein, that the benefits of the proposed expansion outweigh any potential adverse effects and, therefore, should be authorized.

17. Eastern Shore's proposal to construct and operate pipeline facilities to expand capacity is responsive to a market need for additional firm service, as evidenced by its open season. We also find that approval of this project will serve to enhance flexibility, reliability, and stability on Eastern Shore's system. Further, we believe that the project can be constructed without adversely affecting the rates of Eastern Shore's other customers. Accordingly, we find that Eastern Shore's proposal is required by the public convenience and necessity.

Rolled-in Rates

18. Although alleging that rolled-in rate treatment would result in customers in the southern portion of Eastern Shore's system (Zone 2), which includes Easton, bearing a disproportionate share of the costs when facilities enter rate base, Easton does not oppose the certificate because "it appears that the revenues from the expansion service will exceed the costs thereof" over the relevant time frame. However, Easton also alleges that Zone 2 customers will see a degradation in service as a result of

reduced pressures from the commencement of the expansion in November 2003 until the completion of Phase III in November 2006. Therefore, Easton requests that a condition be included to require Eastern Shore to maintain the quality of service to Zone 2 customers, or to hold those customers harmless against any decline in service quality resulting from the proposed expansion.

19. Analysis of the effect of the project on Eastern Shore's system shows that there will be no degradation of service as alleged by Easton. Although the predicted end of day design pressures during Phases I and II of the proposed expansion at the meter that serves Easton will be temporarily reduced from the current 347 psig to 305 psig (Phase I) and 288 psig (Phase II), the pressure will recover to 348 psig at the completion of Phase III. In spite of the temporary drop in pressure, Easton's actual deliveries will not be affected in any case. Eastern Shore explained in its June 13, 2003, response to a data request that, under existing operating procedures, Eastern Shore cuts the pressure to 75 psig before delivering gas to Easton at the Easton, Maryland, city gate, the contractual pressure specified in Eastern Shore's FERC gas tariff. Therefore, the expansion has been properly designed to maintain delivery pressures to existing customers and no condition such as that requested by Easton is required.

Environment

20. On May 27, 2003, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed 2003-2005 System Expansion Project and Request for Comments on Environmental Issues (NOI). We received no responses to the NOI. Our staff prepared an environmental assessment (EA) for Eastern Shore's proposal. The EA addresses geology, erosion and sediment control, water resources, vegetation, wetlands, fisheries, wildlife, federally listed species, cultural resources, land use, visual resources, safety, air and noise quality, and alternatives.

21. Based on the discussion in the EA, we conclude that if constructed in accordance with Eastern Shore's application and supplements filed April 1, May 2, May 27, June 13, June 23, July 2, July 21, August 12, and August 26, 2003 approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

22. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through

application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁵ Eastern Shore 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 Eastern Shore. Eastern Shore shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

23. At a hearing held on October 1, 2003, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Eastern Shore to construct and operate the facilities, as more fully described in the application and in this order.

(B) Eastern Shore shall complete the construction and place in operation the facilities according to the phased time table described herein, pursuant to Section 157.20(b) of the Commission's Regulations.

(C) This certificate authorization is conditioned on Eastern Shore's compliance with the provisions of all applicable Commission Regulations under the NGA, including but not limited to Part 154 and Section 157.20 (a), (c)(1), (c)(3), (c)(4), (e), and (g) of our regulations.

(D) Eastern Shore shall not commence construction until it executes firm contracts equal to the capacity to which its customers have committed themselves in signed precedent agreements, all in accordance with its application in this proceeding.

(E) Easton's request for conditions is denied, as discussed more fully in the body of this order.

⁵See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Eastern Shore 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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(F) The authorization granted herein is subject to Eastern Shore's compliance with the specific environmental conditions listed in the Appendix. Further, Eastern Shore 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 Eastern Shore. Eastern Shore shall file written confirmation of such notification with the Secretary of the Commission within twenty-four hours.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

Appendix
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As recommended in the EA, this authorization includes the following conditions:

1. Eastern Shore shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Eastern Shore 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 delegated 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 modifications 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 abandonment activities.

3. **Prior to any construction**, Eastern Shore 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 appropriate for their jobs before becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Eastern Shore 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.

Eastern Shore's exercise of eminent domain authority granted under Natural Gas Act (NGA) Section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Eastern Shore'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 (ROW) for a pipeline to transport a commodity other than natural gas.

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

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

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

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. Within 60 days of the acceptance of this Certificate and before construction begins, Eastern Shore shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Eastern Shore will implement the mitigation measures approved by this Order. Eastern Shore must file revisions to the plan as schedules change. The plan shall identify:
- a. how Eastern Shore 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 Eastern Shore 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 Eastern Shore's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Eastern Shore 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. Eastern Shore shall ensure that an environmental inspector is available and on duty for each segment of the project. The environmental inspector 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;
- c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
- d. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
- e. responsible for maintaining status reports.

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

- a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;

- b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Eastern Shore from other federal, state or local permitting agencies concerning instances of noncompliance, and Eastern Shore's response.
9. For all residents located within 25 feet of the construction work area, Eastern Shore shall file a site specific construction plan with the Secretary for the review and written approval of the Director of OEP **before construction**. The plans shall include:
- a. a description of construction techniques to be used (such as reduced separation, centerline adjustment, use of stove-pipe or drag-section techniques, working over existing pipelines, pipeline crossovers, bore, etc.), and include a dimensioned site plan that shows:
 1. the location of the residence in relation to the new pipeline and where appropriate, the existing pipelines;
 2. the edge of the construction work area;
 3. the edge of the new permanent ROW; and
 4. other nearby residences, structures, roads, or waterbodies.
 - b. a description of how Eastern Shore will ensure the trench is not excavated until the pipe is ready for installation and the trench is backfilled immediately after pipe installation; and
 - c. evidence of landowner concurrence if the construction work area and fencing will be located within 10 feet of a residence.

10. Eastern Shore shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the ROW. **Prior to construction**, Eastern Shore shall mail the complaint resolution procedures to each landowner whose property would be crossed by the project.
 - a. In its letter to affected landowners, Eastern Shore shall:
 1. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 2. instruct the landowners that, if they are not satisfied with the response, they should call Eastern Shore's Hotline; the letter should indicate how soon to expect a response; and
 3. instruct the landowners that, if they are still not satisfied with the response from Eastern Shore's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
 - b. In addition, Eastern Shore shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
 1. the date of the call;
 2. the identification number from the certificated alignment sheets of the affected property;
 3. the description of the problem/concern; and
 4. an explanation of how and when the problem was resolved, would be resolved, or why it has not been resolved.
11. Eastern Shore shall defer construction and use of facilities and staging, storage, and temporary work areas and new or to-be-improved access roads in Pennsylvania **until**:

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- a. Eastern Shore files with the Secretary, the Pennsylvania State Historic Preservation Officer comments on the revised cultural resource survey report; and
- b. the Director of OEP notifies Eastern Shore in writing that it may proceed.