

156 FERC ¶ 61,054  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Eastern Shore Natural Gas Company

Docket Nos. CP15-18-000  
CP15-18-001

ORDER ISSUING CERTIFICATE

(Issued July 21, 2016)

1. On November 21, 2014, Eastern Shore Natural Gas Company (Eastern Shore) filed an application, as amended on November 18, 2015, under section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> for authorization to construct and operate pipeline, compression, and auxiliary facilities in Chester County, Pennsylvania, and New Castle County, Delaware (White Oak Mainline Expansion Project). For the reasons discussed below, the Commission grants Eastern Shore's requested certificate authorizations, subject to conditions.

**I. Background**

2. Eastern Shore,<sup>3</sup> a Delaware corporation, is a natural gas company within the meaning of section 2(6) of the NGA.<sup>4</sup> Eastern Shore operates transportation and storage facilities in Delaware, Maryland, and Pennsylvania.

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

<sup>2</sup> 18 C.F.R. pt. 157 (2015).

<sup>3</sup> Eastern Shore is a wholly-owned subsidiary of Chesapeake Utilities Corporation.

<sup>4</sup> *See* 15 U.S.C. § 717a(6) (2012).

3. In *Eastern Shore Natural Gas Company*,<sup>5</sup> the Director of the Division of Pipeline Certificates in the Office of Energy Projects authorized Eastern Shore to construct and operate 5.5 miles of 16-inch-diameter pipeline, known as the White Oak Lateral,<sup>6</sup> in order to connect Eastern Shore's mainline to the Garrison Energy Center.<sup>7</sup> Eastern Shore has entered into a long-term agreement with Calpine Energy Services, L.P. (Calpine)<sup>8</sup> to transport 55,200 dekatherms (Dth) of gas per day on a firm basis on the White Oak Lateral.

## II. Proposal

4. The agreement between Calpine and Eastern Shore only provided for firm transportation service on the White Oak Lateral and did not provide for any transportation service on Eastern Shore's mainline. Eastern Shore states that the proposed White Oak Mainline Expansion Project will allow it to provide 45,000 Dth per day of off-peak firm transportation service on its mainline to the White Oak Lateral for ultimate delivery to the Garrison Energy Center.

5. Specifically, Eastern Shore proposes to construct two 16-inch-diameter pipeline loop segments, totaling approximately 5.4 miles, in Chester County, Pennsylvania.<sup>9</sup> The first segment, the Kemblesville Loop, is approximately 2.1 miles long and loops an existing 2.1-mile-long, 16-inch-diameter pipeline segment on Eastern Shore's mainline system.<sup>10</sup> The Kemblesville Loop begins near the intersection of Hess Mill Road and Wingate Drive and terminates at an existing valve cluster south of Walker Road. The second segment, the Daleville Loop, is approximately 3.3 miles long, commencing at

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<sup>5</sup> 145 FERC ¶ 62,153 (2013).

<sup>6</sup> The White Oak Lateral was placed into service on October 1, 2014.

<sup>7</sup> Garrison Energy Center is a 309-megawatt combined cycle power plant in Dover, Delaware owned by Garrison Energy Center, LLC, a subsidiary of Calpine Corporation.

<sup>8</sup> Calpine is also a subsidiary of Calpine Corporation.

<sup>9</sup> Eastern Shore November 18, 2015 Amended Application at 7 (shortening the total length of the proposed pipeline loop segments from 7.2 miles to 5.4 miles).

<sup>10</sup> In its November 18, 2015 Amended Application, Eastern Shore substituted the Kemblesville Loop Alternative Route 2 for the originally-proposed Kemblesville Loop, thereby shortening the length of the loop from 3.9 miles to 2.1 miles. *See* Resource Report 1 at 1-2 from Eastern Shore December 31, 2015 Data Response.

Eastern Shore's existing right-of-way along Limestone Road and terminating at the existing Daleville Compressor Station. The Daleville Loop loops an existing 2.6-mile-long, 16-inch-diameter mainline segment on Eastern Shore's system and an existing 0.6-mile-long, 12-inch-diameter pipeline loop that is parallel to the mainline just north of the Daleville Compressor Station.

6. Eastern Shore also proposes to add two new 1,775 horsepower (hp) natural gas-fired reciprocating compressor units, totaling 3,550 hp, at its existing Delaware City Compressor Station in New Castle County, Delaware. Once completed, the Delaware City Compressor Station will have six compressor units, totaling 7,890 hp.

7. Eastern Shore conducted an open season from July 3 to July 17, 2014, and received one bid from Calpine for 100 percent of the project's firm service capacity on the mainline for a term of 20 years. Eastern Shore states that Calpine signed a precedent agreement in August 2014. No other bids or inquiries were received.<sup>11</sup>

8. Eastern Shore estimates the cost of constructing the project is \$35,211,451.<sup>12</sup> Eastern Shore proposes to charge its existing maximum reservation rate under its existing Off-Peak Firm Transportation Rate Schedule (Rate Schedule OPT $\leq$ 90) as the recourse rate for service on the proposed expansion. Eastern Shore requests a predetermination that it may roll the costs associated with the project into its system rates in a future NGA section 4 rate case.

### **III. Notice, Interventions, and Comments**

9. Notice of Eastern Shore's application was published in the *Federal Register* on December 19, 2014 (79 Fed. Reg. 75,798), with interventions, comments, and protests due by December 29, 2014. Notice of Eastern Shore's amended application was published in the *Federal Register* on December 3, 2015 (80 Fed. Reg. 75,674), with comments due by December 16, 2015. Calpine, Easton Utilities Commission (Easton), Exelon Corporation, and Pivotal Utility Holdings, Inc. filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.<sup>13</sup>

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<sup>11</sup> Concurrent with the open season, Eastern Shore solicited interest in turn back capacity but received no offers.

<sup>12</sup> Revised Exhibit K of Eastern Shore December 15, 2015 Data Response No. 4.

<sup>13</sup> 18 C.F.R. § 385.214(c) (2015).

10. On January 12, 2015, Robert D. and Jennifer C. McNeil (McNeils) filed an untimely motion to intervene. The McNeils have demonstrated an interest in this proceeding and their untimely motion to intervene will not delay, disrupt, or unfairly prejudice any parties to the proceeding. Thus, we will grant the untimely motion to intervene.<sup>14</sup>

11. Leslie Mack, a property owner, and Al Weaver, the husband of a property owner, jointly filed a comment letter stating that the pipeline will be placed between their parcels of property, making one or both parcels unusable. They also contend that the project would not benefit the area and would negatively impact local families. After they and other landowners filed their comments, Eastern Shore amended its application to adopt the Kemblesville Loop Alternative Route 2. Because this alternative route would avoid their property, the Environmental Assessment (EA) did not address Ms. Mack and Mr. Weaver's property-specific comments.

