

**WATER AND SCIENCE ADMINISTRATION
TIDAL WETLANDS DIVISION**

Wetland Report and Recommendation

State Wetlands Case No:

19-WL-1043

Applicant:	Eastern Shore Natural Gas Company C/o Mark Parker 500 Energy Ln, Ste 200 Dover, Delaware 19901 (302) 213-7270 mcparker@esng.com	Agent:	Geo-Technology Associates, Inc. C/o Justin Weber 3445-A Box Hill Corporate Center Drive Abingdon, Maryland 21009 (410) 515-9446 jweber@gtaeng.com
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Date Application Received: October 3, 2019 Public Notice Required? Yes

Comment Period Closing Date: March 1, 2020

Maryland Coordinates: 78665 x 522828

Book Map Coordinates: Wicomico Co. ADC Map Num: 13 Ed: 8 Coord: 10 A

Location of Proposed Work: The pipeline will begin near Business US 50 and East Railroad Avenue in Salisbury and continue adjacent to Rt. 13 to Merser Road near the intersection of Flower Hill Church Road and US 13 near Princess Anne in Somerset County.

Purpose of Proposed Work: The purpose of this project is to extend natural gas in a transmission line to shippers in the area to meet the growing agricultural, business, including Eastern Correctional Institute and University of Maryland, Eastern Shore, and residential use needs for natural gas.

Description of Authorized Work: Install a natural gas pipeline below the South Prong as shown on plans dated June 20, 2020 and described below:

1. To install a 10-inch diameter natural gas pipeline within an 18-inch boring across 75.95 linear feet at a minimum depth of 28 feet below the bottom surface of the South Prong by horizontal directional drilling (HDD) method.

Waterbody: South Prong Wicomico River

Is a Water Quality Certification required: Yes, the project qualifies for coverage under the Maryland State Programmatic General Permit-5 (MDSPGP-5), for which a Water Quality Certification has been issued.

Qualifies for Maryland State Programmatic General Permit?: Yes, the project was reviewed as a Category B project under the MDSPGP-5 and a separate authorization was issued by the United States Army Corps of

Engineers (ACOE) directly to the applicant under NAB-2019-61725 (Eastern Shore Natural Gas DEL MAR Energy Pathway Somerset Ext/Utility Line) in February 2020. See Attachment C.

Area of Vegetated Wetland Impacts Requiring Mitigation: 0 square feet

Area of Wetlands Created: 0 square feet

Was the Applicant's Original Project Modified?: No, but the Applicant did complete an analysis of alternatives, prior to the submission of the application for the proposed project.

Monetary Compensation Recommended: Yes. The Department recommends that compensation be made to the State of Maryland for a 10-inch diameter pipeline crossing 75.95 linear feet of tidal wetlands in an amount to be determined by the Maryland Board of Public Works.

Department Comment: The Eastern Shore Natural Gas Company (ESNG) is proposing to construct, own, and operate approximately 6.83 miles of a new 10-inch diameter buried natural gas pipeline beginning in Salisbury and extending to Merser Road, just over the Wicomico Somerset County Border at a location where a metering and regulation station will be constructed. The purpose of the project is to provide natural gas transportation to meet the needs of the Delmarva Peninsula. ESNG reached out to existing and potential new customers to identify if there was a need or purpose to expand gas in the area. Four existing customers identified a need for gas expansion. This project is intended to meet the natural gas demand from agri-industry, businesses, including Eastern Correctional Institute (ECI) and University of Maryland Eastern Shore (UMES), and residential growth. The pipeline route generally follows US Route 13 within the road and railroad rights-of-way and will cross tidal and non-tidal wetlands using horizontal directional drilling (HDD) and trenching methods. The project has been reviewed by the Tidal Wetlands, Nontidal Wetlands, and Waterway Construction Divisions of MDE's Wetlands and Waterways Program (WWP).

This Report and Recommendation addresses the 75-foot crossing of the tidal waterway at the South Prong by HDD, which requires a public notice and tidal wetland license. The public notice was written to include work in nontidal wetlands as well, because it was not known at the time whether the Army Corps of Engineers would process the application under the MDSPGP-5 or as an individual permit action requiring an individual Water Quality Certification (WQC). The Army Corps of Engineers later informed MDE that the application would be processed under the MDSPGP-5 as a Category B project. Since a WQC has already been granted for activities that qualify for authorization under the MDSPGP-5, an individual WQC is not needed for this project.

As required by § 5-204(b) of the Environment Article, the Department drafted and issued a public notice by posting the public notice on its website from February 1, 2020 to March 1, 2020 and publishing the public notice for the proposed project in *The Daily Times* and the *Somerset Herald* on February 2, 2020. In addition, the public notice was provided to adjacent property owners listed in Attachment A.

