

153 FERC ¶ 61,203
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket No. CP14-555-000

ORDER ISSUING CERTIFICATE

(Issued November 19, 2015)

1. On September 30, 2014, Dominion Transmission, Inc. (Dominion) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations requesting authorization to construct and operate pipeline, compression, regulation, valves, and other facilities in Ohio and Pennsylvania (Lebanon West II Project). As discussed below, the Commission will grant the requested authorization, subject to conditions.

I. Background and Proposal

2. Dominion is a natural gas company, as defined by section 2(6) of the NGA, which transports natural gas in interstate commerce. Dominion's natural gas system extends through Ohio, West Virginia, Pennsylvania, New York, Maryland, and Virginia.

Dominion proposes to:

- (1) replace, with the same diameter pipe, two 26-inch-diameter and nine 30-inch-diameter sections of its existing TL-400 pipeline in Coshocton, Tuscarawas, Muskingum, Licking, Harrison, Columbiana, and Carroll Counties, Ohio and Beaver County, Pennsylvania;²

¹ 15 U.S.C. § 717f(c) (2012).

² The 11 sections of pipeline to be replaced total approximately 10.08 miles in length. Dominion proposes to replace the existing pipe with thicker-walled pipe to enable operation at the higher operating pressures needed to provide additional transportation service under the Lebanon West II Project.

- (2) add 10,915 horsepower (hp) of compression at its existing Rural Valley Compressor Station in Armstrong County, Pennsylvania, expand the existing compressor building to accommodate a new centrifugal compressor, and install an additional motor control center in the existing auxiliary building, as well as a third blow down separator/silencer, new suction/discharge tie-ins, and other minor changes for the new compressor;
- (3) install additional regulation to reduce the pressure on its existing TL-400 pipeline as the pipeline leaves Dominion's existing Newark Compressor Station in Licking County, Ohio;
- (4) install additional regulation equipment at its existing Beaver Compressor Station in Beaver County, Pennsylvania, to allow additional gas to flow from Dominion's existing TL-400 Extension 1 pipeline to its TL-400 pipeline segments;
- (5) install four new valves and 30-inch diameter pipeline (i.e., crossover piping) at Dominion's existing Washington Compressor Station in Fayette County, Ohio, to make the TL-400 pipeline bi-directional; and
- (6) add a new relief valve on Dominion's existing LN-25 pipeline at its existing Coxcomb Gate Assembly Site in Allegheny County, Pennsylvania, for additional over-pressure protection.

3. Dominion states that the proposed Lebanon West II Project will enable it to provide an additional 130,000 dekatherms per day (Dth/day) of firm transportation service from Dominion's existing Mark West Liberty Bluestone Interconnection in Butler County, Pennsylvania, to the Lebanon-Texas Gas Interconnection with Texas Gas Transmission Corporation in Warren County, Ohio. Dominion estimates that the Lebanon West II Project will cost approximately \$111,839,745.

4. Dominion conducted an open season from November 6 to November 14, 2013, and executed a precedent agreement with R.E. Gas Development, LLC (RE Gas) for all of the project's 130,000 Dth/day of incremental service for an initial term of 20 years.³ Dominion proposes to charge a new incremental rate for service utilizing the expansion capacity under the terms and conditions of its existing Rate Schedule FT.

³ Dominion conducted a reverse open season soliciting turnback capacity during the same period, but it received no bids.

II. Notice, Interventions, and Comments

5. Notice of Dominion's application was published in the *Federal Register* on October 24, 2014 (79 Fed. Reg. 63,610), establishing a date for filing motions to intervene of October 31, 2014. The parties listed in Appendix A filed timely, unopposed motions to intervene.⁴

6. On November 3, 2014, National Fuel Gas Distribution Corporation (National Fuel) filed a late motion to intervene in this docket. On September 23, 2015, Freshwater Accountability Project (Freshwater), Heartwood, and Ohio Valley Environmental Coalition (Ohio Valley) each filed a single pleading seeking to intervene in a number of different dockets, including the instant proceeding.⁵ Freshwater, Heartwood, and Ohio Valley each cited the Commission's policy of allowing late intervention during the National Environmental Policy Act (NEPA) review process in support of its request for late intervention.⁶ On September 29, 2015, Dominion filed an answer in opposition to the motions of Freshwater, Heartwood, and Ohio Valley to intervene out of time, alleging that the parties have failed to show good cause for the timing of their filings and suggesting that granting the late interventions might disrupt the proceeding and burden other parties and the Commission. While Freshwater's, Heartwood's, and Ohio Valley's contention that they "only recently became aware of the Projects" is not adequate to demonstrate good cause sufficient to justify their late requests to intervene in this proceeding,⁷ they are correct that the Commission has, to date, been very liberal in

⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2015).

