

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Transcontinental Gas Pipe Line Corporation

Docket No. CP06-34-000

ORDER ISSUING CERTIFICATE

(Issued May 18, 2006)

1. On December 7, 2005, Transcontinental Gas Pipe Line Corporation (Transco) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations seeking authorization for Transco to construct and operate its Leidy to Long Island Expansion Project (Project). The Project is an expansion of Transco's existing pipeline system under which Transco will provide 100,000 dekatherms per day (Dth/day) of incremental firm transportation service to KeySpan Gas East Corporation (KeySpan).

2. The Commission finds that the proposal serves the public convenience and necessity and grants the requested authorization.

I. Background

3. Transco is a natural gas pipeline company engaged in the transportation of natural gas in interstate commerce. Its natural gas transmission system extends from its principal sources of natural gas supply in the states of Texas, Louisiana, Mississippi and Alabama and the offshore Gulf of Mexico area, through the states of Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania and New Jersey, to its termini in the New York City metropolitan area.

II. Proposal

4. Transco has executed a binding precedent agreement with KeySpan for 100 percent of the incremental firm transportation service under the Project. Together with 50,000 Dth/day of firm transportation capacity relinquished pursuant to Transco's reverse open season, the facilities to be constructed in the Project will enable Transco to provide 100,000 Dth/day of incremental firm transportation service to KeySpan from the Leidy receipt points to an interconnection with KeySpan at the Long Beach Meter Station on Transco's Lower New York Bay Extension on Long Island, Nassau County, New York,

to serve increased market demand on KeySpan's gas distribution system. This firm transportation service will be rendered pursuant to Rate Schedule FT of Transco's FERC Gas Tariff and Transco's blanket certificate under Part 284 of the Commission's regulations; therefore, this service will be subject to the terms and conditions of Transco's tariff as amended from time to time. Transco estimates that the Project facilities will cost approximately \$121 million.

5. The Project will involve the construction and operation of new pipeline looping facilities on Transco's existing Leidy Line, replacement and uprating of existing pipeline on Transco's Lower New York Bay Mainline "C," construction and operation of a new compressor station in New Jersey, uprating of Transco's existing Lower New York Bay Extension, and modification to various measurement and regulation facilities.

6. Specifically, Transco proposes to construct and operate the following facilities:

- 3.41 miles of 42-inch pipeline loop from Mile Post 131.19 to Mile Post 134.60 on Transco's existing Leidy Line in Lycoming County, Pennsylvania (Hughesville Loop);
- 5.25 miles of 42-inch pipeline loop from Mile Post 28.02 to Mile Post 33.27 on Transco's existing Leidy Line in Luzerne County, Pennsylvania (Berwick Loop);
- 3.23 miles of 42-inch pipeline loop from Mile Post 1786.55 to Mile Post 1789.78 on Transco's existing Mainline "B" in Somerset County, New Jersey (Neshanic Loop);
- The replacement of approximately 2.45 miles of 42-inch pipeline and the uprating of approximately 3.53 miles of 42-inch pipeline between Mile Post 8.50 and Mile Post 12.03 on Transco's existing onshore portion of the Lower New York Bay Mainline "C" in Middlesex County, New Jersey (Morgan Replacement Segment);
- The uprating of 33.66 miles of Transco's existing 26-inch Lower New York Bay Extension, from Mile Post 12.05 to Mile Post 45.71; Transco's Lower New York Bay Extension begins onshore in Middlesex County, New Jersey, continues offshore across Monmouth County, New Jersey and Queens County, New York, and terminates on Long Island, Nassau County, New York (Lower Bay Uprate);

- The installation of two 5,000 horsepower (HP) electric motor-driven compressor units (10,000 total HP) at a new compressor station in Middlesex County, New Jersey (Compressor Station No. 207); and modifications to: Transco's Delaware Regulator Station in Northampton County, Pennsylvania; Morgan Regulator Station in Middlesex County, New Jersey; and Long Beach Meter Station in Nassau County, New York.

B. Proposed Rates

7. Transco has executed a binding precedent agreement with KeySpan for 100 percent of the incremental firm transportation capacity of the Leidy to Long Island Expansion Project. The precedent agreement requires Transco and KeySpan to execute two firm transportation service agreements with primary twenty-year terms. The two service agreements will provide for a total of 100,000 Dth/day of transportation service under Transco's Rate Schedule FT. Transco proposes to charge KeySpan incremental reservation rates for the cost of the expansion project facilities and the currently effective negotiated rate for the existing capacity relinquished under a reverse open season.