During the comment period, the Department received requests for additional information and communications expressing concerns about the project. Additionally, a request for a public informational hearing was received from Kathy Phillips, of the Assateague Coastal Trust and Assateague Coastkeeper on behalf of other organizations and citizens of the lower shore. A public hearing was originally scheduled for April 8, 2020, however, the hearing was not advertised or held due to COVID-19 restrictions. When it became apparent that an in-person hearing could not be held in the near future, MDE began investigating the possibility of holding a virtual hearing. After weeks of reviewing potential virtual meeting platforms and considering the ability of the platforms to provide access to interested people to participate in the hearing, including those with limited internet access, the decision was made to hold a virtual hearing using

GoToWebinar. This hearing was scheduled for July 7, 2020 from 6:00pm to 9:00pm. Information was placed on a dedicated website beginning on June 17, 2020 to explain the process to register and participate in the live virtual hearing by internet, to call in by phone, and to provide information to MDE (prior to the hearing) to be read by MDE on behalf of the interested person. The website link is https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/DEL_MAR.aspx. The hearing was advertised in *The Daily Times* and the *Somerset Herald* on June 24, 2020.

On July 7, 2020 the virtual hearing was held from 6:00 pm to 9:00 pm. 133 people registered to attend the hearing and 96 actually signed in and participated. After the introduction, the agent for the project, Justin Weber, gave a presentation about the proposed gas line. Participants were then given an opportunity to ask questions about the project by typing questions which were read by MDE staff, or by “raising their hand” and being un-muted and allowed to ask their question directly. After the question and answer session, the participants were given the opportunity to provide comments about the project. Several comments that were provided to MDE prior to the hearing date were read by MDE staff on behalf of the commenter. The hearing was closed with the Department providing information about how to provide written comments regarding the project. The comment period for the public informational hearing closed on July 21, 2020.

Many comments were received with several in favor of the project, including letters from Senator Mary Beth Carozza of the Maryland State Senate, Delegate Charles Otto of the Maryland House of Delegates, Craig Mathies, Sr, President of the Commissioners of Somerset County, Dr. Heidi Anderson, President of the University of Maryland Eastern Shore, and Dr. Alan McCarthy, County Executive for Cecil County. Support was expressed for the expected benefit to air emissions, a reduction of 6.7 million pounds of CO2 with the expected conversion of ECI and UMES to natural gas, expected elimination of the need for twelve daily deliveries of wood chips to ECI, as well as making natural gas available to potential customers along the route. Dr. McCarthy shared Cecil County’s experience with Chesapeake Utilities Corporation and the installation of natural gas through their major corridors. He described the challenge of crossing the North East Creek, which is a source of drinking water for the town of North East and said that the challenges were “safely and responsibly addressed.”

While several letters supporting the project were received, there were many letters and emails questioning this project, with one letter from the Sierra Club including 904 signatures and 364 individual comments, and another letter from several environmental organizations including Assateague Coastal Trust, Chesapeake Climate Action Network, Chesapeake Legal Alliance, Environmental Integrity Project, the Sierra Club, and the Wicomico Environmental Trust. There were also individual emails. In accordance with WWP procedures, these concerns were summarized and sent to the ESNG on July 31, 2020. ESNG responded to the concerns in a letter to MDE dated August 24, 2020.

ESNG responses to Summarized Concerns

1. There is insufficient need or public benefit to support a gas line to extend into Somerset County.

There were concerns that the applicant had not provided evidence of a public need for natural gas. It was stated that the current economics do not support the need for a pipeline, that new construction has been shown to be cheaper with electric heating, and older buildings are easier to retrofit with electric rather than changing to natural gas. There was concern that gas companies are going bankrupt leaving stranded assets, and that a pipeline will become a financial burden that will need to be addressed in the event of bankruptcy.

ESNG Response

ESNG responded that the Federal Energy Regulatory Commission’s (FERC’s) review of Eastern Shore Natural Gas’s application for a Certificate of Public Convenience and Necessity (CPCN) included consideration of the public need and benefit, as well as greenhouse emissions. After reviewing the proposal

and evaluating these impacts, FERC granted the CPCN on December 19, 2019. ESNG did not think they could address the hypothetical situation of stranded assets since a number of factors would determine how the pipeline would be treated in such a scenario. ESNG commented that ESNG has been safely and reliably transporting natural gas on the Delmarva Peninsula for over 60 years.

2. This application is not for a single and complete project.

It was noted that the ESNG is a subsidiary of Chesapeake Utilities Corporation and that this application is for a segment of a larger project. Since the stated purpose of this project is to serve ECI and UMES, the fact that this pipeline ends miles away from these facilities was questioned. It was stated that the entire project and route should be evaluated to determine whether the benefits of the proposed extension outweigh the impacts. There were questions about how Eastern Shore Natural Gas and Chesapeake Utilities Corporation would address the responsibility and liability for the pipeline.

ESNG Response

ESNG clarified that the purpose of this project is to meet the request of their customer, Chesapeake Utilities, to transport natural gas to a new delivery point location in Somerset County near Eden, Maryland. Chesapeake Utilities intends to then connect to the gas line at the metering and regulation facility to be constructed at Merser Road and construct a distribution pipeline. Since these are two different companies and two types of natural gas lines, the two segments should be considered separately. ESNG confirmed that ESNG will be solely responsible for the operation and maintenance of the transmission pipeline installed under this permit (19-WL-1043). Chesapeake Utilities will be solely responsible for the operation and maintenance of any subsequently installed distribution pipeline.

3. The proposal is contrary to Maryland’s goal of increasing renewable energy, the project supports fracking which is banned in Maryland and the proposal will eliminate an important market for the timber industry.