⁵ In addition to Dominion's Lebanon West II Project proposal in CP14-555-000, Freshwater and Ohio Valley requested intervention in Dominion's Docket Nos. CP14-497-000 (New Market Project), CP15-7-000 (Monroe to Cornwell Project), CP15-492-000 (Leidy South Project), and Columbia Gas Transmission's (Columbia) Docket No. CP15-87-000 (Utica Access Project); and Heartwood requested intervention in Dominion's Docket Nos. CP14-497-000, CP15-7-000 and Columbia's Docket No. CP15-87-000).

⁶ We note, however, that the Notice of Availability of Environmental Assessment of the Lebanon West II Project emphasized that comments should be filed on or before July 2, 2015, more than two months before Freshwater, Heartwood, and Ohio Valley filed their requests to intervene.

⁷ See *California Department of Water Resources and the City of Los Angeles*, 120 FERC ¶ 61,057 (2007), *reh'g rejected*, 120 FERC ¶ 61,248 (2007), *aff'd California Trout and Friends of the River v. FERC*, 572 F.3d 1003 (9th Cir. 2009).

granting late motions to intervene in natural gas infrastructure proceedings. In addition, we find that granting the untimely motions to intervene will not, in fact, delay, disrupt, or unfairly prejudice any parties to this proceeding. Thus, we will grant the untimely motions to intervene pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.

III. Discussion

7. Since Dominion proposes to construct and operate facilities used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposals are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.⁸

A. Application of the Certificate Policy Statement

8. 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 natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

⁸ 15 U.S.C. §§ 717f(c) and 717f(e) (2012).

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).

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.

10. As discussed above, the threshold requirement for pipelines proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. We have determined that generally where a pipeline proposes to charge incremental rates for new construction that are higher than the pipelines existing maximum system rates for comparable service, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.¹⁰ That is the case here. Accordingly, we find that the threshold no-subsidy requirement under the Certificate Policy Statement has been met.

11. We also find that the proposal will not degrade service to Dominion's existing customers. The project will allow Dominion to provide additional transportation service to RE Gas, while continuing to meet existing firm obligations to its customers. In addition, there will be no adverse impact on other pipelines in the region or their captive customers because the proposal is not intended to replace service on other pipelines. Also, no pipeline company has protested Dominion's application.

12. The proposed project will disturb approximately 196.5 acres of land. In order to minimize impacts on landowners, Dominion will construct over 90 percent of the proposed facilities on existing rights-of-way and on previously disturbed property. The compressor station modifications will take place within the fence lines of existing compressor station facilities. Accordingly, we find that Dominion has designed the project to minimize adverse impacts on landowners and surrounding communities.

13. The proposed project will allow Dominion to provide 130,000 Dth/day of firm transportation service for RE Gas from Pennsylvania to Ohio. Based on the benefits the project will provide and the minimal adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7, that the public convenience and necessity requires approval of Dominion's proposal, subject to the conditions discussed below.

¹⁰ See, e.g., *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002).

B. Rates**Initial Recourse Rates**

14. Dominion proposes an initial incremental reservation charge of \$13.0945 Dth/day for Lebanon West II Project service. This reservation charge was calculated by dividing the first year cost of service of \$20,427,489 by 1,560,000 Dth (130,000 Dth/day x 12 months). Dominion used a pre-tax rate of return of 13.70 percent, which Dominion states is the pre-tax return underlying the design of its settlement rates in Docket No. RP97-406-000.¹¹ In addition, Dominion states it used its system depreciation rate of 2.5 percent, which was also approved as part of the settlement of Docket No. RP97-406-000.¹² Further, Dominion proposes to charge all other applicable rates, charges, and surcharges under its Rate Schedule FT, including its Transportation Cost Rate Adjustment (TCRA) and Electric Power Cost Adjustment (EPCA) charge, the maximum usage charge, and maximum system fuel retention percentage.