#### **IV. Discussion**

12. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.<sup>15</sup>

##### **A. Certificate Policy Statement**

13. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>16</sup> The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the

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<sup>14</sup> *See id.* § 385.214(d).

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

<sup>16</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

14. 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 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 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 benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

15. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Eastern Shore has entered into a long-term precedent agreement with Calpine for 100 percent of the design capacity of the project and proposes to charge Calpine its existing applicable maximum reservation rate. To ensure that existing customers do not subsidize expansion projects, Commission policy generally requires that incremental rates be established for services utilizing expansion capacity unless such incremental rates would be lower than the existing generally applicable rates, in which case the existing rates are approved as the initial recourse rates for the expansion service.<sup>17</sup> As discussed below, we find that an appropriately-calculated incremental reservation charge for the proposed service would be lower than Eastern Shore's currently-effective maximum Rate Schedule OPT≤90 reservation rate. Given that and the fact, as also discussed below, that we are denying Eastern Shore's request for a predetermination that it may roll the White Oak Mainline Expansion Project's costs into its system rates in a future section 4 rate case, we find that the threshold no-subsidy requirement has been met.

16. The proposal will not adversely affect Eastern Shore's existing customers because the project will not degrade any existing service. Also, the project will not replace firm transportation service on any other pipeline. Further, no pipelines or their captive customers have protested Eastern Shore's proposal. Consequently, we find that there will be no adverse impacts on other pipelines or their captive customers.

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<sup>17</sup> See, e.g., *Florida Gas Transmission Co., LLC*, 154 FERC ¶ 61,256, at P 14 (2016); *Gulf South Pipeline Company, L.P.*, 119 FERC ¶ 61,281, at P 33 (2007).

17. Eastern Shore proposes to site the Kemblesville Loop within its existing right-of-way and the Daleville Loop within or adjacent to the right-of-way associated with its mainline system. Approximately 78 percent of the land required for the project would be in Eastern Shore's existing rights-of-way.<sup>18</sup> We find that Eastern Shore's proposal has been designed to minimize impacts on landowners and the environment.

18. The proposal will enable Eastern Shore to deliver 45,000 Dth per day of natural gas to the White Oak Lateral for ultimate delivery to the Garrison Energy Center. Based on the benefits that Eastern Shore's proposal will provide, the lack of adverse effects on existing customers and other pipelines and their captive customers, and the minimal adverse effects on landowners or communities, we find that, consistent with the criteria discussed in the Certificate Policy Statement and section 7 of the NGA, Eastern Shore's proposal is required by the public convenience and necessity, as conditioned in this order.

## **B. Rates**

### **1. Initial Recourse Transportation Rate**

19. As noted above, Eastern Shore proposes to use its existing Rate Schedule OPT $\leq$ 90 rates (for Receipt Zone 2 and Delivery Zone 2) as the initial recourse rates for firm transportation service. Eastern Shore's currently-effective monthly reservation charge for Receipt Zone 2 is \$1.7116 per Dth and for Delivery Zone 2 is \$12.6427 per Dth, resulting in a total initial reservation charge of \$14.3543 per Dth.<sup>19</sup> Eastern Shore's currently-effective Delivery Zone 2 commodity charge is \$0.0104 per Dth.<sup>20</sup> Eastern Shore calculated that if it were to use an incremental reservation charge for service on the project, the charge would be \$16.6449 per Dth.<sup>21</sup>

20. We find that Eastern Shore improperly calculated what the incremental reservation charge would be. Under Eastern Shore's Rate Schedule OPT $\leq$ 90, it may decline to schedule service on any gas day from November 1 through April 30, for up to a total of

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<sup>18</sup> EA at 64.

<sup>19</sup> Eastern Shore, FERC NGA Gas Tariff, Third Revised Volume No. 1; Sheet No. 4B, Part 284 Currently Effective Rates - Off Peak Transportation, 0.0.0.

<sup>20</sup> *Id.*

<sup>21</sup> Eastern Shore March 10, 2016 Data Response No. 2. Eastern Shore states in calculating the incremental rate it assumed that maximum of 90 days of interrupted service.

90 days.<sup>22</sup> Accordingly, Eastern Shore calculated its illustrative incremental reservation charge based upon 275 days of service (365-90 days). However, charging a reservation charge calculated on 275 days would result in Eastern Shore over-recovering its cost of service if it provides service for more than the minimum number of days allowable, i.e., it provides service on 276 or more days. Therefore, we find that an incremental reservation charge should be based on 365 days of service. Based on 365 days, we calculate that an incremental reservation charge calculated to recover the fixed costs of the White Oak Mainline Expansion Project would be approximately \$12.5407 per Dth.<sup>23</sup>

21. As noted above, where the currently-effective system recourse rate is greater than the estimated incremental cost-based recourse rate, we have found it appropriate to establish the existing system rate as the initial recourse rate for the project.<sup>24</sup> Eastern Shore's currently-effective reservation charge for Receipt Zone 2 and Delivery Zone 2 (\$14.3543) exceeds the illustrative incremental reservation charge for project service (\$12.5407). Accordingly, consistent with Commission policy, we will approve the use of Eastern Shore's currently-effective Receipt Zone 2 and Delivery Zone 2 recourse charges as the initial recourse rates for service utilizing the new capacity created by the expansion facilities.

22. Eastern Shore also proposes to use its existing Rate Schedule OPT $\leq$ 90 commodity charge for Receipt Zone 2 and Delivery Zone 2 as the initial recourse commodity charge for firm project service. Eastern Shore, however, failed to provide a comparable illustrative incremental commodity charge based on the billing determinants and costs associated with the project,<sup>25</sup> nor did it provide sufficient information to enable the

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<sup>22</sup> Eastern Shore is required to provide shippers with a reservation charge credit for any day it declines to provide service. Eastern Shore, FERC NGA Gas Tariff, Third Revised Volume No. 1; Sheet No. 27C, Rate Schedule Off Peak Transportation, Continued, 0.0.0.

<sup>23</sup> The use of four decimal places is consistent with Eastern Shore's method of expressing its currently effective charges.  $\$6,771,961$  (Cost of Service)/(45,000 Dth per day times 12 months) = \$12.5407 per Dth.

<sup>24</sup> See, e.g., *Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160, at P 30 (2015); *Millennium Pipeline Co., L.L.C.*, 145 FERC ¶ 61,007, at P 30 (2013).

<sup>25</sup> On March 3, 2016, Commission staff requested that Eastern Shore calculate a commodity charge that would recover all variable costs of the project. Eastern Shore's March 10, 2016 Data Response fails to reflect an incremental commodity charge for the project.