Concerns were expressed about the pipeline contributing to the use of fossil fuels and that it would lead to an increase in greenhouse gas emissions which is contrary to the Greenhouse Emissions Reduction Act of 2016. Concerns were raised that increasing environmental regulations may cause natural gas rates to increase which may outweigh the initial cost savings. The point was made that a Maryland Environment Service’s request for proposals, Project ID No. 1-19-4-01-8, was a request for proposals to provide engineering, procurement, and construction of a natural gas pipeline to supply to ECI and to UMES campus and was not open to all energy providers, only a gas solution. Since clean energy and electricity were not given an opportunity to bid, it is not known whether the project is a least-cost approach. The local proximity of two large solar farms located nearby in Somerset County was mentioned and that UMES had a solar field on campus and has committed to be carbon neutral by 2050. There were also concerns that the project is supporting fracking which has been banned in Maryland and that Maryland should not support projects that import fracked gas through fragile wetlands when the practice has been banned in the state. Additionally, the proposal will eliminate an important market for the local timber industry.

ESNG Response

As part of FERC’s review of the project, FERC prepared an Environmental Assessment, dated April 2019. Air quality, including greenhouse gas, was a consideration of the environmental analysis portion of the assessment. Following completion of this analysis and issuance of the Environmental Assessment, FERC issued the CPCN on December 19, 2019. ESNG is an interstate natural gas pipeline transmission company that receives natural gas from interconnects with three upstream natural gas interstate pipelines and further transports that gas to customer delivery points throughout the Delmarva Peninsula. Natural gas transported through interstate commerce comes from multiple sources.

4. The pipeline will degrade wetlands and contribute to the effects from climate change.

The project was thought to contribute to flooding, storm surges and sea level rise from climate changes and there were concerns that sedimentation from heavy rainfall events would lead to a reduction in the ability of the wetlands to function for flood control and as a carbon sink. Concerns about the construction process were that there would be sedimentation problems due to heavy rainfalls despite use of silt fences and best management practices. There were concerns that there may be a risk of “frac-outs” and that the Pipeline and Hazardous Materials Safety Administration refers to severe flooding, river scour, and river channel migration as types of unusual operating conditions that can adversely affect the safe operation of a pipeline.

ESNG Response

In response to concerns that the project will contribute to effects from climate change, ESNG offered that, during construction of the project, ESNG will adhere to the State of Maryland and/or local Erosion and Sedimentation regulations and Best Management Practices (BMPs). Additionally, in accordance with FERC requirements, ESNG will provide an Environmental Inspector (EI), to provide oversight with regards to compliance with environmental regulations. The EI will inspect erosion control devices, particularly after precipitation events, and will direct repairs if necessary. Additionally, an HDD Inadvertent Return and Contingency Plan has been provided to address procedures to be followed if a “frac-out” occurs.

Regarding concerns about impacts to wetlands during construction, ESNG responded that ESNG will follow the requirements specified in FERC’s Wetland and Waterbody Construction and Mitigation Procedures, as well as applicable conditions specified in State and Federal permits or authorizations. ESNG will follow the State of Maryland and/or local Erosion and Sedimentation regulations and BMPs. They explained that the proposed depths below channel beds provide for the safe operation of the proposed transmission pipeline.

5. An alternate pipeline pathway should be considered

Questions were asked about whether the proposed gas pipeline path should be reconsidered due to safety and environmental concerns and that the overall project should be evaluated to determine whether an alternative route is available. Post-construction wetland concerns included wildlife habitat degradation and groundwater contamination. Local residents in the area of the extension use the shallow water aquifer for their potable water supply, and contamination from a leak in the pipeline would require a significant cost to drill through the contaminated aquifer and into a deeper, confined aquifer. Groundwater remediation would be expensive and lengthy. Concerns were raised about the proximity of the proposed pipeline to heavily used areas. Examples were given of the proximity of the pipeline to housing areas and walkways used by college students. They stated that if an explosion were to occur, it could cause catastrophic damage.

ESNG Response

Regarding consideration of an alternative route, ESNG explained that FERC’s review of ESNG’s application for a CPCN included a review of alternatives, including the “no action” alternative, as well as various alternative routes. This review also included an evaluation of safety and environmental concerns. The pipeline will be primarily located within existing road and railroad rights-of-way, which are already disturbed. No significant tree clearing is proposed. For these reasons, impacts to wildlife are anticipated to be minor and temporary.

Concerning groundwater contamination, ESNG responded that natural gas is lighter than air, and therefore, if a leak occurred, it would rise to the ground surface and enter the atmosphere; it would not contaminate groundwater. ESNG is required to offer pre- and post-construction well yield and water quality testing to landowners with potable water wells located within 150 feet of the construction work areas. If it is determined that a well is impacted from the construction of the proposed facilities, ESNG will coordinate the level of repair and ensure a temporary source of water is provided until the damaged well is restored to its original capacity/quality.

