

155 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Carolina Gas Transmission, LLC

Docket No. CP15-504-000

ORDER ISSUING CERTIFICATE

(Issued June 2, 2016)

1. On May 29, 2015, Dominion Carolina Gas Transmission, LLC (Dominion Carolina)¹ filed an application under section 7(c) of the Natural Gas Act (NGA)² and Part 157 of the Commission's regulations³ for a certificate of public convenience and necessity authorizing it to construct and operate pipeline, metering, and appurtenant facilities in Calhoun and Richland Counties, South Carolina (Columbia to Eastover Project). For the reasons discussed below, we will authorize Dominion Carolina's proposal, subject to the conditions discussed herein.

I. Background and Proposal

2. Dominion Carolina, a limited liability company organized and existing under the laws of South Carolina, is a natural gas company as defined by section 2(6) of the NGA.⁴ Dominion Carolina operates and maintains approximately 1,500 miles of interstate natural gas pipeline in Georgia and South Carolina.

¹ Dominion Carolina Transmission, LLC is a subsidiary of Dominion Midstream Partners, LP.

² 15 U.S.C. § 717f(c) (2012).

³ 18 C.F.R. Pt. 157 (2015).

⁴ 15 U.S.C. § 717a(6) (2012).

3. The Columbia to Eastover Project will enable Dominion Carolina to provide 18,000 dekatherms (Dth) per day of firm transportation service to International Paper Company's (International Paper) existing pulp and paper plant, known as the Eastover Plant, in Richland County, South Carolina. Specifically, Dominion Carolina proposes to construct and operate the following facilities:

- A new take off station that consists of a tap and pig launcher on Dominion Carolina's existing 20-inch-diameter Sally to Eastman pipeline located near the DAK Americas, LLC (DAK) facility in Calhoun County, South Carolina.
- A new delivery point that includes a pig receiver and metering and regulation (M&R) equipment located at International Paper's Eastover Plant.
- Approximately 28 miles of new 8-inch-diameter pipeline originating near the DAK facility, extending east and terminating at the new International Paper M&R Station.

4. Dominion Carolina conducted an open season from May 30 through June 28, 2013, which was subsequently extended until July 19, 2013. As a result of the open season, Dominion Carolina executed a binding precedent agreement with International Paper for 15,800 Dth per day of firm transportation service to the Eastover Plant with a 20-year primary term.⁵

5. Dominion Carolina and International Paper have an existing firm transportation service agreement for 2,200 Dth per day of truck-delivered compressed natural gas with a delivery point in Kershaw County, South Carolina. Under the precedent agreement, Dominion Carolina will transport an additional 15,800 Dth per day, from its existing interconnection with Southern Natural Gas Company, LLC in Aiken County, South Carolina, to the proposed International Paper M&R Station at the Eastover Plant. In addition, Dominion Carolina and International Paper have agreed to change the primary delivery point listed in the existing 2,200 Dth per day service agreement to allow for delivery of gas via the proposed pipeline directly to the Eastover Plant. Therefore, the Columbia to Eastover Project will enable Dominion Carolina to provide a total of 18,000 Dth per day of firm transportation service to International Paper.

6. Dominion Carolina states that the project will allow International Paper to increase its use of natural gas at the Eastover Plant, replacing the use of coal and fuel oil,

⁵ Dominion Carolina also conducted a reverse open season during the same period, but did not receive any offers of turnback capacity that would reduce the facilities required to serve International Paper.

as well as the truck-delivered compressed natural gas. Dominion Carolina asserts that the proposed project will help International Paper meet new air emissions requirements mandated by the U.S. Environmental Protection Agency (EPA).⁶

7. Dominion Carolina estimates that the proposed facilities will cost \$36,255,867. Dominion Carolina proposes to establish an initial recourse rate under Rate Schedule FT for firm transportation services provided on the project. Dominion Carolina states that it intends to enter into a negotiated rate agreement with International Paper.

II. Notice, Interventions, Comments, and Protests

8. Notice of Dominion Carolina's application was issued on June 12, 2015, and published in the *Federal Register* on June 19, 2015 (80 Fed. Reg. 35,342). The notice established July 6, 2015, as the deadline for filing comments and interventions. The parties listed in Appendix A filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁷

9. The parties listed in Appendix B filed late motions to intervene. The untimely motions to intervene will not delay, disrupt, or unfairly prejudice any parties to this proceeding. Thus, we will grant the untimely motions.⁸

10. On July 6, 2015, Belle Grove, LLC (a tree farm and hunt club) and St. Matthews Baptist Church each filed protests to the project. The protests were subsequently withdrawn on December 23, 2015 and March 23, 2016, respectively.