Commission to calculate such a rate on its own. Eastern Shore's Revised Exhibit N<sup>26</sup> includes an estimated operation and maintenance (O&M) expense of \$654,437 in the proposed cost of service, but Eastern Shore does not breakdown O&M expenses by labor and non-labor costs for each account. The Commission requires that certain non-labor O&M costs be classified as variable costs<sup>27</sup> and be recovered through a commodity charge using a straight fixed-variable (SFV) rate design.<sup>28</sup> Accordingly, we are not able to approve the use of Eastern Shore's currently-effective Delivery Zone 2 commodity charge as the appropriate commodity charge. Therefore, we will direct Eastern Shore, when it files to implement rates for the project, to propose an incremental commodity charge calculated consistent with the Commission's policy requiring the use of a SFV rate design or to file information demonstrating that its existing Rate Schedule OPT<sub>≤90</sub> commodity charge for Receipt Zone 2 and Delivery Zone 2 is higher than an appropriately calculated incremental commodity charge. Such filing should include a breakdown of projected O&M expenses by FERC account number and labor and non-labor costs for the proposed project in order to support its proposed commodity charge and be made not less than 30 days, and not more than 60 days, prior to commencing service on the project.

23. Eastern Shore does not propose an interruptible transportation rate. Thus, we will direct Eastern Shore to implement interruptible rates that are consistent with Commission policy requiring a pipeline to charge its current system interruptible transportation rate for any interruptible service rendered on additional capacity made available as a result of an incremental expansion that is integrated with existing pipeline facilities.<sup>29</sup>

## **2. Preliminary Determination Regarding Rolled-in Treatment for Project Costs**

24. Eastern Shore requests a predetermination that it may roll the costs associated with the project into its system rates in a future NGA section 4 rate proceeding. To receive such a predetermination in a certificate proceeding, a pipeline must demonstrate that rolling in the costs associated with the construction and operation of new facilities will

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<sup>26</sup> See Eastern Shore December 18, 2015 Data Response No. 4.

<sup>27</sup> See, e.g., *Equitrans, L.P.*, 153 FERC ¶ 61,381, at P 20 (2015); *Columbia Gulf Transmission, LLC*, 152 FERC ¶ 61,214, at P 20 (2015).

<sup>28</sup> See 18 C.F.R. § 284.7(e) (2015).

<sup>29</sup> See, e.g., *Texas Gas Transmission, LLC*, 154 FERC ¶ 61,235, at P 20 (2016); *Tennessee Gas Pipeline Co L.L.C.*, 154 FERC ¶ 61,191, at P 21 (2016).

not result in existing customers subsidizing the expansion.<sup>30</sup> In general, this means that a pipeline must show that the revenues to be generated by an expansion project will exceed the costs of the project. For purposes of making such a determination, we compare the cost of the project to the revenues generated utilizing actual contract volumes and the maximum recourse rate (or the actual negotiated rate if the negotiated rate is lower than the recourse rate).<sup>31</sup>

25. Here, we find that projected revenues from actual contract volumes are less than the expected cost of service. Eastern Shore's Revised Exhibit N<sup>32</sup> estimates a total cost of service of \$6,771,961 for the first year of service, \$6,504,074 for the second year, and \$6,255,594 for the third year, and revenues of \$7,751,322 for each year of the project. However, Eastern Shore's Revised Exhibit N fails to reflect a reservation charge credit for the up to 90 days per year Eastern Shore has the option, under Rate Schedule OPT $\leq$ 90, to decline service. Pursuant to that rate schedule, Eastern Shore is required to provide a daily reservation charge credit for each day that service is declined. Eastern Shore's initial Exhibit N calculated a reservation charge credit of \$1,911,285 for the 90 days per year of potential interruption of service,<sup>33</sup> but its Revised Exhibit N failed to utilize that credit in comparing costs to revenues. Based on the full contract volume that may be requested, and after deducting from Eastern Shore's projected revenues of \$7,751,322 the reservation charge credit of \$1,911,285 for the service it is allowed to decline under Rate Schedule OPT $\leq$ 90, the projected revenue for each of the first three years of the project is \$5,840,037. Thus, because the estimated cost of service exceeds the projected revenues (assuming a full 90 days per year of interruption), we will deny Eastern Shore's request that the Commission grant a predetermination of rolled-in rate treatment for the costs associated with the project.<sup>34</sup> This determination is without

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<sup>30</sup> See Certificate Policy Statement, 88 FERC at 61,746.

<sup>31</sup> See *Natural Gas Pipeline Co. of America, LLC*, 154 FERC ¶ 61,220, at P 25 (2016). Calpine has executed a binding precedent agreement with Eastern Shore committing to the entire design capacity of the White Oak Mainline Expansion Project at the current maximum tariff rates.

<sup>32</sup> See Eastern Shore December 18, 2015 Data Response No. 4.

<sup>33</sup> Eastern Shore calculated the demand charge credit based on the quantity and rate of the binding precedent agreement executed with Calpine. The precedent agreement with Calpine was not changed in Eastern Shore's amended application.

<sup>34</sup> In its motion to intervene, Easton, an Eastern Shore customer, states that the Commission should not approve Eastern Shore's request for a predetermination of rolled-in rate treatment for the costs associated with the project. (continued ...)

prejudice to Eastern Shore filing for and fully supporting rolled-in rate treatment for the White Oak Mainline Expansion Project facilities in a future NGA general section 4 rate case.

26. To ensure that costs are properly allocated between Eastern Shore's existing shippers and the services proposed in this proceeding, the Commission directs Eastern Shore to keep separate books and accounting of costs attributable to the project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.<sup>35</sup>

### 3. Fuel Rates

27. Eastern Shore proposes to charge its generally applicable fuel retention percentage, as set forth in Rate Sheet No. 4B of its FERC Gas Tariff. The fuel retention percentage is a system-wide rate applicable to all the services that Eastern Shore provides and is calculated by dividing total fuel consumption (including lost and unaccounted for fuel) by total system throughput.<sup>36</sup> Eastern Shore's currently-effective fuel percentage rate is 0.62 percent.<sup>37</sup>

28. Eastern Shore provided a model of the throughput, linepack, and compressor fuel on its existing system, which examines the system both before and after the construction and operation of the proposed project. Based on this analysis, Eastern Shore estimates that the fuel retention percentage would increase by 0.04 percent on a peak day.<sup>38</sup>

29. Eastern Shore requests a presumption in favor of rolled-in rate treatment for fuel related to the project, stating that the potential increase to the fuel retention percentage will be *de minimis*, and that the additional compression would improve system-wide operational reliability and redundancy to the benefit of all of its customers. Specifically,

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in treatment until Eastern Shore files the precedent agreement with the Commission. In response, Eastern Shore filed the agreement.

<sup>35</sup> See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

<sup>36</sup> Eastern Shore February 13, 2015 Data Response No. 2.

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

<sup>38</sup> *Id.*

Eastern Shore states that the addition of two new compressor units at the Delaware City Compressor Station would increase the station's horsepower, thereby removing a bottleneck on its existing system.