In addition, ESNG reported that it performs recurring visual and integrity surveys of the pipeline in compliance with the U.S. Department of Transportation Minimum Federal Safety Standards in 49 Code of Federal Regulations (CFR) Part 192. ESNG stated that they monitor the status and condition of the entire pipeline in their pipeline control room located in Dover, DE which is staffed and operated 24-hours per day, every day of the year. From the control room ESNG explained that they are able to see changes in gas flow and pressure across the pipeline in real time, which will alert the operator to changing conditions. In addition, ESNG technicians are on-call 24-hours per day, to respond to emergencies or other abnormal operating conditions. FERC's review of ESNG's application for a CPCN included a detailed review of the safety of the proposed project. The pipeline and aboveground facilities have been designed and will be constructed, operated, and maintained in accordance with the U.S. Department of Transportation Minimum Federal Safety Standards in 49 Code of Federal Regulations (CFR) Part 192. These regulations are intended to ensure adequate protection for the public and to prevent natural gas facility accidents and failures.

6. Procedural Concerns

Concern was expressed about the lack of opportunity for public comment during the Federal Energy Regulatory Commission's (FERC) review process, and that the public informational hearing associated with this tidal wetlands license application seemed to be the only opportunity for the public to comment on the project at this point. Due to this, there were several concerns shared about the FERC process and requirements. There were also concerns expressed about a perceived lack of transparency regarding contract agreements between non-MDE parties associated with the distribution and purchase of the service. There were concerns that the 6-mile extension of the pipeline from Salisbury to Merser Road submitted by Eastern Shore Natural Gas, and the 10-mile extension from Merser Road to Revells Neck Road submitted by Chesapeake Utilities are actually one project being proposed by the parent company, Chesapeake Utilities Corporation. The concern was that, when the two sections are combined, it may change the type of review or authorizations that are required. Some commenters stated that there was an appearance that the bidding process was non-competitive and that other HVAC contractors should have been allowed to bid on providing energy to UMES and ECI without fuel source requirements to allow cost comparisons. It was thought that the decision to approve the natural gas pipeline had already been made as evidenced by the July 1, 2020 vote by the Board of Public Works to approve the change of ECI and UMES to natural gas before it is available. It should be noted that, while ESNG was made aware of these concerns, there was agreement that the applicant was not the appropriate entity to provide a response to all of them.

ESNG Response

A scoping meeting, open to the public, was held on November 14, 2018 by the FERC. The scoping meeting discussed all portions of the overall Del-Mar Energy Pathway Project, including the Somerset Extension. The scoping meeting was held at the Town of Millsboro Office Center, 322 Wilson Highway, Millsboro, Delaware. FERC staff, as well as representatives of Eastern Shore, GTA, and the civil engineer (Mott MacDonald) were present to answer questions from members of the public. Additionally, ESNG held an open house on November 29, 2018, at the James M. Bennett High School, located at 300 East College Avenue, Salisbury, Maryland. The focus of the open house was the Somerset Extension portion of the Del-Mar Energy Pathway Project, and representatives of ESNG, GTA, and Mott MacDonald were present to answer questions from members of the public. Members of the public were also able to submit written comments to FERC at the scoping meeting and to ESNG at the open house. Prior to deciding whether to authorize a proposed project, FERC conducts thorough financial, environmental, and landowner impacts review under its Certificate Policy Statement, the goal of which is to balance public benefits against potential adverse consequences. They clarified ESNG's proposed Somerset Extension project does not involve the connection to UMES or ECI. This is a transmission line that the distributor can connect to in order to provide natural gas to these facilities in the future. FERC's review of ESNG's application for a CPCN included a review of environmental justice data which is based on census information. FERC granted the CPCN on December 19, 2019. ESNG notified landowners of the proposed project in accordance with all applicable regulations.

MDE Responses to Key Issues Raised in Public Comments

Key issues:

1. There is insufficient need or public benefit to support a gas line to extend into Somerset County.

MDE Response: With regard to the consideration of “need or public benefits” Maryland’s tidal wetlands regulations require MDE to take into account the ecological, economic, developmental, recreational, and aesthetic value of tidal wetlands and consider, among one of 19 separate factors, the degree to which the proposed activity benefits the public (when a project has public benefits). ESNG conducted an Open Season in 2017 in the context of the FERC CPCN process which is required for new interstate pipeline construction projects. FERC requires the CPCN “be preceded by a fair open season process through which potential shippers may seek and obtain firm capacity rights.” This open season process is intended to provide market transparency and ensures that any new capacity is allocated in a not unduly discriminatory manner. Before filing for construction authorization under the NGA, pipelines are today required to conduct open seasons. The open season resulted in sufficient interest for it to research and design the proposed natural gas line extension. The FERC review as part of the CPCN process included an assessment of the public need for the project; FERC granted a CPCN to ESNG on December 19, 2019 and found that there is a need for the proposed project and that the proposed project will serve the public interest. In addition, the project has the support of local elected and unelected officials, and work is underway to provide for the transition of two large state facilities in the area to natural gas. MDE considered the FERC CPCN decision as well as the support of local officials in its review of the application to impact tidal wetlands by emplacing a 75.95 linear foot pipeline under the South Prong of the Wicomico River.

2. This application is not for a single and complete project.

MDE Response: The stated purpose of this project is to transport natural gas to a new delivery point location in Somerset County near Eden, Maryland. This is a gas transmission line. A separate company, Chesapeake Utilities, currently intends to then connect to the gas transmission line at the metering and regulation facility to be constructed at Merser Road and construct a distribution pipeline. Since these are two different companies and two types of natural gas lines (i.e., transmission and distribution), the two segments can be considered separately. ESNG will be solely responsible for the operation and maintenance of the transmission pipeline installed under this permit.