15. We have reviewed Dominion's incremental cost of service and proposed rates and find that they are reasonable. Because the proposed incremental monthly reservation charge of \$13.0945 Dth/day is higher than the general applicable Rate Schedule FT monthly reservation charge of \$3.8820 Dth/day, it is appropriate for Dominion to charge an incremental rate for service utilizing project capacity in order to protect Dominion's existing customers from subsidizing the project. We accept Dominion's proposed incremental rate and direct Dominion to file tariff records that are consistent with the *pro forma* tariff records contained in Dominion's filing, between 30 and 60 days prior to the date the project facilities go into service. In addition, Commission policy requires a pipeline to charge its currently effective system IT rate for any interruptible service rendered on additional capacity made available as a result of an incremental expansion that is integrated with existing pipeline facilities.¹³

Reporting Incremental Costs

16. Consistent with the Certificate Policy Statement, we direct Dominion 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

¹¹ Application, Exhibit P.

¹² See also *CNG Transmission Corp.*, 85 FERC ¶ 61,261, at 62,051 (1998).

¹³ See, e.g., *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138, at P 31 (2012); *Gulf South Pipeline Co., LP*, 130 FERC ¶ 61,015, at P 23 (2010); and *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at PP 313-314 and 326 (2006).

Commission's regulations.¹⁴ 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. 710.¹⁵ Such measures protect existing customers from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project.

C. Environmental Analysis

17. On November 25, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was 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.

18. Allegheny Defense Project (Allegheny) and the U.S. Department of the Interior (DOI) filed comments responding to the NOI. The primary issues raised by Allegheny and DOI concerned segmentation, indirect, and cumulative impacts, threatened and endangered species, water quality, fish and wildlife habitats, invasive plant impacts, and impacts on pollinator species.

19. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), Commission staff prepared an environmental assessment (EA) for Dominion's proposal. 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. The EA specifically addresses each environmental comment filed in response to the NOI. The EA was issued for a 30-day comment period and placed into the public record on June 2, 2015. The U.S. Fish and Wildlife Service (FWS),¹⁶ the Pennsylvania Department of Environmental Protection (Pennsylvania DEP), and Dominion filed comments on the EA.

¹⁴ 18 C.F.R. § 154.309 (2015).

¹⁵ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

¹⁶ In its filing, FWS indicated it had no new comments.

Indirect Effects of Natural Gas Production

20. The Council on Environmental Quality's (CEQ) regulations direct federal agencies to examine the direct, indirect, and cumulative impacts of proposed actions.¹⁷ Indirect impacts are defined as those "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems."¹⁸ Accordingly, to determine whether an impact should be studied as an indirect impact, the Commission must determine whether it (1) is caused by the proposed action and (2) is reasonably foreseeable.

21. With respect to causation, "NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause"¹⁹ in order "to make an agency responsible for a particular effect under NEPA."²⁰ As the Supreme Court explained, "a 'but for' causal relationship is insufficient [to establish cause for purposes of NEPA]."²¹ Thus, "[s]ome effects that are 'caused by' a change in the physical environment in the sense of 'but for' causation," will not fall within NEPA if the causal chain is too attenuated.²² Further, the Court has stated that "where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect."²³

22. An effect is "reasonably foreseeable" if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision."²⁴ NEPA

¹⁷ See 40 C.F.R. § 1508.25(c) (2015).

¹⁸ See 40 C.F.R. § 1508.8(b) (2015).

¹⁹ *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752 at 767 (2004) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

²⁰ *Id.*

²¹ *Id.*

²² *Metro. Edison*, 460 U.S. at 774.

²³ *Dep't of Transp. v. Pub. Citizen*, 541 U.S. at 770.

²⁴ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). See also *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

requires “reasonable forecasting,” but an agency is not required “to engage in speculative analysis” or “to do the impractical, if not enough information is available to permit meaningful consideration.”²⁵

23. The Commission does not have jurisdiction over natural gas production. The potential impacts of natural gas production, with the exception of greenhouse gases and climate change, would be on a local and regional level. Each locale includes unique conditions and environmental resources. Production activities are thus regulated at a state and local level. In addition, the Environmental Protection Agency regulates deep underground injection and disposal of wastewaters and liquids under the Safe Drinking Water Act, as well as air emissions under the Clean Air Act. On public lands, federal agencies are responsible for the enforcement of regulations that apply to natural gas wells.

24. As we have previously concluded in natural gas infrastructure proceedings, the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline (or other natural gas infrastructure) project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by the CEQ regulations.²⁶ A causal relationship sufficient to warrant Commission analysis of the non-pipeline activity as an indirect impact would only exist if the proposed pipeline would transport new production from a specified production area and that production would not occur in the absence of the proposed pipeline (i.e., there will be no other way to move the gas).²⁷ To date, the Commission has not been presented with a proposed pipeline project that the record shows will cause the predictable development of gas reserves. In fact, the opposite causal relationship is more likely,

²⁵ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

²⁶ *See, e.g., Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh'g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed sub nom. Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2012) (unpublished opinion).