8. For firm transportation service performed under the first Rate Schedule FT service agreement, Transco proposes to charge KeySpan an initial daily maximum reservation rate of \$.97002 per Dth for the 50,000 Dth/day of new firm transportation capacity to be created from the Leidy receipt points to the Long Beach Meter Station. For firm transportation service performed under the second Rate Schedule FT service agreement, Transco proposes to charge KeySpan the sum of (1) the currently effective negotiated reservation rate for the existing capacity from the Leidy receipt points to Transco's Station 210 relinquished under the reverse open season, plus (2) an initial daily maximum reservation rate surcharge of \$.39721 per Dth for the additional 50,000 Dth/day of new firm transportation capacity to be created from Station 210 to the Long Beach Meter Station. Under both service agreements, KeySpan will also be charged any other commodity charges and reservation and commodity surcharges and fuel as applicable for firm transportation service pursuant to Transco's FERC Gas Tariff.

9. Transco states that its proposed rate structure reflects a straight fixed-variable rate design. The reservation rates also reflect estimated facilities costs of \$121,316,663, a pre-tax return of 15.34 percent, a 2.35 percent depreciation rate, and annualized billing determinants of 18,250,000 Dth and 36,500,000 Dth for the first and second service agreements, respectively (based on daily contract demand entitlements of 50,000 Dth/day and 100,000 Dth/day times 365 days).

10. Transco states that in addition to the proposed reservation rates, Keyspan will be charged the electric power unit rate, fuel retention factor and ACA and any other applicable charges under Rate Schedule FT. Transco explains that the electric power unit rate and fuel retention factor will be the generally applicable levels under Rate Schedule FT for Rate Zone 6.

III. Interventions

11. Notice of Transco's application was published in the *Federal Register* on December 28, 2005 (70 *Fed. Reg.* 76,797). Atlanta Gas Light Company and Pivotal Holdings, Inc. d/b/a Elizabethtown Gas; Process Gas Consumers Group; Cherokee County Cogeneration Partners, L.P., and Northeast Energy Associates; Brooklyn Union Gas Company d/b/a Keyspan Energy Delivery New York, KeySpan Gas East Corporation d/b/a KeySpan Energy Long Island, Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company, jointly; Consolidated Edison Company of New York, Inc.; Philadelphia Gas Works (PGW); New Jersey Natural Gas Company; PSEG Energy Resources & Trade, LLC; Atmos Energy Corporation; Delmarva Power & Light Company; and, Dominion Transmission, Inc. filed timely, unopposed motions to intervene.¹ The Public Service Commission of New York filed a late motion to intervene. The Commission finds that granting the motion to intervene out of time will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the motion.² The motion by PGW also included a request for clarification which is discussed below.

IV. Discussion

12. Since the proposed facilities will be used to store and transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction, acquisition, and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

¹ Timely unopposed motions to intervene and timely notices of intervention are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2005).

² 18 C.F.R. § 385.214(d) (2005).

A. The Certificate Policy Statement

13. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.³ The Certificate 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 Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new storage and 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 its 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 route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

1. Subsidization

15. The threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has consistently determined that where a pipeline proposes to charge incremental rates for new construction, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.⁴ Transco proposes to charge

³ *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

⁴ *See, e.g., Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002).

KeySpan incremental reservation rates for the cost of the Project facilities and the currently effective negotiated rate for the existing capacity relinquished under the reverse open season. Therefore, the Project satisfies the Commission's threshold requirement under the Policy Statement that there be no subsidy from existing shippers.

2. Adverse Effects

16. Transco's application demonstrates that there will be no adverse operational impact on service provided to Transco's existing customers as a result of the construction of the Project. KeySpan will use the capacity under the Project to serve the incremental growth requirements of its markets, not to displace existing service providers. Therefore, the Project will have no adverse effect on competing existing pipelines and their captive customers.

17. On May 24, 2004, the Commission approved Transco's request for the Commission Staff to initiate a pre-filing review of the Project. During the Commission's Pre-Filing review, various aspects of the proposal, including those associated with NEPA, were addressed prior to the filing of the formal application with the Commission. In response to stakeholder concerns, Transco developed a preferred route that is designed to minimize impact on the community and the environment.