The Army Corps of Engineers (ACOE) reviewed this project as a Category B project under the MDSPGP-5 and determined that it was a single and complete project. The ACOE defines a single and complete linear project to be a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point. For linear projects crossing a single waterbody or multiple waterbodies several times at separate locations, each crossing is considered a single and complete project. The ACOE authorized the project on February 28, 2020 under NAB-2019-61725 (Eastern Shore Natural Gas DEL MAR Energy Pathway Somerset Ext/Utility Line). See Attachment C.

3. The proposal is contrary to Maryland’s goal of increasing renewable energy, the project supports fracking which is banned in Maryland and the proposal will eliminate an important market for the timber industry.

MDE Response: Under MD tidal wetlands regulations, MDE is required to ensure that projects designed to achieve a particular purpose are designed in a manner that avoids and then minimizes the loss of tidal wetlands. The basis for an MDE recommendation to allow impacts to tidal wetlands must take into account the value of the impacted tidal wetland and the degree to which the impacts can be avoided or minimized while still meeting the purpose for the project. In this case, the purpose of the project is to transport natural gas from a location near US 50 and East Railroad Avenue in Salisbury and continue adjacent to Rt. 13 to the

intersection of Flower Hill Church Road and US 13 near Princess Anne in Somerset County, MD. The purpose of this project is defined by the applicant and is not subject to revision by MDE. MDE supports renewable energy policies and projects but the relevant scope of review for this particular gas transport project is whether it can avoid or minimize impacts to tidal wetlands. The Department needs to determine whether the project purpose--which is to transport natural gas---can be achieved in a manner which avoids or minimizes impacts to tidal wetlands.

ESNG is an interstate natural gas pipeline transmission company that receives natural gas from interconnects with three upstream natural gas interstate pipelines and further transports that gas to customer delivery points throughout the Delmarva Peninsula. Natural gas transported through interstate commerce comes from multiple sources, including natural gas derived through fracking. The purpose of this project is to transport natural gas to a new delivery point location in Somerset County near Eden, Maryland. This project, which would transport natural gas from a location near US 50 and East Railroad Avenue in Salisbury and continue adjacent to Rt. 13 to the intersection of Flower Hill Church Road and US 13 near Princess Anne in Somerset County, MD is a natural gas transmission project which terminates at the intersection of Flower Hill Church Road and US 13 near Princess Anne in Somerset County, MD. This project as a natural gas transmission project is instrumental in providing entities which are currently using timber biofuel with the option of choosing natural gas. There are no impacts to vegetated tidal wetlands or submerged aquatic vegetation associated with the tidal wetlands portion of this project.

4. **The pipeline will degrade wetlands and contribute to climate change.**

The project was thought to contribute to flooding, storm surges and sea level rise from climate change and there were concerns that sedimentation from heavy rainfall events would lead to a reduction in ability for the wetlands to function for flood control and as a carbon sink. Concerns about the construction process were associated with sedimentation problems due to heavy rainfalls despite use of silt fences and best management practices. There were concerns that there may be a risk of “frac-outs” and that severe flooding, river scour, and river channel migration can adversely affect the safe operation of the pipeline.

MDE Response: Under Maryland’s tidal wetlands regulations, MDE is required to ensure that projects designed to achieve a particular purpose--such as the transport of natural gas--are designed in a manner that avoids and minimizes the loss of tidal wetlands. Although it is well recognized that fossil fuel use contributes to climate change, the focus of MDE’s review is on avoiding and minimizing tidal wetlands impacts for a project whose purpose is to transport natural gas. The impacts to tidal wetlands associated with this project will not contribute to flooding, storm surges, and sea level rise or reduce the ability of these tidal wetlands to function as a carbon sink. Moreover, installing a 75.95 foot-long 10 inch diameter natural gas pipeline 28 feet under the river bottom of the south prong of the Wicomico River using HDD minimizes adverse impacts to tidal wetlands at this location. The South Prong is a stable waterway and runs through a railroad overpass at this location, making it unlikely for channel migration. HDD is a trenchless construction method which eliminates the need for equipment to enter the River. There is no surface disturbance or activity in the River and riverbank stability is not adversely impacted. The use of HDD minimizes adverse impacts to tidal wetlands. The applicant must comply with sediment and erosion control plans and implement measures during the construction process to minimize the movement of sediment into the River. The environmental risks posed by potential frac-outs can be reduced to acceptable levels by requiring the applicant to adhere to the guidelines set forth in HORIZONTAL DIRECTIONAL DRILLING (HDD) Good Practices Guidelines 4th Edition [authors: David Bennett, Ph.D., P.E., et al.]. In addition, requirements for ESNG to perform recurring visual and integrity surveys of the pipeline in compliance with the U.S. Department of Transportation Minimum Federal Safety Standards in 49 Code of Federal Regulations (CFR) Part 192 helps ensure pipeline safety. ESNG is capable of monitoring the status and condition of the entire pipeline in their pipeline control room located in Dover, DE which is staffed and operated 24-hours per day, every day of the year. From the control room ESNG is able to see changes in gas flow and pressure across the pipeline in real time which will alert the operator to changing conditions.