²⁷ *See c.f. Sylvester v. U.S. Army Corps of Engin'rs*, 884 F.2d 394, 400 (9th Cir. 1989) (upholding the environmental review of a golf course that excluded the impacts of an adjoining resort complex). *See also Morongo Band of Mission Indians v. F.A.A.*, 161 F.3d 569, 580 (9th Cir. 1998) (concluding that increased air traffic resulting from airport plan was not an indirect, “growth-inducing” impact); *City of Carmel-by-the-Sea v. United States Dept. of Transp.*, 123 F.3d 1142, 1162 (9th Cir. 1997) (acknowledging that existing development led to planned freeway, rather than the reverse, notwithstanding the project’s potential to induce additional development).

i.e., once production begins in an area, shippers or end users will support the development of a pipeline to move the produced gas. It would make little economic sense to undertake construction of a pipeline in the hope that production might later be determined to be economically feasible and that the producers will choose the previously-constructed pipeline as best suited for moving their gas to market.

25. Even accepting, *arguendo*, that a specific pipeline project will cause natural gas production, we have found that the potential environmental impacts resulting from such production are not reasonably foreseeable. As we have explained, the Commission generally does not have sufficient information to determine the origin of the gas that will be transported on a pipeline. It is the states, rather than the Commission, that have jurisdiction over the production of natural gas and thus would be most likely to have the information necessary to reasonably foresee future production. We are aware of no forecasts by such entities, making it impossible for the Commission to meaningfully predict production-related impacts, many of which are highly localized. Thus, even if the Commission knows the general source area of gas likely to be transported on a given pipeline, a meaningful analysis of production impacts would require more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods, which can vary per producer and depending on the applicable regulations in the various states. Accordingly, the impacts of natural gas production are not reasonably foreseeable because they are “so nebulous” that we “cannot forecast [their] likely effects” in the context of an environmental analysis of the impacts related to a proposed interstate natural gas pipeline.²⁸

26. Nonetheless, we note that, although not required by NEPA, a number of federal agencies have examined the potential environmental issues associated with unconventional natural gas production in order to provide the public with a more complete understanding of the potential impacts. The Department of Energy has concluded that such production, when conforming to regulatory requirements, implementing best management practices, and administering pollution prevention concepts may have temporary minor impacts to water resources.²⁹ The EPA has reached

²⁸ *Habitat Educ. Ctr.*, 609 F.3d 897, 902 (7th Cir. 2010) (finding that impacts that cannot be described with specific specificity to make their consideration meaningful need not be included in the environmental analysis).

²⁹ See U.S. Department of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From The United States* (August 2014) at 19, available at <http://energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf> (“DOE Addendum”)

a similar conclusion.³⁰ With respect to air quality, the Department of Energy found that natural gas development leads to both short-and long-term increases in local and regional air emissions.³¹ It also found that such emissions may contribute to climate change. But to the extent that natural gas production replaces the use of other carbon-based energy sources, the Department of Energy found there may be a net positive impact in terms of climate change.³²

27. Freshwater, Heartwood, and Ohio Valley state that approving the project will encourage further shale gas drilling, which, they state, has significant adverse environmental impacts. Allegheny contends that the EA must consider the indirect and cumulative impacts of past, present, and reasonably foreseeable future natural gas drilling in the Marcellus and Utica shale formations because the proposed project is a “critical link in ensuring that natural gas supply can reach market areas.” Specifically, Allegheny asserts that future gas drilling in the Marcellus and Utica shale formations is reasonably foreseeable even if the Commission does not know the extent of the production.

28. The record in this proceeding does not demonstrate the requisite reasonably close causal relationship between the impacts of future natural gas production and the Lebanon West II Project which would necessitate further analysis. As we have explained in other proceedings, a number of factors, such as domestic natural gas prices and production costs drive new drilling.³³ Again, any such production would take place pursuant to the regulatory authority of state and local governments.

³⁰ See U.S. Environmental Protection Agency, *Draft Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*, at ES-6, available at http://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=244651#_ga=1.161236345.552502682.1445635975. See also Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, 80 Fed. Reg. 16128, (Mar. 26, 2015) (Bureau of Land Management promulgates regulations for hydraulic fracturing on Federal and Indian lands to “provide significant benefits to all Americans by avoiding potential damages to water quality, the environment, and public health”)

³¹ DOE Addendum at 32.