18. The proposed facilities were designed to utilize, to the maximum extent practicable, existing rights-of-way and areas adjacent to existing rights-of-way. By using capacity relinquished as part of Transco's reverse open season for the Project to provide a significant portion of the firm capacity required by KeySpan, construction activities and associated impacts will be minimized. Furthermore, most of the Project loops will be installed either entirely within or parallel to existing pipeline and utility rights-of-way. The compressor station property was selected to minimize impacts to land use, nearby landowners, and the environment. Accordingly, we find that Transco designed the project to minimize the economic impact on effected landowners and that any adverse impacts on landowners and communities along the pipeline route will be minimal with respect to the project as a whole.

19. Further, transportation of gas supplies to the Mid-Atlantic markets will benefit the consuming public by increasing competition among fuel sources and increasing the security of their gas supplies. The interests of landowners and surrounding communities will be served by approval of the Project because it will meet un-served market requirements for natural gas in the region. We conclude that the subject facilities will further the development of the interstate natural gas infrastructure.

20. For all of these reasons, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Transco's proposal. As is the Commission's practice, the certificate issued herein is conditioned on Transco's having executed contracts for the level of service and the terms of service represented in the precedent agreements before commencing construction on the project.

B. Proposed Rates

21. The Commission has reviewed the rates proposed by Transco and finds that they reflect the cost-of-service underlying the Rate Schedule FT service agreements. Transco's proposed rates have been designed properly using the pre-tax rate of return and depreciation rate approved in Transco's settlement.⁵ Therefore, the Commission approves Transco's proposed maximum rates under the service agreements.

22. The Commission's policy on negotiated rate agreements⁶ and section 154.1(d) of the Commission's regulations⁷ require that pipelines entering into negotiated rate agreements file either the negotiated rate agreement or a tariff sheet describing the negotiated rate agreement. If the negotiated rate agreement contains material deviations from the pipeline's form of service agreement the pipeline must file and clearly delineate the differences between the negotiated rate agreement and its form of service agreement in redline and strikeout. If the negotiated rate agreement does not contain any material deviations from the form of service agreement the pipeline may elect to file a tariff sheet reflecting the terms of the agreement together with a statement that the agreement conforms in all material respects with its form of service agreement. The tariff sheet must fully describe the essential elements of the transaction, including the name of the shipper, the negotiated rate, the type of service, the receipt and delivery points applicable to the service and the volume of gas to be transported. Where the price term of the negotiated rate agreement is a formula, the formula should be fully set forth on the tariff sheet. The Commission directs Transco to file either its negotiated rate agreement with KeySpan or a tariff sheet fully describing the transaction no sooner than 60 days and no later than 30 days before service commences.

⁵ *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085 (2002).

⁶ *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003).

⁷ 18 CFR § 154.1(d) (2005).

23. Additionally, as a result of the proposed negotiated rate service agreement, the Commission will require Transco, to keep separate and identifiable accounts for any volumes transported, billing determinants, rate components, surcharges and revenue associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate cases.

24. PGW filed a request for clarification contending that Transco has not represented that its collection of Zone 6 electric power charges for the expansion project's services will offset the entirety of its electric power costs for those services. PGW claims that if the electric power charges do not at least equal the electric power costs, the remaining costs would be borne by Transco's other customers as a result of Transco's electric power cost tracker mechanism. PGW requests that the Commission clarify that Transco's accounts for the expansion project include the electric power revenues and costs attributable to the expansion project and that Transco must demonstrate, in its electric power cost tracker filings subsequent to the initiation of services, that its system customers are not being required to subsidize the expansion project.

25. The Commission grants PGW's request for clarification. The Certificate Policy Statement seeks to ensure that an expansion will be financially viable without subsidies from existing customers. Transco seeks to charge KeySpan the Zone 6 electric power charge for the expansion service, but does not specify if it intends to apply any under or over recoveries to its electric power tracker account. To the extent that electric power costs on the expansion facilities exceed the Zone 6 charge, existing customers could be called upon to subsidize the expansion shippers. This would be contrary to Commission policy. The Commission directs Transco to ensure that expansion electric power costs above the Zone 6 electric power charge are the responsibility of the expansion shipper and Transco alone; no costs attributable to the proposed expansion can be charged to existing shippers.⁸ Existing shippers can review the costs included in Transco's periodic tracker filing to verify that only expansion shippers are assessed electric power costs attributable to expansion service.