Special Conditions, E, H, I, K, L, M, N, O, P, R, S, T, and V are being recommended to address concerns raised in these comments.

5. An alternate pipeline pathway should be considered.

Questions were asked about whether the proposed path should be reconsidered due to safety and environmental concerns and whether the overall project should be evaluated to determine whether an alternative route is available. Wetland concerns post-construction included wildlife habitat degradation and groundwater contamination. Local residents in the area of the extension use the shallow water aquifer for their potable water supply, and contamination from a leak in the pipeline would require a significant cost to drill through the contaminated aquifer and into a deeper, confined aquifer; groundwater remediation would be expensive and lengthy. Concerns were raised about the proximity of the proposed pipeline to heavily used areas. Examples were given of the proximity of the pipeline to housing areas and walkways used by college students. Commenters stated that if an explosion were to occur, it could cause catastrophic damage.

MDE Response: FERC's review of Eastern Shore's application for a CPCN included a review and evaluation of alternative routes. ESNG investigated alternative routes along existing transportation corridors, which generally provide the ability to locate the pipeline in areas that have already been disturbed and already have easements. The project was revised from its initial design to avoid impacting several areas of wetlands (nontidal wetlands). This resulted in the project that was submitted for review that includes one tidal wetland crossing. Avoiding crossing the Wicomico River would add miles to the pipeline pathway and would still result in nontidal impacts. This review also included an evaluation of safety and environmental concerns. The pipeline will be primarily located within existing road and railroad rights-of-way, which are already disturbed. No significant tree clearing is proposed.

The impacts to tidal wetlands associated with this project will not contribute to flooding, storm surges and sea level rise or reduce the ability of these tidal wetlands to function. Moreover, placing the 75.95 foot-long 10 inch diameter natural gas pipeline 28 feet under the river bottom of the south prong of the Wicomico River using HDD minimizes adverse impacts to tidal wetlands at this location. HDD is a trenchless construction method which eliminates the need for equipment to enter the River. There is no surface disturbance or activity in the River and riverbank stability is not adversely impacted. The use of HDD minimizes adverse impacts to tidal wetlands. Concerning groundwater contamination, any leaks of natural gas would typically move up into the air rather into groundwater. Moreover, ESNG is required to offer pre- and post-construction well yield and water quality testing to landowners with potable water wells located within 150 feet of the construction work areas. If it is determined that a well is impacted from the construction of the proposed facilities, ESNG will coordinate the level of repair and ensure a temporary source of water is provided until the damaged well is restored to its original capacity/quality. In addition any horizontal directional drilling under the South Prong of the Wicomico River to emplace the pipeline is not allowed between March 1 and June 15, to minimize impacts to spawning fish species.

Special Conditions D, E, H, I, K, L, M, N, O, P, R, S, T, and V are recommended to address concerns raised in this comment.

6. There are several procedural concerns raised by commenters. First, regarding the public notice procedures for the project, there were concerns raised that only property owners adjacent to the proposed South Prong HDD crossing were notified of the project and commenters suggested that the tenants of the properties should also have been notified. Second, while the public hearing was for the 75.95 feet long tidal crossing, commenters suggested that MDE does not have enough information to determine whether the nontidal impacts of the project qualify for a letter of authorization (LOA) instead of a permit. Third, it was noted that the plans that were provided directly to a person who requested them during the initial public notice were different from the plans posted on the website for the hearing. Fourth, there were also a series of

comments raising concerns about the transparency of agreements between various non-MDE parties related to the natural gas which would be transported as a result of this project. Fifth, there were concerns that treating the ESNG natural gas transmission project as a separate project from the Chesapeake Utilities natural gas distribution line project may have had the effect of changing the type of review or authorizations that are required.

MDE Response: Maryland tidal wetland regulations require notification to property owners and this requirement was met. While tenants were not contacted directly by the applicant regarding the project, there were public notices posted and published by MDE (and by FERC during the CPCN process). MDE issued a public notice by posting the public notice on its website from February 1, 2020 to March 1, 2020 and publishing the public notice for the proposed project in *The Daily Times* and the *Somerset Herald* on February 2, 2020. Regarding the issues raised about the review process and requirements for nontidal wetlands, MDE will address those concerns in the upcoming nontidal wetlands decision and record of decision. With regard to the concerns that the application was incomplete, this is likely attributable to the way the application was filled out. While several portions of the application were left blank, the information was provided as an attachment to the application. When the plans were created for the public notice, MDE received feedback about other information that people wanted to see included with the plans. To address this request, MDE required ESNG to revise the plans. Also, during the time between the initial public notice and the public hearing notice, ESNG revised work in nontidal wetlands that reduced impacts. The updated plans showing these changes were provided on the website for the public hearing. Regarding the concerns raised about the transparency of various agreements among non-MDE parties involving the use of the natural gas that would be transported as a result of this project, MDE's evaluation of ESNG's application for a permit/license to impact tidal wetlands is an independent environmental review governed by COMAR Title 26, Subtitle 24. MDE's review is focused on ensuring that the project--which is intended to meet an applicant-defined purpose---is designed in a manner that avoids and then minimizes impacts to tidal wetlands. With regard to the concerns raised about the regulatory implications of not combining the ESNG and the Chesapeake Utilities project in a single review process, MDE has ample authority under COMAR Title 26 Subtitle 24 to ensure that any environmental and public health risks posed by the projects are effectively managed and mitigated whether the projects are reviewed separately or as a single project.