11. We received several comments about the project. These comments are addressed in the Environmental Assessment (EA) and, as appropriate, in the environmental section of this order.

III. Discussion

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

⁶ Dominion Carolina Application at 6.

⁷ 18 C.F.R. § 385.214(c) (2015).

⁸ 18 C.F.R. § 385.214(d) (2015).

A. Certificate Policy Statement

13. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁹ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

14. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from 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, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

15. As discussed above, 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. Dominion Carolina's proposed incremental base reservation rate is based on the cost of the project facilities recovered over the incremental project capacity. The proposed incremental rate is designed to recover the full cost of the expansion and is higher than the applicable system rate. Thus, we find that Dominion Carolina's existing shippers will not subsidize the expansion project.

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified* 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

16. The proposed project will not degrade service to existing customers. In addition, there will be no adverse impact on any other pipelines in the region or their captive customers because the proposal is not intended to replace service on other pipelines. Further, no pipeline company or their captive customers have protested the application.

17. We also find that the Columbia to Eastover Project will have minimal impacts on landowners and surrounding communities. Dominion Carolina states that all facility installations will be located on land that it owns or that is subject to permanent easements.¹⁰ In addition, approximately 75 percent of new right-of-way will be contiguous to existing utility corridors.¹¹

18. The Columbia to Eastover Project will enable Dominion Carolina to provide 18,000 Dth per day of incremental firm transportation service to International Paper, which has signed a 20-year precedent agreement for all of the capacity created by the project. Based on the benefits the project will provide and the minimal adverse effect on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of Dominion Carolina's proposal, as conditioned in this order.

B. Rates

19. Dominion Carolina proposes to establish an initial recourse rate under Rate Schedule FT for the firm transportation service provided on the project. Specifically, Dominion Carolina proposes to establish an incremental reservation charge of \$29.6526 per Dth. In addition, Dominion Carolina proposes to charge all other applicable rates, charges, and surcharges, including its maximum usage charge and maximum system fuel retention percentage.

20. Dominion Carolina's proposed incremental reservation charge is calculated on a projected annual cost of service of \$6,404,968 and annual billing determinants of 216,000 Dth. Included in the total cost of service are Operation and Maintenance (O&M) expenses of \$110,026. On July 23, 2015, Commission staff issued a data request asking Dominion Carolina to provide a breakdown of projected O&M expenses by FERC account number and labor and non-labor costs for the proposed project. In response, Dominion Carolina identified a total of \$6,578 in non-labor O&M for FERC account numbers 857 and 865. Consistent with the Commission's regulation requiring the use of

¹⁰ Dominion Carolina Application at 13.

¹¹ *Id.*

straight fixed-variable rate design,¹² these costs are classified as variable costs and should not be recovered through the reservation charge.¹³ Accordingly, we direct Dominion Carolina to recalculate its incremental reservation charge to recover only fixed costs when it files actual tariff records.

21. The Commission's policy generally requires a pipeline establish incremental rates for expansion projects if the incremental rate will exceed the maximum system-wide generally-applicable recourse rate.¹⁴ Dominion Carolina's proposed incremental reservation charge of \$29.6526 per Dth is higher than its generally-applicable Rate Schedule FT Zone 1-1 reservation charge of \$8.4387 per Dth. Although we are requiring Dominion Carolina to recalculate the project's incremental reservation charge, it does not appear that removal of the improperly classified variable costs will result in the incremental reservation charge being less than Dominion Carolina's current system reservation charge. Thus, we will approve Dominion Carolina's proposed initial recourse rate subject to the removal of the variable costs, as discussed above.

22. Dominion Carolina does not provide an interruptible transportation rate to be charged for interruptible service on the project capacity. We will require Dominion Carolina to charge its currently effective system interruptible rates under Rate Schedule IT for any interruptible service rendered on the additional capacity made available as a result of the project.

1. Negotiated Rates

23. Dominion Carolina intends to enter into a negotiated rate agreement with its Customer.¹⁵ Dominion Carolina must file either its negotiated rate agreement or tariff records setting forth the essential terms of the agreement associated with the project, in

¹² 18 C.F.R. § 284.7(e) (2015).