30. When deciding whether to grant a predetermination of a rolled-in fuel rate, we compare the pipeline's estimated incremental fuel rate to the pipeline's existing system-wide fuel rate.<sup>39</sup> If the estimated incremental fuel rate for the project is higher than the existing system-wide fuel rate, there is a risk that existing customers would subsidize costs related to the expansion.<sup>40</sup> Eastern Shore estimates that on a peak day rolling in the fuel related to the project will result in a 0.04 percent increase of the fuel retention percentage. Although Eastern Shore contends the project will improve system-wide operational reliability and redundancy to the benefit of all of its customers, we have found that for projects, such as Eastern Shore's, where the purpose is to expand the capacity of the existing system to serve new load, our policy requires there be no subsidization from existing customers.<sup>41</sup> Thus, we will require Eastern Shore to separately identify the incremental fuel associated with its project and to charge an incremental fuel rate. This finding is without prejudice to Eastern Shore's proposing to roll the project's fuel costs into its system gas retention rate in a general or limited NGA section 4 filing.

#### **4. Service Agreement**

31. Eastern Shore states that the OPT $\leq$ 90 service agreement executed with Calpine will include certain non-conforming provisions that reflect Calpine's status as an anchor shipper. At least 30 days, but not more than 60 days, before the in-service date of the proposed facilities, Eastern Shore must file an executed copy of the non-conforming agreement, disclosing and reflecting all non-conforming language as part of its tariff,<sup>42</sup>

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<sup>39</sup> *ANR Pipeline Co.*, 149 FERC ¶ 61,197, at P 23 (2014), *order denying reh'g*, 152 FERC ¶ 61,021 (2015).

<sup>40</sup> *See ANR Pipeline Co.*, 149 FERC ¶ 61,197 at P 23.

<sup>41</sup> *See ANR Pipeline Co.*, 152 FERC ¶ 61,021 at P 9; *Southeast Supply Header, LLC*, 151 FERC ¶ 61,032, at P 13 (2015).

<sup>42</sup> Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. 18 C.F.R. § 154.112(b) (2015).

and a tariff record identifying the agreement as a non-conforming agreement consistent with section 154.112 of the Commission's regulations.<sup>43</sup>

### C. Accounting

32. Based on past calculations of Allowance for Funds Used During Construction (AFUDC) for its previous projects, Eastern Shore calculated that the AFUDC for the White Oak Mainline Project amounts to one percent of the total project cost.<sup>44</sup> Eastern Shore did not calculate monthly estimates of AFUDC.<sup>45</sup>

33. The Commission's accounting rules require that AFUDC be calculated on a monthly basis in accordance with Gas Plant Instruction No. 3(17).<sup>46</sup> Estimating expenditures on a monthly basis over the period of construction of the project provides a more realistic estimate of AFUDC for each specific project. If Eastern Shore cannot estimate the monthly expenditures of the project, it would be more appropriate to assume that expenditures are made evenly throughout the period of construction. We will require Eastern Shore to revise its procedures for estimating the amount of AFUDC in project costs so as to provide a more realistic estimate of AFUDC.

### D. Environmental Analysis

34. On January 22, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the *Federal Register*<sup>47</sup> and mailed to approximately 420 entities, including federal, state, and local government officials; agency representatives; Native American tribes; environmental and public interest groups; local libraries and newspapers; and property owners affected by construction of the pipeline facilities. In response to the NOI, we received written comments from the Delaware Nation, Franklin Township Historical Commission,

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<sup>43</sup> *Id.* § 154.112.

<sup>44</sup> *See* Eastern Shore January 26, 2015 Data Request Response No. 1(a).

<sup>45</sup> While Eastern Shore used a percentage of estimated project costs for determining AFUDC for Exhibit K purposes, Eastern Shore states that its accounting system properly calculates actual AFUDC charges during construction in accordance with the Commission's Uniform System of Accounts gas plant instructions. *See* Eastern Shore January 26, 2015 Data Request Response No. 1(b).

<sup>46</sup> 18 C.F.R. pt. 201 (2015).

<sup>47</sup> 80 Fed. Reg. 5102 (2015).

Franklin Township Historical Architectural Review Board, the National Oceanic and Atmospheric Administration, the National Park Service, Franklin Township, the Pennsylvania Department of Conservation and Natural Resources, the Chester County Water Resources Authority (Water Resources Authority), and 28 individuals.

35. On July 9, 2015, the Commission issued a *Supplemental Notice of Intent to Prepare an Environmental Assessment* (Supplemental NOI) for the project and opened a scoping period specific to the Kemblesville Loop Alternative Route 2. The Supplemental NOI was published in the *Federal Register*<sup>48</sup> and mailed to approximately 505 entities, including federal, state, and local government officials; agency representatives; Native American tribes; environmental and public interest groups; local libraries and newspapers; and property owners affected by construction of the pipeline facilities. We received environmental comments from the Franklin Township Historical Commission, the National Park Service, the Water Resources Authority, and four individuals. Eastern Shore subsequently adopted the alternative route in its amended application.<sup>49</sup>

36. The primary issues raised in response to the NOIs concerned impacts on wetlands and waterbodies, the White Clay Creek National Wild and Scenic River, watersheds within the project area, the Kemblesville Village Historic District, bog turtle habitat, cultural resources, old growth forested areas along the pipeline routes, and pipeline safety. In addition, commenters were concerned about forest clearing, alternative routes (including the Kemblesville Loop Alternative Route 2), and pipeline installation in proximity to residences. We also received a letter from the U.S. Department of Agriculture's Natural Resources Conservation Service regarding potential project impacts on its easement holdings.

37. To satisfy the requirements of the National Environmental Policy Act of 1969,<sup>50</sup> Commission staff prepared an EA for Eastern Shore's proposal. The EA addresses geology and soils, water resources, vegetation and wildlife, fisheries, land use, recreation and visual resources, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and alternatives. All substantive environmental comments received in response to the NOIs, as well as the comments about the project's potential impacts on their property made by the McNeils in their motion to intervene, were addressed in the EA.

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<sup>48</sup> 80 Fed. Reg. 43,076 (2015).

<sup>49</sup> Eastern Shore filed its amended application on November 18, 2015.

<sup>50</sup> 42 U.S.C. §§ 4321 *et seq.* (2012). *See also* 18 C.F.R. pt. 380 (2015) (Commission's regulations implementing the National Environmental Policy Act of 1969).

38. On April 25, 2016, the EA was issued for a 30-day comment period, mailed to all stakeholders on the Commission staff's environmental mailing list, and placed into the public record. In response to the EA, the Commission received comments from the Water Resources Authority and the Chester County Planning Commission (Planning Commission) regarding water quality, vegetation, consultation, and construction procedures. Eastern Shore also filed documentation of its U.S. Army Corps of Engineers (Corps) permit and Water Quality Certification from the Pennsylvania Department of Environmental Protection (PA DEP).