Comments from Other State Agencies

In addition to the public notice and public hearing, the application was shared with interested agencies for comments related to their missions.

MDNR

The Maryland Department of Natural Resources (DNR) made the following comment related to protection of spawning fish species from any potential inadvertent release (frac-out) of drilling fluids: If the proposed project is permitted, the proposed HDD crossings of the various waterways in the pipeline corridor should not be performed during the period 1 March through 15 June of any year to minimize impacts to spawning fish species from any potential inadvertent release (frac-out) of drilling fluids.

- Special Condition D is recommended to address MDNR's requested time of year restriction.

MHT

The Maryland Historical Trust determined that there are no historic properties affected by this undertaking.

MDE Conclusions and Recommendations Regarding Special Conditions

The evaluation of this project has taken into account ecological, economic, recreational, developmental, and aesthetic considerations appropriate for the purpose of this project as well as other requirements set forth in the Code of Maryland Regulations. To ensure that impacts to resources are avoided and minimized to the maximum extent possible while meeting the project purpose and need, and, to ensure that all work is performed in accordance with critical area and local regulations, the Department is recommending a number of special conditions. Provided all general and special conditions are adhered to, the work proposed will not cause significant deleterious impacts to marsh vegetation, submerged aquatic vegetation, finfish, shellfish, or navigation.

Project Justification: In consideration of the project purpose and need, the site characteristics and the nature of the proposed work, the Department concludes that the application represents a reasonable exercise of riparian rights.

SPECIAL CONDITIONS:

- A. The Maryland Department of the Environment has determined that the proposed activities comply with, and will be conducted in a manner consistent with the State's Coastal Zone Management Program, as required by Section 307 of the Federal Coastal Zone Management Act of 1972, as amended.
- B. The Licensee shall comply with all Critical Area requirements and obtain all necessary authorizations from local jurisdictions. This License does not constitute authorization for disturbance in the 100-foot Critical Area Buffer. "Disturbance" in the Buffer means clearing, grading, construction activities, or removal of any size of tree or vegetation. Any anticipated Buffer disturbance requires prior written approval, before commencement of land disturbing activity, from the local jurisdiction in the form of a Buffer Management Plan.
- C. If the authorized work is not performed by the property owner, all work performed under this Tidal Wetlands License shall be conducted by a marine contractor licensed by the Marine Contractors Licensing Board (MCLB) in accordance with Title 17 of the Environment Article of Annotated Code of Maryland. A list of licensed marine contractors may be obtained by contacting the MCLB at 410-537-3249, by e-mail at MDE.MCLB@maryland.gov or by accessing the Maryland Department of the Environment, Environmental Boards webpage.
- D. The Licensee shall not perform any horizontal directional drilling crossing of the waterway for the pipeline during the period 1 March through 15 June of any year, to minimize impacts to spawning fish species from any potential inadvertent release (frac-out) of drilling fluids.
- E. Licensee shall adhere to the guidelines set forth in HORIZONTAL DIRECTIONAL DRILLING (HDD) Good Practices Guidelines 4th Edition [authors: David Bennett, Ph.D., P.E., et al.].
- F. Before work begins, Licensee shall contact the United States Coast Guard, Fifth Coast Guard District, to determine if Coast Guard approval is required for the authorized work.
USCG, Federal Building, 431 Crawford Street, Portsmouth, VA 23705 Phone: 757-398-6486

- G. At least 30 days before starting the authorized work, Licensee shall provide current geotechnical data including, but not limited to, soil logs, soil borings, or well logs, to MDE's Water and Science Administration Compliance Program and the Wetlands Administrator.
- H. Before starting the authorized work, Licensee must complete and sign the enclosed frac-out Contingency Plan and return it with the signed license.
- I. Prior to the start of construction, the Licensee shall retain a qualified full-time Independent Environmental Monitor (Monitor) that is independent from the Licensee, design consultants, and construction contracts working on the project. The Licensee shall retain a Monitor to assess compliances with all conditions of this and other applicable permits, licenses and environmental regulations. The Licensee shall develop a project-specific Monitor Manual detailing all Monitor responsibilities and procedures and submit the manual to MDE for review and approval prior to implementation. MDE and the BPW Wetlands Administration shall be provided with the opportunity to review the qualifications of the Monitor proposed by the Licensee and shall provide concurrence that the candidate is qualified to perform the Monitor role. The Monitor shall:
- 1) Review design submittals and construction activities for compliance with all conditions of this License and other applicable permits and environmental regulations;
 - 2) Report findings directly and concurrently to MDE's Tidal Wetlands Division and BPW Wetlands Administration, notifying them and the Licensee immediately of any reported or observed violations or non-compliance issues within the terms or conditions of the Wetlands License or approved plans and specifications;
 - 3) Document impacts to regulated resources by developing and maintaining a detailed tracking list of impacted resources;
 - 4) Assist with identification of ongoing opportunities for further avoidance and minimization of impacts to regulated environmental resources and protection of water quality;
 - 5) Be present at the site when authorized work occurs in, under, or over State tidal wetlands or State tidal Waters of the U.S.
- J. A pre-construction meeting shall be held with the Registered Marine Contractor, the Monitor, the Wetlands Administrator, the MDE Compliance Inspector, and the Licensee's representative, to provide the opportunity for all to review and discuss the construction plans and Wetland License conditions. All meeting participants shall be notified of this meeting a minimum of 14 days prior to the date of the meeting.
- K. **If an inadvertent return (frac-out) occurs in tidal wetlands or waters, HDD operations must cease immediately.** The Monitor shall immediately contact the Wetlands Administrator and MDE's Water and Science Administration Compliance Inspector within TWO hours of the inadvertent return and document that the HDD Contingency Plan was implemented. The Monitor shall coordinate with the drilling contractor until the problem is corrected. Drilling can resume only when the frac-out has been contained and cleanup completed.
1. MDE/Water and Science Administration Compliance: 410-901-4020 (business hours)
 2. MDE/Water and Science Administration Compliance: 410-517-3600 (evenings, weekends and holidays)