¹³ *Columbia Gulf Transmission, LLC*, 152 FERC ¶ 61,214 (2015); *Dominion Transmission, Inc.*, 153 FERC ¶ 61,382 (2015).

¹⁴ Certificate Policy Statement, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000).

¹⁵ The negotiated rate includes both a fixed negotiated base reservation charge of \$16.75 per Dth for 15,800 Dth per day and a facilities charge of nine fixed payments of \$1,000,000 and one payment of \$2,044,729.

accordance with the Alternative Rate Policy Statement¹⁶ and the Commission's negotiated rate policies¹⁷ at least 30 days, but not more than 60 days, before the proposed effective date for such rates.¹⁸

2. Reporting Incremental Costs

24. To ensure that costs are properly allocated between Dominion Carolina's existing customers and the incremental services proposed in this proceeding, we will require Dominion Carolina to keep separate books and accounting of costs attributable to the project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations.¹⁹ This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.²⁰

C. Accounting

25. On March 8, 2016, Dominion Carolina submitted a request in Docket No. AC16-57-000 that it be granted any waivers of the requirements of Order No. 561 and 18 C.F.R. Part 201, specifically Gas Plant Instruction No. 3(17) to allow it to calculate an Allowance for Funds Used During Construction (AFUDC) rate using a hypothetical capital structure of 50 percent debt and 50 percent equity, the rate of return on equity

¹⁶ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

¹⁷ *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

¹⁸ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement.

¹⁹ 18 C.F.R. § 154.309 (2015).

²⁰ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

from the settlement of Dominion Carolina's last rate case proceeding,²¹ and the actual cost of long-term debt of Dominion Midstream Partners, LP. In that filing, Dominion Carolina represents that it utilized the method of calculating AFUDC described above in this certificate application.²² Thus, the approval for the accounting proposed herein may be subject to change based upon the guidance that will be provided in Docket No. AC16-57.

D. Environmental Analysis

26. On July 16, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was published in the *Federal Register* on July 22, 2015, and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.²³

27. The Commission received 7 comment letters prior to the issuance of the NOI and 23 comment letters in response to the NOI. In addition to general opposition to the project, we received requests for minor and major reroutes of the pipeline to utilize more existing utility rights-of-way and for a reduction in the number and length of access roads. The primary environmental issues raised by the commenters were potential impacts on sensitive fish species, the Cowasee Basin, specific archaeological sites, local tree farms, and recreation areas.

28. To satisfy the requirements of the National Environmental Policy Act of 1969,²⁴ our staff prepared an environmental assessment (EA) for Dominion Carolina's proposal. The EA was placed into the public record on February 19, 2016. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive environmental comments received in response to Dominion Carolina's application and our NOI were addressed in the EA.

²¹ See *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014 (2011).

²² See Docket No. CP15-504-000 Transmittal Letter at 15; Docket No. AC16-57-000, Request for Waiver of Order No. 561 and Gas Plant Instruction No. 3 (17) at 3.

²³ 80 Fed. Reg. 43,419-43,421 (2015).

²⁴ 42 U.S.C. §§ 4321 *et seq.* (2012).

29. In response to the EA, the Commission received comments from Dominion Carolina, John Grego on behalf of Friends of Congaree Swamp,²⁵ the South Carolina Department of Natural Resources (South Carolina DNR), and the EPA.

1. Clarifications

30. Dominion Carolina provided correspondence with the South Carolina State Historic Preservation Office (SHPO), which clarifies that SHPO's comment letter dated June 4, 2015, inadvertently omitted the word "not" when referring to the National Register of Historic Places eligibility of archaeological site 38RD262. In the correspondence, SHPO confirmed that the site was determined not to be eligible for the National Register of Historic Places. Accordingly, staff's recommendation in the EA regarding SHPO comments and Commission approval of cultural reports/plans has been revised to exclude the requirement that Dominion Carolina address the National Register of Historic Places eligibility of site 38RD262. The revised recommendation is attached as Environmental Condition 22 in Appendix C to this order.