C. Engineering

26. The Commission's engineering staff analyzed Transco's application and concludes that the proposed facility modifications are properly designed to allow Transco to provide an additional 100,000 Dth/d of new incremental firm transportation from the Leidy receipt point to an interconnection with KeySpan at the Long Island Meter Station on

⁸ *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,120 at P 36 (2002).

Transco's Lower New York Bay Extension on Long Island, Nassau County, New York. The analysis also shows that proposed new service and pipeline modifications will not adversely impact Transco's existing ability to meet contractual requirements with its existing shippers.

D. Environmental Assessment

27. On May 25, 2005, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Leidy to Long Island Expansion Project and Request for Comments on Environmental Issues* (NOI). On October 19, 2005, we issued a Supplemental NOI describing two additional, previously unidentified compressor station sites. In response to the NOIs, we received 22 comment letters; 8 from federal agencies, 3 from state agencies, and 11 from other interested parties. Our staff addressed all substantive comments in the environmental assessment (EA). The EA addresses geology, soils, water resources, fisheries, wetlands, vegetation, wildlife, endangered and threatened species, land use, cultural resources, air and noise quality, reliability and safety, and alternatives.

28. The EA was issued on March 20, 2006 with a 30 day comment period. The EA was mailed to federal, state, and local agencies, elected officials, public libraries, interveners to the FERC proceeding, and other interested parties (i.e., landowners, other individuals, and environmental groups who provided scoping comments). We received five comment letters on the EA from the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries), Transco, Mr. John E. Del Gigante, the New Jersey Department of Environmental Protection (NJDEP) and the Fish and Wildlife Service (FWS) New Jersey field office. The following paragraphs address these comments.

29. NOAA Fisheries served as a cooperating agency in our review of the project and filed comments on the EA on April 24, 2006. NOAA Fisheries stated that it concurs with the EA and Essential Fish Habitat (EFH) Assessment that impacts to EFH and other resources of concern have been minimized to the maximum extent practicable. NOAA Fisheries also stated that no further EFH conservation recommendations are necessary.

30. Transco filed comments on the EA on April 17, 2006, including responses to four of Commission staff's recommendations. Commission staff recommended in the EA that Transco file updated status reports on a biweekly basis (environmental condition 8) and that Transco shall include a summary of any landowner complaints in its weekly report (environmental condition 17). In its comments on the EA, Transco requested clarification on whether landowner complaints are to be included in the biweekly reports or whether separate weekly reports are to be filed. We have revised environmental

condition 17 to state that Transco should include a summary of any landowner complaints in its biweekly report.

31. Commission staff recommended in the EA that Transco file a schedule identifying when trenching or blasting would occur within each waterbody greater than 10-feet-wide, or within any coldwater fishery, and the schedule be filed within 30 days of the acceptance of the certificate. In its comments on the EA, Transco requested that this condition be revised to allow for the schedule to be filed within 60 days of the acceptance of the certificate to coincide with the filing of the Initial Implementation Plan. We believe this request is appropriate and have revised environmental condition 13 to reflect this.

32. Commission staff recommended in the EA that Transco not begin construction activities until the staff receives FWS comments on the proposed project. In its comments on the EA, Transco requested confirmation that this environmental condition has been met. We have received comments from the FWS Pennsylvania field office and the FWS New Jersey field office concluding informal consultation on the Project; therefore, we have not included the recommendation as an environmental condition in this Order.

33. Commission staff recommended in the EA that Transco not begin construction of the Neshanic Loop, Morgan Replacement, or Compressor Station 207 until it files a copy of the Coastal Zone Consistency determination issued by the NJDEP. In its comments on the EA, Transco stated that only section 5 and a portion of section 4 of the Morgan Replacement fall within the Coastal Zone Management Area of New Jersey. We have revised environmental condition 18 to require that Transco not begin construction of sections 4 and 5 of the Morgan Replacement until it files documentation of concurrence from the NJDEP that construction of the project is consistent with the New Jersey Coastal Zone Management Rules.

34. In its comments on the EA, Transco requested authorization for the use of four additional temporary workspaces at Milepost (MP) 1786.55 and 1786.57 on the Neshanic Loop and at MP 11.13 and 11.20 on the Morgan Replacement. We have reviewed the information included in its filing and approve use of these four additional temporary workspaces.