### 1. Water Resources, Geology, and Soils

39. The Water Resources Authority recommends that construction and staging be conducted in a manner to minimize any water quality impacts in area watersheds near the Kemblesville and Daleville Loops. Additionally, it requests more information regarding turbidity and erosion impacts in the watersheds due to hydrostatic testing, as well as the impacts of construction on groundwater. The Planning Commission states that discharge from the hydrostatic testing of the pipelines could potentially cross sub-watershed boundaries, which would be inconsistent with the Water Resource Authority's Watersheds Action Plan. With regard to erosion, the Water Resources Authority and Planning Commission are concerned that the project would cause erosion on the steep slopes along the Brandywine/Christina Basin and Chesapeake Bay watersheds.

40. The EA identifies the associated impacts during construction and operation of the project, including Eastern Shore's mitigation measures. The EA also details the best management practices in the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Plan) and *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures) that Eastern Shore will implement during construction of the Kemblesville and Daleville Loops to minimize environmental impacts.<sup>51</sup> With regards to water quality impacts as a result of construction and staging areas, our Procedures prescribe minimum distances of separation from temporary workspaces, including staging areas from wetlands and waterbodies to minimize water quality impacts, and impacts in the area watersheds.

41. As stated in the Planning Commission's comment letter and the EA, Eastern Shore will obtain the hydrostatic test water for the project from a municipal source. The EA finds the discharge of the water would be a temporary event with no long-term impacts.<sup>52</sup> Eastern Shore will follow our Procedures, as well as any additional requirements in the

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<sup>51</sup> See EA at 6.

<sup>52</sup> See *id.* at 42.

already-issued PA DEP National Pollutant Discharge Elimination System permits for the discharge of water to minimize erosion and watershed impacts. In addition, the provisions of Eastern Shore's Erosion and Sedimentation Control (ESC) Plan and Stormwater Pollution Prevention (SWPP) Plan will ensure that any discharge of trench water will be made into a well-vegetated upland area or properly constructed dewatering structure to minimize erosion and allow the water to infiltrate into the ground. Thus, we agree with the EA's conclusion that impacts from the withdrawal and discharge of hydrostatic test water would be short-term and not significant.<sup>53</sup>

42. As stated in the Planning Commission's comment letter and the EA, certain ranges of slopes are crossed by the pipeline loops. With regards to soil erosion and soil stability concerns, the EA recognizes the potential for soil erosion during construction of the Daleville and Kemblesville Loops.<sup>54</sup> The EA summarizes the measures that Eastern Shore will implement to reduce the potential for adverse impacts on soils during construction and to help facilitate revegetation and to permanently stabilize disturbed areas, such as installing temporary erosion control devices and temporary and permanent slope breakers during and after construction. We agree with the EA's conclusion that Eastern Shore's use of the Commission's Plan and implementation of the approved Chester County Conservation District's ESC Plans will minimize erosion during construction and restoration of the areas disturbed by the project. We also agree that the impacts on soils will be minor and not significant.

43. The Water Resources Authority recommends that we require Eastern Shore to conduct pre- and post-construction monitoring of well yield and water quality for all private wells within 150 feet of pipeline construction, as well as to expand the monitoring distance if blasting is necessary. The Planning Commission also asks if the Commission has remedies for homeowners whose wells are damaged or impacted by project construction. The EA identifies the public and private water wells in the project area, and table 9 in the EA specifically details the private wells within 150 feet of the construction workspaces for the Kemblesville and Daleville Loops. Further, we have included Environmental Condition 19 in the appendix to this order to ensure adequate protection of private water wells within 150 feet of the construction workspaces for the Kemblesville and Daleville Loops. Under this condition, Eastern Shore shall conduct, with the well-owner's permission, pre- and post-construction well testing of the private wells identified in table 9 of the EA<sup>55</sup> to provide a baseline for assessing any potential

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<sup>53</sup> *See id.* at 42.

<sup>54</sup> *See id.* at 29.

<sup>55</sup> *Id.* at 33.

well-owner complaints and demonstrate that any wells/systems damaged by construction have been repaired or any complaints concerning well yield and quality have been resolved. The EA explains that blasting is not anticipated in association with construction of the looping pipelines or the compressor station but, if blasting does become necessary, Eastern Shore will adhere to blasting requirements in our Plan and Procedures. Our Plan requires the development of specific blasting procedures in coordination with the appropriate agencies that address pre- and post-blast inspections, procedures to notify the public, and the development of mitigation measures for building foundations, groundwater wells, and springs.

44. Eastern Shore will also implement its Spill Prevention Control and Countermeasure (SPCC) Plan, which includes hazardous materials management, preventative measures to avoid spills, and mitigation measures to be implemented in the event of a spill. Eastern Shore's SPCC Plan prohibits refueling within 100 feet of any known potable water wells. Eastern Shore will implement its ESC Plan, SPCC Plan, and SWPP Plan, as well as adhere to our Plan and Procedures, to minimize potential impacts on groundwater resources. Thus, we agree with the EA's conclusion that although pipeline construction activities could affect groundwater resources, potential impacts would be minor and temporary.<sup>56</sup>

45. The Water Resources Authority requests that the Commission use the currently updated flood zone delineations on the Federal Emergency Management Agency's Map Service website to assess the environmental effects of the project in Chester County. The EA states that with some exceptions, the majority of the project area is not within the 100-year flood boundary. Information in the EA on floodplains along the pipeline routes is based on information as recent as 2014 from the Federal Emergency Management Agency.<sup>57</sup> While we recognize that flood zone delineations are currently being updated, the EA relied on recent information to base its conclusion of environmental effects. Further, because the pipeline loops will be buried followed by restoration to pre-construction contours, resulting in no change to the flood-carrying capacity of the drainage systems, and the majority of the pipeline loops will be located with existing utility rights-of-way, we agree with the finding in the EA that the proposed pipeline facilities will not be compromised due to flooding, and that the pipeline facilities will not result in significant impact on geologic resources.<sup>58</sup>

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<sup>56</sup> *See id.* at 34.

<sup>57</sup> *See id.* at 28.

<sup>58</sup> *See id.*

46. The Planning Commission requests clarification of the waterbodies that would be crossed by horizontal directional drill (HDD). The Planning Commission also requests that Eastern Shore be required to file the site-specific HDD plans with affected municipalities and the Chester County Department of Emergency Services. The EA specifically states that Eastern Shore has not confirmed whether it would cross any of the waterbodies along the pipeline loops with an HDD.<sup>59</sup> Environmental Condition 12 in the appendix to this order requires Eastern Shore to file site-specific crossing plans for any contemplated HDDs for review and written approval from Commission staff prior to construction of the project. Eastern Shore would file these plans in this docket for public viewing.