31. The South Carolina DNR suggests a number of minor clarifications in response to the EA, including some errors in nomenclature and designations (for example, Cabin Branch was erroneously identified as not sensitive in the table in Appendix D-1; some geological province and aquifer descriptions were incorrect; the Eastern chipmunk was incorrectly identified as common in the project area; and the Congaree River does support commercial fishing). These and similar clarifications provided by the South Carolina DNR are acknowledged, and we find that they do not change the conclusions reached in the EA.

2. Construction Method

32. The Friends of Congaree Swamp and the South Carolina DNR request that Dominion Carolina use trenchless construction methods to cross all waterbodies, with the exception of some ditches. Trenchless methods such as horizontal directional drilling (HDD) involve installing pipe segments beneath the ground surface by pulling the pipeline through a predrilled bore hole. In particular, the South Carolina DNR recommends that Dominion Carolina cross Ray Branch (an approximately 8-foot-wide perennial stream) via a trenchless method. Appendix D-1 of the EA assigns a crossing

²⁵ The Friends of Congaree Swamp is a nonprofit corporation that seeks to protect, restore, and support the Congaree National Park and maintain compatible land uses outside of the park.

method for each waterbody based on what Dominion Carolina proposed in its alignment sheets and workspace configurations.²⁶

33. With respect to Ray Branch, the EA notes that Dominion Carolina is proposing an open-cut crossing.²⁷ The EA indicates that Ray Branch has not been designated by the South Carolina DNR or U.S. Fish and Wildlife Service (FWS) as supporting sensitive fish species. As such, the EA concludes, and we agree, that an open-cut crossing would be appropriate for this stream. Furthermore, Dominion Carolina is required to implement the Commission's *Wetland and Waterbody Construction and Mitigation Procedures*, which includes methods it must implement in order to minimize impacts on waterbodies during construction. As with any open-cut crossing of a jurisdictional feature (i.e., wetland or waterbody), Dominion Carolina must obtain a permit from the U.S. Army Corps of Engineers (Corps) and any applicable federally delegated state permits prior to construction. These permits may include additional mitigation measures for the Ray Branch crossing.

34. The South Carolina DNR recommends that if a trenchless crossing method cannot be implemented for waterbodies that are known to contain sensitive species, Dominion Carolina should use the temporary flume crossing method instead of the dam-and-pump method. The South Carolina DNR clarifies that the latter method could entrain or impinge a variety of non-game fishes and other aquatic organisms. According to the EA, four waterbodies (Mill Creek, Cabin Branch, Cedar Creek, and Tom's Creek)²⁸ are of concern to the South Carolina DNR due to the presence of certain sensitive fish species. In response to the South Carolina DNR's recommendation, we have added

²⁶ Dominion Carolina may elect to revise its alignment sheets and workspace configurations in its upcoming implementation plan to clarify waterbody crossing methods for particular waterbodies. This plan is subject to staff approval before construction will be authorized.

²⁷ Open-cut methods include dry crossing methods (flume or dam-and-pump) and wet open-cuts. Dry crossing methods divert or isolate flow during pipe installation. A flume crossing temporarily directs the flow of water through one or more flume pipes placed over the area to be excavated. The dam-and-pump method involves installing temporary dams upstream and downstream of the proposed waterbody crossing and using a pump to divert the flow of water around construction. A wet open-cut crossing opens a trench while flow is maintained across the trench.

²⁸ A fifth sensitive waterbody identified in the EA (a tributary to Cedar Creek) was subsequently determined not to be crossed by the project. This was confirmed in South Carolina DNR's comments on the EA.

Environmental Condition 24, which requires Dominion Carolina to use the temporary flume crossing method rather than a dam-and-pump for any open-cut crossing of these four waterbodies.

35. The Friends of Congaree Swamp request that the Commission require Dominion Carolina to report the condition of existing culverts for roads that would be used as access roads during construction and operation of the project. Further, they request that the Commission require Dominion Carolina to monitor these culverts and replace any that fail during construction due to increased traffic and crossing of heavy equipment. As stated in the EA, Dominion Carolina identified 13 existing culverts under roads that will be used for project access. Dominion Carolina proposes to improve or replace two existing culverts that were deemed not suitable for construction purposes. As discussed in the EA,²⁹ Dominion Carolina has committed to returning existing roads to their pre-construction condition or better. This commitment includes the roads' associated culverts.