35. Mr. John E. Del Gigante filed a comment letter on the EA on April 18, 2006. He stated that the EA did not discuss or review the findings and recommendations of the National Transportation Safety Board (NTSB) for the Texas Eastern gas pipeline explosion in Edison, New Jersey on March 23, 1994. He also stated that the EA did not state whether these recommendations have been implemented on the existing Transco

pipeline or would be implemented on the proposed Transco pipeline. The NTSB has issued recommendations in the NTSB Report Number: PAR-95-01, adopted on January 18, 1995 with respect to the explosion that took place in Edison, New Jersey. These recommendations were among factors looked at when the U.S. Department of Transportation (DOT) Office of Pipeline Safety issued updated Pipeline Safety Regulations. Transco is required to meet all current pipeline safety regulations.

36. Mr. Del Gigante stated that the EA did not address his suggestion for modifying and rerouting the Neshanic Loop. He suggested Transco remove the existing 36-inch-diameter pipeline which traverses the Atkinson Circle housing development, and install the new 42-inch-diameter pipeline around and away from the Atkinson Circle housing development, the Hillsborough First Aid and Rescue Squad building, and other houses just north of Amwell Road. The proposed Neshanic Loop begins north of Amwell Road, and would not impact the Atkinson Circle housing development. The Neshanic Loop follows the existing pipeline to minimize disturbance. Removing the existing pipeline and installing the new pipeline in a different location would impact new landowners, residential areas, and environmental resources. The Hillsborough First Aid and Rescue Squad and houses located within 50 feet of the pipeline construction right-of-way are addressed in sections B.5.b and B.5.c of the EA.

37. Mr. Del Gigante comments that Transco only conducted two public comment meetings in the central New Jersey area (January 26 and June 16, 2005). However, Transco held three open houses (January 25, 26, and 27, 2005) and the Commission staff held one public comment meeting (June 16, 2005) in the central New Jersey area. Mr. Del Gigante also stated that Transco has not informed or otherwise met with the Township Committee or other local public officials on a regular basis as stated on page 84 of the EA. Section 1.8 of Transco's application filed December 7, 2005, describes several meetings Transco held with various Hillsborough Township officials and committees. The EA states that in accordance with the community liaison requirement of the U.S. DOT's 49 CFR Part 192, and the American Petroleum Institute Pipeline Standards Committee's Recommended Practice 1162, Transco would identify target audiences that should receive regular correspondence from the pipeline company such as the general public, libraries, affected landowners, local public officials, local media, and one-call centers. This future correspondence would include the Township Committee and local public officials.

38. In addition, Mr. Del Gigante suggested that Transco prepare and conduct a Power Point presentation to explain the goals and objectives of the proposed project, in order to help members of the public and Township Committee understand and evaluate the technical and engineering information contained in the EA. As stated above, Transco held several meetings with Township officials and committees. In addition, Transco held

eight public open houses and sent informational mailings to potentially affected parties and maintained a project-specific website. Mr. Del Gigante also stated that the EA did not mention, consider, or evaluate the suggestion that Transco and/or the pipeline industry association prepare a generalized DVD for adjacent and nearby landowners/residents on “How the Public can Safely Live with Gas Transmission Lines.” Transco notified all landowners in accordance with 18 CFR 157.6, which included, among other things, a copy of the Commission’s pamphlet “An Interstate Natural Gas Facility on My Land? What do I Need to Know?” The pamphlet explains the Commission’s process and addresses the basic concerns of landowners, including safety and environmental issues. We believe this landowner notification provided sufficient information and sources for additional information.

39. Mr. Del Gigante stated that the EA did not discuss or consider how the Hillsborough Township 75-foot Zoning Setback Ordinance No. 2005-47 would affect the pipeline project, as there are several buildings within 50 feet or less of the pipeline construction right-of-way. Ordinance No. 2005-47 states that no new building construction or land disturbance shall be permitted within 75 feet of the right-of-way of any distribution, gathering, or transmission line. The ordinance regulates development which may occur near pipelines, rather than pipeline construction near developments. Therefore it would not apply to the proposed project.