## 2. Vegetation

47. The Water Resources Authority recommends that tree removal be avoided to minimize flooding, erosion, and sedimentation, as well as other adverse environmental effects. It states that any reforestation plan should ensure successful re-vegetation, verifiable by post-construction inspections. The EA explains that approximately 83 percent of the Daleville and Kemblesville Loops will be constructed in existing utility rights-of-way and public roadways,<sup>60</sup> with approximately seven acres of upland forest impacted during construction.<sup>61</sup> While impacts on forests will be long-term or permanent, as it will take years or decades for mature trees to reestablish in the construction work areas, less than one acre, spread along 3.3 miles of residential development, will be permanently converted to a maintained herbaceous state for pipeline operation.<sup>62</sup> The EA states that Eastern Shore will implement measures to revegetate impacted areas, as outlined in our Plan and Procedures and the approved Chester County Conservation District's ESC Plans. Further our Plan requires monitoring of the restored rights-of-way for at least two growing seasons or until Commission staff determines that restoration is complete and further monitoring is no longer required. For these reasons, we agree with the EA's conclusion that overall project impacts on vegetation, including those impacts on forested uplands, will not be significant.<sup>63</sup>

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<sup>59</sup> *See id.* at 41.

<sup>60</sup> *See id.* at 16.

<sup>61</sup> *See id.* at 16.

<sup>62</sup> *See id.* at 69.

<sup>63</sup> *See id.* at 53.

### **3. Wetlands**

48. The Water Resources Authority states that wetlands and riparian buffer areas should not be disturbed beyond the width of the corridor necessary for pipe installation and should best be avoided. The Planning Commission states that 0.01 acre of wetlands would be permanently impacted and that failure to protect and restore these resources would conflict with Chester County's policy. The EA details the temporary and permanent impacts on the wetlands along the rights-of-way. We find that the location of the proposed pipelines with other utility rights-of-way and compliance with the requirements in our Procedures and the approved Chester County Conservation District's ESC Plans for avoidance and minimization of impacts on wetlands, as described in the EA, adequately protects these resources. In addition, the EA states that Eastern Shore will conduct all crossing of wetlands in compliance with the recently-approved Pennsylvania State Programmatic General Permit issued by the Corps.<sup>64</sup>

### **4. Consultation with Agencies**

49. The Water Resources Authority and the Planning Commission support the EA's recommendation that Eastern Shore complete its consultation with the National Park Service and the Corps in developing the final construction and restoration plan for the crossings of the tributaries to the West Branch of White Clay Creek.<sup>65</sup> The Corps issued its authorization for the project under the authority of the Pennsylvania State Programmatic General Permit on May 12, 2016, which was modified on May 19, 2016. Because consultation with the National Park Service is not yet complete, we will include Environmental Condition 11 in the appendix to this order to ensure that Eastern Shore completes consultation prior to construction.

50. The Planning Commission requests that Eastern Shore send copies of all State Historic Preservation Office concurrence letters to Chester County. On October 9, 2015, Eastern Shore filed the concurrence letters from the Pennsylvania State Historic Preservation Office issued on September 10, 18, and 24, 2015. They are available in the Commission's e-Library for public viewing.

51. The Planning Commission requests that Eastern Shore be required to coordinate with the PA DEP and the Water Resources Authority to ensure all waterbody crossings comply with water quality standards. Eastern Shore will comply with all federal and state requirements regarding waterbody crossings along the Daleville and Kemblesville Loops. Moreover, the PA DEP issued its State Water Quality Certification required

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<sup>64</sup> *See id.* at 47.

<sup>65</sup> *See id.* at 134.

under section 401 of the Clean Water Act on April 26, 2016, for the Daleville and Kemblesville Loops.

52. The Planning Commission also requests that Eastern Shore coordinate with the Chester County Conservation District to minimize potential erosion and potential debris or pollutants from piping. We encourage Eastern Shore to coordinate with state and local agencies during construction of the project.

53. The Planning Commission requests that Eastern Shore coordinate with municipalities regarding emergency services, municipal services, and traffic. The EA explains that Eastern Shore has committed to ensure emergency vehicles and typical local traffic would not be hindered or otherwise impacted by construction activities.<sup>66</sup> The EA also states that Eastern Shore will bore under paved public roads so that it will not impede traffic, and that any roads crossed by the open-cut construction method will typically be completed in 24 hours. Finally, the EA states that Eastern Shore has committed to coordinate with state and local transportation department representatives, as appropriate, to establish detours to accommodate local traffic. As our authorization is conditioned upon Eastern Shore's following the construction procedures and mitigation measures to which it has committed, we find the Planning Commission's coordination requests will be adequately addressed.

## 5. Construction

54. The Planning Commission supports the EA's recommendation that Eastern Shore file evidence of landowner concurrence with the site-specific residential construction plans for any residence within 10 feet of the proposed construction workspaces for the project. We have included this recommendation as Environmental Condition 13 in the appendix to this order.

55. The Planning Commission requests that Eastern Shore provide Chester County the contact information for the project's environmental inspector during construction to assist with issues or concerns of residents. The EA states that Eastern Shore is responsible for obtaining all project-specific permits and approvals prior to construction and operation of each project and we encourage project proponents to coordinate with state and local agencies during project planning, implementation, construction, and restoration.<sup>67</sup> Further, Environmental Condition 7 in the appendix to this order requires that Eastern Shore provide its weekly construction status reports to federal and state agencies upon request. These reports, which will be available on the Commission's e-Library, will

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<sup>66</sup> *See id.* at 74.

<sup>67</sup> *See id.* at 21.

detail the status of construction, including all problems encountered and each instance of noncompliance observed by the environmental inspector, corrective actions implemented in response to all instances of noncompliance, a description of any landowner/resident complaints that may relate to compliance with the requirements of this order, and the measures taken to satisfy the landowner/resident's concerns. In addition, Environmental Condition 14 in the appendix to this order requires Eastern Shore to develop and implement an environmental complaint resolution procedure that would include a phone number and other methods of contact in order identify and resolve individual resident's environmental mitigation problems/concerns during construction and restoration of the rights-of-way. Eastern Shore will summarize any complaints and the resulting resolution of the complaints in its filed weekly status reports.

56. The Planning Commission recommends that the pipelines be buried deeper in active agricultural areas to decrease the potential for adverse contact between agricultural machinery and the pipelines. The EA states that the U.S. Department of Transportation (DOT) requires a minimum of three feet of soil cover over a pipeline, and additional cover may be required at waterbodies, ditches, road crossings, or other areas as necessary to maintain the integrity of the pipeline.<sup>68</sup> We agree that the EA accurately describes the requirements for depth of cover over pipelines. Landowners can discuss increasing the depth of cover with Eastern Shore on a property-specific basis during easement negotiations.