3. Waterbody and Wetland Impacts

36. The EPA states that instead of applying for a Corps Nationwide Permit 12, Dominion Carolina should have applied for an individual permit under section 404 of the Clean Water Act. According to the EPA, this recommendation is based upon the EPA's understanding that the project would result in 28 miles of stream crossings. This understanding is incorrect. The project length in its entirety is approximately 28 miles. As discussed in the EA,³⁰ the project crosses 61 waterbodies and 71 wetlands within the Santee Basin, which contains the Congaree River and Wateree River watersheds. The Corps is responsible for determining which of the permits it authorizes under the Clean Water Act are applicable to the project. Environmental Condition 8 in Appendix C of this order requires Dominion Carolina to obtain all necessary permits and authorizations from the Corps (and any other applicable authorizations required under federal law) prior to construction.

37. Additionally, the South Carolina DNR notes the existence of a Carolina Bay near milepost 17.0. A Carolina Bay is an elliptical depression found in South Carolina that fills with rainwater in the winter and spring before drying in the summer months. We acknowledge this clarification. Because the area will be avoided via the HDD method, we find that it does not change the EA's conclusions regarding wetland impacts.

²⁹ EA at 7.

³⁰ EA at 33-39.

38. The Friends of Congaree Swamp ask the Commission to consider whether the project meets anti-degradation standards for Outstanding National Resource Waters, because a portion of Cedar Creek within the Congaree National Park is designated as Outstanding National Resource Waters. The project, however, is located approximately five miles north of the National Park. The EA discusses sensitive streams including the Nationwide Rivers Inventory, which is a list of river segments in the United States that are believed to possess one or more “outstandingly remarkable” natural or cultural values and are of local or regional significance. No surface waters crossed by the project are on the Nationwide Rivers Inventory or are designated as Wild and Scenic Rivers. Further, the South Carolina Scenic Rivers Act of 1989 protects rivers that “possess unique or outstanding scenic, recreational, geologic, botanical, fish, wildlife, historic or cultural values.” No river segments in the project area have been designated as wild, scenic, or recreational in South Carolina. Accordingly, there is no applicable anti-degradation standard to apply here.

39. The Friends of Congaree Swamp request that the Commission remove the clause in recommendation 16 of the EA that would allow Dominion Carolina to provide justification for a requested workspace that would impact wetland WLRR-01. That recommendation, included here as Environmental Condition 16, requires Dominion Carolina to revise its construction configuration in order to avoid impacts on WLRR-01 or provide justification for the workspace that would impact the wetland. We agree that avoiding this wetland is the preferred outcome. However, if the construction configuration cannot be revised due to safety constraints within the rights-of-way of Dominion Carolina’s pipeline and the adjacent high-voltage utility corridor, then staff may consider for approval Dominion Carolina’s justification for the workspace.

40. The South Carolina DNR indicates that the west side of the Wateree River Valley has a potential for landslides, as the slopes steepen into the valley along the eastern end of the project corridor, and notes that liquefaction increases the potential of landslides on certain slopes. Soil liquefaction is a phenomenon in which the strength and stiffness of soil is reduced by earthquake shaking or other rapid loading. We acknowledge liquefaction could increase the probability of landslides. As discussed in the EA,³¹ however, there is a low overall probability for liquefaction to occur in the project area.

4. Air Quality

41. The EPA recommends that Commission staff “work with Dominion Carolina” to identify monitoring measures and emission controls that would reduce the potential for fugitive emissions of methane from the project facilities. The EA explains that the

³¹ EA at 22.

project's potential air quality impacts would be temporary because emissions are only associated with the construction phases of the project, with the exception of minor operational fugitive emissions.³² Operational fugitive emissions are expected to be well-below the 25,000 tons per year of carbon dioxide equivalents that would trigger the Greenhouse Gas reporting rule.³³ Further, as explained above, natural gas from the project is intended to help International Paper replace its use of coal, fuel oil, and truck-delivered compressed natural gas.³⁴ The EA notes that International Paper's modifications and use of natural gas at its existing plant would have a beneficial effect on regional air quality. Given that potential fugitive methane emissions from the project's operation are not expected to exceed the reporting threshold and that the project is expected to have an overall beneficial effect on regional air quality, we are not requiring monitoring measures or emission controls for the project.³⁵

5. Fish and Wildlife Resources

42. As discussed in the EA,³⁶ the Congaree River is known to contain federally listed fish species (Atlantic and shortnose sturgeon) and, for this reason, Dominion Carolina proposes to cross the Congaree River via an HDD. The EA recommends that in the event the proposed HDD cannot be constructed, Dominion Carolina engage in further agency consultations in developing an alternate crossing plan. The South Carolina DNR requests that it be included as a consulting agency in such an endeavor. We agree and have modified Environmental Condition 15 accordingly.