40. Mr. Del Gigante stated that a new project has been approved for the Foot Hills Acres Nursing Home which would consist of a new 200 bed, two story building, located approximately 330 feet to the northeast of the existing and proposed pipeline right-of-way. This planned residential development is discussed in section B.5.b of the EA. Mr. Del Gigante stated that the EA did not discuss whether a facility of this type would qualify as a High Consequence Area (HCA). Section B.8.a of the EA discusses HCAs, including the definition and number of sites identified. This location, should it be constructed, would appear to qualify as an HCA and an identified site. Transco has consulted and will continue to coordinate with the developer of the nursing home to minimize impacts. After construction, Transco will be required to comply with U.S. DOT regulations to identify all HCAs and develop an Integrity Management Plan for HCAs along the pipeline route.

41. Mr. Del Gigante recommended that Transco follow the South Segment Alternative for the Neshanic Loop. He recommended that Transco re-approach the NJDEP to explain the safety and environmental hazards and construction difficulties of the proposed Neshanic Loop in order to obtain a waiver from the NJDEP to cross land on the South Segment Alternative enrolled in the NJDEP’s Green Acres Program. Section C.3 of the EA discusses the South Segment Alternative. We agree with the EA’s conclusions as to why the proposed route is environmentally preferable to the South Segment Alternative.

42. The NJDEP filed comments on the EA dated April 25, 2006. In its comments, the NJDEP stated that the Division of Fish and Wildlife (DFW) has no new comment at this time relative to the EA. However, the DFW remains concerned, to the point of opposition, about “open wet-trenching”, particularly when the location is in erodible soils. The NJDEP stated that these concerns would be evaluated during its permit process for Transco’s Individual Freshwater Wetlands Permit and Stream Encroachment Permit, which were submitted to the NJDEP in February 2006. Section B.2.b of the EA discusses surface water and proposed crossing methods. In addition, Transco is required to follow our Wetland and Waterbody Construction and Mitigation Procedures to minimize impacts to waterbodies.

43. The NJDEP stated that only one potentially significant resource was located within the area of potential effects, and the NJDEP Historic Preservation Office has been consulting successfully with Transco on cultural resource considerations for the Project.

44. The FWS New Jersey field office filed comments on the EA dated April 21, 2006. The FWS stated that via letter dated March 29, 2006, the New Jersey field office concluded informal consultation for the Project pursuant to section 7 of the Endangered Species Act.

45. The FWS New Jersey field office also reiterated two recommendations. The FWS New Jersey field office recommended that Transco permanently preserve the 7.5 acres of forest on the proposed compressor station site. Transco has stated that the remaining 7.5 acres of forest on the proposed compressor station site would not be disturbed. Section 3.b of the EA discusses the FWS recommendation. We agree with the EA’s conclusions that the 7.5 acres of forest would not be impacted. The FWS New Jersey field office also recommended that Transco re-plant temporary rights-of-way and other workspaces in forested areas following construction, rather than allowing trees and woody vegetation to re-establish naturally. Transco is developing site-specific Soil Erosion and Sediment Control Plans which would include seed mixes developed in consultation with local soil conservation districts. This recommendation is addressed in section 3.a of the EA.

46. Based on the discussion in the EA, we conclude that if constructed in accordance with Transco’s application and supplements, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

47. 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, replacement, or operation of facilities approved by this Commission.⁹ Transco shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Transco. Transco shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

48. At a hearing held on May 18, 2006, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Transco authorizing it to construct and operate its proposed Project as described more fully in this order and in Transco's application, as modified and conditioned herein.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on Transco's compliance with all applicable Commission regulations under the NGA, 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 regulations.

(C) Transco's proposed initial rates for firm transportation services are approved.

(D) Transco is directed to file either its negotiated rate agreement with KeySpan or a tariff sheet fully describing the transaction no sooner than 60 days and no later than 30 days before service commences.

⁹See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(E) Transco must keep separate and identifiable accounts for any volumes transported, billing determinants, rate components, surcharges and revenue associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate cases.

(F) The certificate issued in Ordering Paragraph (A) is conditioned upon Transco's compliance with the environmental conditions set forth in the appendix to this order.

(G) Transco's facilities shall be made available for service within 3 years of the date of the order in this proceeding as required by section 157.20(b) of the Commission's regulations.

(H) Transco shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Transco. Transco shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(I) Transco must execute firm contracts equal to the level of service and terms of service represented in the precedent agreements prior to commencing construction.