57. Several landowners filed comments regarding the general environmental impacts from construction of the pipeline loops, the location of the pipelines in proximity to their residences, and the addition of a pipeline within Eastern Shore's existing easements. Section B.7 of the EA discusses pipeline safety, specifically near residences. The EA also describes the procedures Eastern Shore will implement during construction, the construction requirements in our Plan and Procedures, and the location of the pipelines in the vicinity to nearby residences. The EA invited owners of residences within close proximity to the pipelines to comment on the plans and configurations of the construction workspaces on their individual properties. In addition, Environmental Condition 13 in the appendix to this order requires Eastern Shore to file evidence of landowner concurrence with the site-specific residential construction plan for any residence within 10 feet of the proposed construction workspaces for the project. We agree with the EA's conclusion that impacts on residences from construction of the project would generally be short-term and minor. All project facilities would meet current safety regulations administered by the DOT.

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<sup>68</sup> See *id.* at 10

58. The EA also explains that the Eastern Shore pipeline system in the project area predates the housing development that has built up around the existing right-of-way over the years, with some houses having been built very close to the right-of-way and some structures built directly over the right-of-way.<sup>69</sup> The EA notes that the DOT's Pipeline and Hazardous Materials Safety Administration has acknowledged this common scenario across the United States and in 2010 sponsored the Pipelines and Informed Planning Alliance to provide guidance to pipeline operators, local government officials, property owners, and developers for the safe use and development of land near transmission pipelines. The EA acknowledges that pipeline operators are able to install additional pipelines within their existing rights-of-way, provided these additional facilities meet DOT pipeline safety requirements as well as other federal environmental permitting requirements.

#### **6. Pipe Storage/Contractor Yards**

59. The Planning Commission states that the EA does not identify any proposed pipe storage/contractor yards for construction of the proposed pipeline. The EA states that Eastern Shore's proposal to locate the pipe storage/contractor yards within the construction right-of-way is problematic and unlikely.<sup>70</sup> We agree and Environmental Condition 5 in the appendix to this order requires Eastern Shore to file detailed information requesting the use of any pipe storage/contractor yards with the Commission, if it determines that a pipe storage and/or contractor yard outside of the right-of-way is needed during construction.

#### **7. Noise**

60. The Planning Commission notes that the EA should include noise restrictions imposed by any Highland, Londonderry, or Franklin Township, and specifically points to potential noise impacts at HDD sites. Commission staff searched for applicable noise ordinances by the specified townships but did not identify any. Nevertheless, the EA discloses the potential noise impacts and the typical sources of noise that occur during pipeline construction. The EA also indicates that Eastern Shore will primarily limit construction to daytime hours. Environmental Condition 17 in the appendix to this order requires Eastern Shore to comply with a day-night noise level of 55 decibels on the A-weighted scale at each of the HDD sites that it identifies prior to construction. We agree with the assessment of construction-related noise impacts in the EA and find that

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<sup>69</sup> See *id.* at 127.

<sup>70</sup> See *id.* at 17.

Environmental Condition 17 is sufficiently protective of the nearby noise-sensitive areas regarding potential HDDs along the pipeline loops.<sup>71</sup>

## 8. Land Use

61. The Planning Commission states that there are preservation easements on parcels of land within 0.5 mile of the pipeline loops and recommends that Eastern Shore coordinate with the appropriate agencies, land trusts/conservancies, and homeowner associations. The EA identifies one parcel crossed by the Daleville Loop that is subject to an agricultural conservation easement under the Natural Resources Conservation Service's Farm and Ranch Lands Preservation Program and includes environmental recommendation 13 requiring Eastern Shore to file a revised construction workspace configuration that avoids use of temporary workspaces on this parcel.<sup>72</sup> Subsequent to the issuance of the EA, Eastern Shore revised its construction workspace configuration to avoid the parcel and filed the Natural Resources Conservation Service's agreement to the revised workspace configuration.<sup>73</sup> Thus, we are not including recommendation 13 as a condition in this order. We believe that the EA accurately identifies the land uses crossed by the project, including preservation lands, and the associated impacts on those land uses. Nonetheless, we encourage Eastern Shore to coordinate with the affected residences along the pipeline rights-of-way, as well as the associated homeowner associations and appropriate agencies during construction and restoration of the project.

62. The Planning Commission asks about the width of the construction rights-of-way, the time period for when the construction right-of-way would revert to the landowner's control, and whether there are any restrictions on the land crossed by the pipeline. Section A.6 of the EA clearly details the sequence of construction along the rights-of-way, as well as restoration activities. The EA states that following completion of major construction, all affected parcels crossed, as well as residential properties (including lawns and landscaping that do not conflict with Eastern Shore's operation policies), will be restored in accordance with Eastern Shore's ESC Plan and any agreements between Eastern Shore and the landowners regarding landowner use of the pipeline easement. The EA also indicates that the construction right-of-way width will be 100 feet for both pipeline loops, consisting of a 35-foot-wide permanent right-of-way with 65 feet of temporary workspace. Temporary extra workspaces along the rights-of-way are also

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<sup>71</sup> *See id.* at 103.

<sup>72</sup> *See id.* at 65 and 134.

<sup>73</sup> *See* Eastern Shore's May 2, 2016 Supplemental Filing.

identified in table 2 of the EA and on the pipeline alignment sheets in the EA, Appendix 1.

63. The Planning Commission requests clarification regarding the distance between the Kemblesville Loop and the mainline and the total number of pipelines that would be in the right-of-way. In addition, the Planning Commission asks about other properties impacted by the project. The EA indicates that the majority of the proposed pipeline loops will be installed within Eastern Shore's existing right-of-way. However, the EA also indicates that some additional permanent right-of-way will need to be acquired from individual property owners and additional temporary work space will be necessary for staging areas. Further, the EA includes the pipeline alignment sheets and construction diagrams that show the pipeline alignments, as well as all construction workspaces, permanent rights-of-way along the pipeline routes, the number of existing pipelines in the right-of-way, the distance separating the Kemblesville Loop from these pipelines, and the municipalities affected by both pipeline loops.<sup>74</sup> We find that the EA clearly shows the locations and configurations of the pipeline loops that will be authorized by this order.

64. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Eastern Shore's application, as amended, and supplements, and in compliance with the environmental conditions in the appendix to the order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

65. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>75</sup>

66. At a hearing held on July 21, 2016, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application, as

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<sup>74</sup> See EA appendices 1 and 5.

<sup>75</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulations are preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

amended and supplemented, and exhibits thereto, and all comments submitted, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Eastern Shore, authorizing it to construct and operate the proposed White Oak Mainline Expansion Project, as described and conditioned herein, and as more fully described in the application as amended.

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

(1) Eastern Shore's proposed White Oak Mainline Expansion Project being constructed and made available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) Eastern Shore's compliance with all applicable Commission regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) Eastern Shore's compliance with the environmental conditions listed in the appendix to this order; and

(4) Eastern Shore's execution of firm contracts for volumes and service terms equivalent to those in its precedent agreements, prior to the commencement of construction.