43. The Friends of Congaree Swamp state that federally listed wood storks have been sighted near the project area. As discussed in the EA, Dominion Carolina identified potential wood stork habitat within the project area, but no wood stork nest sites were identified during field surveys. Dominion Carolina proposes to use a trenchless construction method for many areas along the route, including the areas with potential

³² EA at 71.

³³ See 40 C.F.R. Pt. 98 (2015).

³⁴ See *supra* P 6.

³⁵ Although not required, we note that the EPA administers the Gas STAR Program, which is a flexible, voluntary partnership between the EPA and gas companies to reduce the methane emissions from natural gas facilities.

³⁶ EA at 52.

nesting habitat for the wood stork. Furthermore, the FWS concurred with our staff's determination that the project is not likely to adversely affect the wood stork.

44. The Friends of Congaree Swamp also state that the eastern painted bunting, an FWS-designated "Bird of Conservation Concern," is found throughout the summer in portions of the Congaree floodplain with appropriate habitat. As identified in the EA, Dominion Carolina has committed to reduce impacts on birds during construction by minimizing overlap of construction clearing with primary nesting seasons as much as practicable, inspecting forested areas where clearing activity will take place to identify active nests, and avoiding any active nests to the extent practicable in accordance with provisions of the Migratory Bird Treaty Act. Environmental Condition 17 requires Dominion Carolina to further consult with the FWS to ensure that appropriate avoidance and minimization measures for migratory birds are implemented.

6. Vegetation

45. The South Carolina DNR recommends that disturbed areas deemed unsuitable for replanting woody species be revegetated in native warm-season grasses that are beneficial to wildlife. The South Carolina DNR also recommends incorporating this revegetation measure into Dominion Carolina's *Non-Native Invasive Species Management Plan*. As described in the EA, Dominion Carolina has committed to restore temporary workspaces using native seed mixes recommended by the Natural Resources Conservation Service or seed mixes requested by landowners in agricultural and residential areas. In response to the South Carolina DNR's request, we have added Environmental Condition 25, which requires Dominion Carolina to consult with the South Carolina DNR in addition to the Natural Resources Conservation Service to determine the appropriate seed mixes and/or planting requirements for revegetation in disturbed areas deemed unsuitable for replanting woody species.

46. The Friends of Congaree Swamp state that some of the vegetation communities of special concern identified by the South Carolina DNR are more properly associated with floodplains than wetlands. They recommend that Dominion Carolina utilize trenchless construction methods in floodplains that may contain these vegetation communities. As discussed in the EA,³⁷ Dominion Carolina would avoid impacts on all wetlands (including those that may contain vegetation communities of special concern) by using a trenchless construction method. To minimize impacts on vegetation communities during construction and operation in all project areas, Dominion Carolina is required to follow the Commission's *Wetland and Waterbody Construction and Mitigation Procedures* for restoration and post-construction monitoring and reporting.

³⁷ EA at 38.

7. Route Alternatives

47. The Friends of Congaree Swamp question whether its concerns regarding Minor Route Alternative 1 were properly addressed in the EA. As addressed in the EA,³⁸ our staff analyzed one major route alternative located entirely within existing rights-of-way, and two minor route alternatives with increased segments of the route located within existing rights-of-way. The EA concludes that none of the route alternatives offered a significant environmental advantage over the proposed route since all three alternatives would increase the pipeline length, increase the acres of both temporary and permanent impacts, increase the number of wetlands and waterbodies crossed, increase the number of residences in proximity to the pipeline, and increase the numbers of landowners impacted. Thus, the EA did not recommend any of these alternatives. We agree.

48. Based on the analysis in the EA and as supplemented herein, we conclude that if constructed and operated in accordance with Dominion Carolina's application and supplements, and in compliance with the environmental conditions in Appendix C to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

49. 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 of facilities approved by this Commission.³⁹

50. 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, and all comments and upon consideration of the record,

³⁸ EA at 92-97.