(J) The motion to intervene out of time of the Public Service Commission of New York is granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

As recommended in the EA, this authorization includes the following condition(s):

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

5. Transco shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all 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 extra workspace allowed by the *Upland Erosion Control, Revegetation, and Maintenance Plan*, minor field realignments per landowner needs, and requirements that 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**, Transco shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Transco will implement the mitigation measures required by this Order. Transco must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Transco will incorporate these requirements into 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 project area, and how

- the company will ensure that sufficient personnel are available to implement the environmental mitigation;
- c. the company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. what training and instruction Transco will give to all personnel involved with the construction and restoration (initial and refresher training as the project progresses and personnel change);
 - e. the company personnel (if known) and specific portion of Transco's organizations having responsibility for compliance;
 - f. the procedures (including the use of contract penalties) Transco 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. Transco shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition number 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspections;
 - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Transco shall file updated status reports prepared by the environmental inspector with the Secretary on a **biweekly 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. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(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);
 - 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 Transco from other federal, state or local permitting agencies concerning instances of noncompliance, and Transco's responses.
9. Transco must receive written authorization from the Director of OEP **before commencing service** on the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the sites are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Transco has complied with or will comply with. This statement shall also identify any areas 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. Transco shall complete its survey of private water wells and springs within 150 feet of the pipeline facilities in New Jersey and file a copy of the survey results with the Secretary prior to construction.
12. Prior to the crossing of the South Branch of the Raritan River, Transco shall file

with the Secretary a copy of the final site-specific construction and restoration plan, and New Jersey Department of Environmental Protection (NJDEP) comments on the plan, for the crossing of the South Branch of the Raritan River for review and written approval by the Director of OEP.

13. Transco shall prepare a schedule identifying when trenching or blasting would occur within each waterbody greater than 10-feet-wide, or within any coldwater fishery. Transco shall include this schedule in its Implementation Plan, which shall be filed with the Secretary **within 60 days** of the acceptance of the Certificate. Transco shall revise the schedule as necessary to provide **at least 14 days advance notice**. Changes within this last 14-day period must provide for **at least 48 hours advance notice**.
14. Transco shall prepare a site-specific revegetation plan, in consultation with the NJDEP, for the wetland complex at Crossway Creek and file this revegetation plan and any comments received from NJDEP with the Secretary prior to construction across Crossway Creek.
15. Prior to construction, Transco shall file with the Secretary its Soil Erosion and Sediment Control (SESC) Plans for review and written approval by the Director of OEP. The SESC Plans shall include restoration seed mixes composed of only native species, or site-specific justifications for any suggested non-native species.
16. Prior to hydrostatic testing, Transco shall file with the Secretary a final schedule for hydrostatic test water uptake for review and approval by the Director of OEP. In addition, Transco shall avoid placement of the water withdrawal structure within one foot of the waterbody bottom or surface.
17. Transco 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 right-of-way. Prior to construction, Transco shall mail the complaint procedures to each landowner whose property would be crossed by the project.
 - a. In its letter to affected landowners, Transco 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 Transco'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 Transco's Hotline, they should contact the Commission Enforcement Hotline at (888) 889-8030.
- b. In addition, Transco shall include in its biweekly 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, will be resolved, or why it has not been resolved.
18. Transco shall file with the Secretary documentation of concurrence from the NJDEP that construction of the project is consistent with the New Jersey Coastal Zone Management Rules, prior to construction of sections 4 and 5 of the Morgan Replacement.
19. Transco shall defer implementation of any treatment plans/measures (including archaeological data recovery), construction of the Neshanic Loop in New Jersey, and use of all associated staging, storage or temporary work areas, or the Delaware Meter Station in Pennsylvania until:
- a. Transco files with the Secretary cultural resources survey and evaluation reports, any necessary treatment plans, and the New Jersey and Pennsylvania State Historic Preservation Officers' comments; and
 - b. The Director of OEP reviews all cultural resources survey reports and plans and notifies Transco in writing that treatment plans/mitigation measures may be implemented or construction may proceed.
- All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering "CONTAINS PRIVILEGED INFORMATION-DO NOT RELEASE".
20. Transco shall file a noise survey with the Secretary no later than 60 days after placing Compressor Station 207 in service. If the noise attributable to the operation of the facility at full load exceeds an Ldn of 55 dBA at any nearby

NSAs, Transco shall install additional noise controls to meet that level within one year of the in-service date. Transco shall confirm compliance with the Ldn of 55 dBA requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.