- L. The Monitor shall provide daily visual monitoring of the drilling route and surrounding area.
- M. The Monitor shall prepare and submit weekly reports to the Wetlands Administrator and MDE's Water and Science Administration Compliance Inspector when drilling is in, under, or over State tidal wetlands or State tidal Waters of the U.S. The weekly reports must include volume of drilling material used and recovered, method of material disposal, and depth of bore below the bottom.
- N. The Monitor shall prepare and submit a summary report to the Wetlands Administrator and MDE's Water and Science Administration Compliance Inspector.
- O. Licensee shall seal each abandoned drill hole with bentonite or other approved material upon withdrawing the drill stem. Licensee shall submit an abandonment report to MDE's Water and Science Administration Compliance Inspector within 48 hours after sealing is complete.
- P. Licensee shall, prior to commencement of activities authorized by this License, submit to MDE's Water and Science Administration, Tidal Wetlands Division, one complete set of the final, approved Soil Erosion and Sediment Control Plans.
- Q. The Licensee is required to offer pre- and post-construction well yield and water quality testing to landowners with potable water wells located within 150 feet of the construction work areas. If it is determined that a well is impacted from the construction of the proposed facilities, the Licensee shall coordinate the level of repair and ensure a temporary source of water is provided until the damaged well is restored to its original capacity/quality. The Licensee shall submit this information to the Wetlands Administrator and MDE's Water and Science Administration, Tidal Wetlands Division within 30 days of completion of the data collection and any planned or actual corrective action.
- R. The drilling fluid used in HDD operations shall consist of water and bentonite clay. No additives are permitted without prior approval from the Administration. The Licensee may submit for pre-approval a list of thickening additives to be stored on site in order to prevent delays in the drilling operation. Any additive must be certified in conformance with ANSI/NSF Standard 60 (Drinking Water Treatment Chemicals - Health Effects) and used in the manner indicated in the certification of the additive.
- S. In the event of an inadvertent release of drilling fluid or a pollution event occurs in the South Prong of the Wicomico River, the Licensee will provide water quality monitoring downstream from the release until water quality satisfies the requirements of COMAR 26.08.02 for a Use II stream or match the levels found immediately upstream from the release.
- T. The Licensee shall report to MDE's Water and Science Administration, Compliance Program within one business day any citizen making a complaint to the Licensee reporting leaking gas or any other release from the construction or operation of the pipeline. This can be made by phone or email. The Licensee shall provide to the MDE's Water and Science Administration, Compliance Program and Wetlands Administrator in writing the completed or planned response and any planned or actual corrective action to address the citizen complaint within 3 business days.
- U. If the Licensee transfers ownership or operation of this pipeline after completion, the Licensee shall, at the time of transfer, notify the Wetlands Administrator and MDE's Water and Science Administration, Tidal Wetlands Division and shall advise the new owner/operator in writing of the conditions that must

be met for continued operation and provide a copy of such notification to Wetlands Administrator and MDE's Water and Science Administration, Tidal Wetlands Division .

- V. Prior to hydrostatic testing of the gas line, Licensee must provide the Wetlands Administrator and MDE's Water and Science Administration, Compliance Program with specific information relative to the source of test water and the manner and location in which the water will be disposed. If the source or waste location of the water involves other than municipal water and sewer systems, the Department must approve the plan prior to line testing. Additional Conditions may be imposed if the water is drawn directly from or returned to Waters of the State.

DEPARTMENT OF THE ENVIRONMENT APPROVAL:

Mary Phipps-Dickerson

Mary Phipps-Dickerson, Natural Resource Planner
Tidal Wetlands Division

September 18, 2020

DATE

Tammy K Roberson

Tammy Roberson, Division Chief
Tidal Wetlands Division

9/18/2020

DATE

D Lee Currey

D. Lee Currey, Director
Water and Science Administration

9/18/2020

DATE

WETLANDS ADMINISTRATION CONCURRENCE:

William Morgante, Wetlands Administrator
Board of Public Works

DATE