³⁹ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Dominion Carolina authorizing it to construct and operate its Columbia to Eastover Project, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Dominion Carolina's:

(1) completion of construction of the authorized facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) compliance with all applicable Commission regulations including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) compliance with the environmental conditions listed in Appendix C to this order;

(4) execution of firm service agreements equal to the levels of service and in accordance with the terms of service represented in the precedent agreement prior to commencing construction.

(C) Dominion Carolina's proposed initial recourse rate for firm transportation service under Rate Schedule FT is approved, subject to the conditions described above.

(D) Dominion Carolina is directed to charge its currently-effective interruptible rate, as discussed above.

(E) Dominion Carolina's request to charge its maximum system fuel retention percentage is approved.

(F) Dominion Carolina shall file actual tariff records no earlier than 60 days, and no later than 30 days, prior to the date the project facilities go into service.

(G) Dominion Carolina shall keep separate books and accounting of costs attributable to the proposed incremental services, as described above.

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

(I) The untimely motions to intervene are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Timely, Unopposed Interventions

Beckham Swamp, LLC

John Grego

Monteith P. Todd on behalf of Belle Grove, LLC

Patriots Energy Group

SCE&G

St. Matthews Baptist Church

Appendix B

Untimely Motions to Intervene

Robert H. Bunch Sr.
Chris M. Cloaninger
Congaree Riverkeeper
Tracci Dorgan
Michael T. Dotson
Richland County Conservation Commission
South Carolina Department of Natural Resources
U.S. Department of the Interior
U.S. Fish and Wildlife Service

Appendix C

Environmental Conditions

1. Dominion Carolina shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Dominion must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction (and operation).
3. **Prior to any construction**, Dominion Carolina shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel will be informed of the EI'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**, Dominion Carolina shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Dominion Carolina's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the Order must be

consistent with these authorized facilities and locations. Dominion Carolina's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

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

This requirement does not apply to extra workspace allowed by the the Commission's *Upland Erosion Control, Revegetation and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands. Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins**, Dominion Carolina shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Dominion Carolina must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Dominion Carolina will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Dominion Carolina will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses

- and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- c. the number of EIs assigned (per spread), and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Dominion Carolina will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Dominion Carolina's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Dominion Carolina will follow if noncompliance occurs; and
 - h. 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 environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Dominion Carolina shall file updated status reports with the Secretary on a **weekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Dominion Carolina's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

- d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Dominion Carolina from other federal, state, or local permitting agencies concerning instances of noncompliance, and Dominion Carolina's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Dominion Carolina shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
 9. Dominion Carolina must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
 10. **Within 30 days of placing the authorized facilities in service**, Dominion Carolina 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 conditions in the Order Dominion Carolina has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
 11. **Prior to construction**, Dominion Carolina shall file with the Secretary documentation of its consultation with the South Carolina Department of Health and Environmental Control and Richland County regarding applicable mitigation measures and associated permits for operation of the mainline valve at milepost 5.2 and Access Road 084 within a Special Flood Hazard Area.
 12. **Prior to conducting blasting activities**, Dominion Carolina shall file its blasting plan(s) with the Secretary for the review and written approval of the Director of OEP.
 13. **Prior to construction**, Dominion Carolina shall file with the Secretary, for review and written approval by the Director of OEP, a revised combined *Response Plan*

for Handling Inadvertent Releases of Drilling Fluid and Horizontal Directional Drilling Contingency Plan. The revised plan must include:

- a. specific contact information for local, state, and federal agencies that would be contacted if an inadvertent release occurs and/or a contingent crossing method is required;
 - b. details for the conditions and number of attempts that would be completed before an HDD is abandoned, a new HDD location is chosen, and when the use of an alternate crossing method may be required; and
 - c. contingent crossing methods for each HDD location and a discussion of the regulatory authority and process that Dominion Carolina would be required to follow if a trenchless construction method is not feasible.
14. **Prior to construction**, Dominion Carolina shall file with the Secretary:
- a. the location, by milepost, of any previously unidentified private water wells within 150 feet of construction workspaces, as identified during remaining field surveys and landowner coordination; and
 - b. documentation indicating where testing plans would be implemented for any previously unidentified wells.
15. **Prior to the use of an alternative waterbody crossing method for the Congaree River HDD**, Dominion Carolina shall develop an alternative site-specific crossing plan in consultation with the Commission, the Corps, National Marine Fisheries Service, FWS, South Carolina Department of Health and Environmental Control, and the South Carolina DNR, as applicable. The final alternative crossing plan must be filed for review and written approval from the Director of OEP prior to its implementation.
16. **Prior to construction**, Dominion Carolina shall file with the Secretary, for review and written approval by the Director of OEP, a revised construction configuration to avoid palustrine forested wetland WLRR-01 at milepost 5.3, or provide justification for the workspace.
17. **Prior to construction**, Dominion Carolina shall file with the Secretary consultation with the FWS South Carolina field office regarding migratory birds to determine what, if any, additional minimization and mitigation measures are appropriate for the project.
18. **Dominion Carolina shall not begin construction activities until:**
- a. Commission staff receives comments from the National Marine Fisheries Service regarding the proposed action relative to the Atlantic sturgeon and shortnose sturgeon;