(C) Eastern Shore shall file an executed copy of the non-conforming service agreement as part of its tariff, disclosing and reflecting all non-conforming language not less than 30 days, and not more than 60 days, prior to the project's commencement of service.

(D) Eastern Shore shall submit, not less than 30 days and not more than 60 days prior to commencing service on the project, an incremental commodity charge calculated consistent with the Commission's regulation requiring the use of a SFV-rate design, or information demonstrating that its existing Rate Schedule OPT $\leq$ 90 commodity charge for Receipt Zone 2 and Delivery Zone 2 is higher than an appropriately calculated incremental commodity charge. Such filing should include a breakdown of projected O&M expenses by FERC account number and labor and non-labor costs for the proposed project in order to support its proposed commodity charge as discussed above.

(E) Eastern Shore's request for a predetermination that it may roll the costs associated with the project into its system rates in a future NGA section 4 rate proceeding is denied.

(F) Eastern Shore's request to use its existing fuel retention percentage is denied, as described in the body of this order. Eastern Shore is required to charge an incremental fuel rate for the project and is required to separately identify the incremental fuel associated with its project.

(G) Eastern Shore must revise its AFUDC procedures, as discussed in the body of this order.

(H) Eastern Shore shall notify the Commission's environmental staff by telephone, e-mail, 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 (Secretary) within 24 hours.

(I) Robert D. and Jennifer C. McNeil's untimely motion to intervene is granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Environmental Conditions

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) for both projects and as identified in the EA, unless modified by the order. Eastern Shore must:
  - 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 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 the 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**, Eastern Shore shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, 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 the order. All requests for modifications of environmental conditions of the order or site-specific clearances must be written

and must reference locations designated on these alignment maps/sheets.

Eastern Shore's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the 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 facilities to accommodate future needs or to acquire a right-of-way 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, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

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

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

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

- a. how Eastern Shore will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the order;
  - b. how 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;
  - c. the number of EI assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions Eastern Shore will give to all personnel involved with construction and restoration (initial and the refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of Eastern Shore's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Eastern Shore will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - i. the completion of all required surveys and reports;
    - ii. the environmental compliance training of onsite personnel;
    - iii. the start of construction; and
    - iv. the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Eastern Shore shall file updated status reports with the Secretary on a **weekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Eastern Shore's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, and work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions

- imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the order, and the measures taken to satisfy their concerns; and
  - g. 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.
- 8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Eastern Shore shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
- 9. Eastern Shore must receive written authorization from the Director of OEP **before placing the pipeline facilities into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
- 10. **Within 30 days of placing the authorized facilities in service**, Eastern Shore shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the respective 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 Eastern Shore has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
- 11. **Prior to construction**, Eastern Shore shall complete its consultation with the National Park Service and the Corps and file with the Secretary, for review and written approval of the Director of OEP, its final construction and restoration plan for the crossings of the tributaries to the West Branch of White Clay Creek.
- 12. **Prior to construction**, Eastern Shore shall file with the Secretary, for review and written approval of the Director of OEP, site-specific HDD crossing plans where

this method is determined to be feasible and appropriate; and, if an HDD will be used, Eastern Shore shall file an HDD Inadvertent Surface Release Contingency Plan. The crossing plans shall detail the crossing and operational procedures as well as the responsibilities for the prevention, containment, and cleanup of any releases associated with the HDD(s).

13. **Prior to construction**, Eastern Shore shall file with the Secretary evidence of landowner concurrence with the site-specific residential construction plans for any residence within 10 feet of the proposed construction workspaces for the project.
14. 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, and restoration of the rights-of-way. **Prior to construction**, Eastern Shore shall mail the complaint procedures to each landowner whose property would be crossed.
  - 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 Landowner Helpline at 877-337-2237 or at [LandownerHelp@ferc.gov](mailto:LandownerHelp@ferc.gov).
  - 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 identity of the caller and date of the call;
    - (2) the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
    - (3) a description of the problem/concern; and
    - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
15. **Prior to construction**, Eastern Shore shall file with the Secretary, for review and written approval of the Director of OEP, an Unanticipated Discovery of

Contamination Plan. The plan shall include identifying hazardous materials, testing, and disposing of the contaminated media according to appropriate state and federal regulations.

16. **Prior to construction**, Eastern Shore shall file with the Secretary, for review and approval by the Director of OEP, a Fugitive Dust Control Plan. The plan shall specify the precautions that Eastern Shore will take to minimize fugitive dust emissions from the Daleville and Kemblesville Loops construction activities, including additional mitigation measures to control fugitive dust emissions of particulate matter with an aerodynamic diameter less than or equal to 2.5 microns. The plan shall clearly explain how Eastern Shore would implement measures, such as:
  - a. watering the construction workspace and access roads;
  - b. providing measures to limit track-out onto the roads;
  - c. identifying the speed limit that Eastern Shore would enforce on unsurfaced roads;
  - d. covering open-bodied haul trucks, as appropriate;
  - e. clarifying that the EI has the authority to determine if/when water or a palliative needs to be used for dust control; and
  - f. clarifying the individuals with the authority to stop work if the contractor does not comply with dust control measures.
17. **Prior to any HDD construction**, Eastern Shore shall file with the Secretary an HDD noise analysis identifying the existing and projected noise levels at each noise-sensitive area (NSA) within 0.5 mile of each HDD entry and exit site. If noise attributable to the HDD is projected to exceed an day-night noise level ( $L_{dn}$ ) of 55 dBA at any NSA, Eastern Shore shall file with the noise analysis a mitigation plan to reduce the projected noise levels for the review and written approval by the Director of OEP. During drilling operations, Eastern Shore shall implement the approved plan, monitor noise levels, include these noise levels in its weekly status reports, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an  $L_{dn}$  of 55 dBA at the NSAs.
18. Eastern Shore shall file a noise survey with the Secretary **no later than 60 days** after placing the modified Delaware City Compressor Station in service. If a full load condition noise survey is not possible, Eastern Shore shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within six months**. If the noise attributable to the operation of all of the

equipment at the Delaware City Compressor Station under interim or full horsepower load conditions exceeds an  $L_{dn}$  of 55 dBA at the nearby NSAs, Eastern Shore shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within one year** of the in-service date. Eastern Shore shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

19. Eastern Shore shall conduct, with the well-owner's permission, pre- and post-construction testing of well yield and water quality for all private wells identified in table 9 of the EA. **Within 30 days of placing the pipeline facilities in service**, Eastern Shore shall file a report with the Secretary identifying all water supply wells/systems damaged by construction and how they were repaired. The report shall include a discussion of any complaints concerning the well yield or quality and how each problem was resolved.

Document Content(s)

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