- b. the Commission completes any necessary Endangered Species Act Section 7 consultation with the National Marine Fisheries Service for the Atlantic sturgeon and shortnose sturgeon; and
 - c. Dominion Carolina has received written approval from the Director of OEP that construction or use of mitigation measures may begin.
19. **Dominion Carolina shall not begin construction activities until:**
- a. surveys for the rough-leaved loosestrife are complete and the results and any comments from the FWS have been provided to the Secretary for review;
 - b. the Commission completes any necessary Endangered Species Act Section 7 consultation with the FWS for the rough-leaved loosestrife; and
 - c. Dominion Carolina has received written approval from the Director of OEP that construction or use of mitigation measures may begin.
20. **Prior to construction**, Dominion Carolina shall file with the Secretary, for the review and written approval of the Director of OEP, revised site-specific plans that show evidence of landowner concurrence for each residence that would be located within 10 feet of construction work areas and fencing.
21. Dominion Carolina shall develop and implement an environmental complaint resolution procedure. The procedure must 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**, Dominion Carolina must mail the complaint procedures to each landowner whose property would be crossed by the project.
- In its letter to affected landowners, Dominion Carolina shall:
- a. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - b. instruct the landowners that if they are not satisfied with the response, they should call Dominion Carolina's Hotline (the letter should indicate how soon to expect a response); and
 - c. instruct the landowners that if they are still not satisfied with the response from Dominion Carolina's Hotline, they should contact the Commission's Landowner Helpline at 877-337-2237 or at LandownerHelp@ferc.gov.
- In addition, Dominion Carolina shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
- a. the identity of the caller and date of the call;

- b. the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
- c. a description of the problem/concern; and
- d. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.

22. **Dominion Carolina shall not begin construction until:**

- a. Dominion Carolina files the South Carolina State Historic Preservation Office's comments on the revised draft cultural resources survey report;
- b. the Advisory Council on Historic Preservation is afforded the opportunity to comment if historic properties would be adversely affected; and
- c. staff reviews and the Director of OEP approves the cultural resources reports and any plans, and notifies Dominion Carolina in writing that any avoidance/treatment plan may be implemented and/or construction may proceed.

All materials 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.”**

- 23. **Prior to night time and/or 24-hour drilling activities**, Dominion Carolina shall file with the Secretary a night time noise mitigation plan for the review and written approval by the Director of OEP. During any nighttime drilling operations at HDD 07 (milepost [MP] 12.3), HDD 10 (MP 13.9), HDD 11 (MP 14.3), HDD 13 (MP 19.1), HDD 20 (MP 24.4), or HDD 36 (MP 25.4), Dominion Carolina shall implement the approved plan, monitor noise levels, and make all reasonable efforts to restrict the noise attributable to the drilling operations to no more than an day-night averaged sound level of 55 decibels on the A-weighted scale at the nearest noise sensitive area.
- 24. Dominion Carolina shall utilize the flume dry-ditch crossing method for any open-cut crossing of Mill Creek (MP 5.7), Cabin Branch (MP 13.4), Cedar Creek (MP 16.4), or Tom's Creek (MP 20.7).
- 25. **Prior to construction**, Dominion Carolina shall file a revised *Non-Native Invasive Species Management Plan* that incorporates the South Carolina DNR's recommendation to revegetate areas deemed unsuitable for replanting with woody species with native warm-season grasses. Dominion Carolina shall revise the plan in consultation with both the South Carolina DNR and the Natural Resources Conservation Service to determine the appropriate seed mixes and/or planting requirements for revegetation.

Document Content(s)

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