³² *Id.* at 44.

³³ *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 39 (2015) (*Rockies Express*). See also *Florida Wildlife Fed’n v. Goldschmidt*, 506 F.Supp. 350, 375 (S.D. Fla. 1981) (ruling that an agency properly considered indirect impacts when market demand, not a highway, would induce development).

29. Moreover, even if a causal relationship between our action here and additional production were presumed, the scope of the impacts from any such induced production is not reasonably foreseeable. Allegheny asserts that the Commission should review the Bureau of Land Management's Reasonable Foreseeable Development Scenario ("RFDS") for the agency's Southeastern District to forecast the proposed project's alleged induced shale gas production. The RFDS forecasts total federal and non-federal oil and gas wells by county or parish in several southeastern states to help inform analyses of federal wells' direct and cumulative impacts. The RFDS's forecasts, however, do not take into account the influence of future changes in infrastructure or transportation, which are precisely the factors that Allegheny claims trigger additional production. Based on this omission, even if a causal relationship existed between the proposed project and additional upstream development, the kind of analysis in the RFDS would not reveal the specific impacts attributable to any purported induced development.

Pennsylvania DEP Concerns

30. The Pennsylvania DEP notes that Dominion must obtain a Federal Clean Water Act, section 401 Water Quality Certification. As shown in Table 1 of the EA, Dominion obtained a Pennsylvania DEP Chapter 105 General Permit dated December 4, 2014, which includes the section 401 Water Quality Certification for the project. Table 1 of the EA also addresses Dominion's intent to file for and receive all other required permits.

31. The Pennsylvania DEP states that in the event that the project includes demolishing any structure or disturbing any asbestos-containing materials, the project may be subject to the federal asbestos regulations found at 40 C.F.R. Part 61, Subpart M, beginning at 40 C.F.R. § 61.140. As recommended in EA section B.7.0, Environmental Condition 17 of this order provides for worker safety while working with asbestos-containing materials and for proper disposal of any asbestos-containing materials found during abandonment by removal of project facilities. Dominion's compliance with this condition will ensure compliance with the federal regulations regarding asbestos-containing materials.

32. The Pennsylvania DEP states that the Commission must base its air quality analysis "on the latest and most accurate emission estimation techniques available," as required under 40 C.F.R. § 93.159(b). The Pennsylvania DEP states that the EA provides no details about its methodology or calculations, leaves out construction vehicle emissions, and fails to use deterioration rates to more accurately reflect non-road equipment emissions. Since the EA does not indicate that deterioration rates were used, the Pennsylvania DEP assumed that deterioration rates were not used to estimate emissions.

33. We note that the EA does not typically include all supporting documentation because such documentation is contained in the application included in the public record. Dominion provided non-road emissions calculations as part of Resource Report 9, at

Appendix 9-A, Construction Emission Calculations, and a supplement thereto. These calculations, as well as the deterioration rate calculations, were based on the U.S. Environmental Protection Agency's (EPA) NONROAD model, which uses deterioration rates to incrementally increase emission factors of non-road equipment as the equipment ages.

34. The Pennsylvania DEP states that the air quality analysis must include increased emissions from increased highway traffic and changes in traffic patterns caused by the project, including employee trips to and from the project. The Pennsylvania DEP states that the motor vehicle emissions model, i.e., USEPA MOVES Model, must be used to estimate all excess highway emissions caused by the project, as required under 40 C.F.R. § 93.159(b)(1) (2015).

35. Due to its limited and temporary nature, project construction would not significantly affect traffic patterns in a way that would significantly increase highway emissions. Therefore, an air quality traffic analysis is not warranted. Further, the EA quantifies the construction vehicle emissions and concludes that construction equipment would not result in a significant impact on air quality.³⁴

36. The Pennsylvania DEP states that the EA's air quality analysis must include an estimate of volatile organic compound emissions due to leaks, blowdown venting, maintenance events, and all other fugitive events for future years or include a detailed protocol for preventing underground pipeline leaks of volatile organic compound emissions. The Pennsylvania DEP also asserts that (1) the air emissions analysis did not include other emissions that could cause a substantial increase in direct and indirect emissions; (2) since the Commission regulates environmental impacts of pipeline construction and the Pipeline and Hazardous Material Safety Administration (PHMSA) regulates pipeline maintenance, PHMSA should submit an EA of future indirect emissions that would occur due to corrosion, as required by EPA's General Conformity regulations; and (3) the Commission should work with the relevant federal agencies to ensure that the EA incorporates all analyses of future emissions. The Pennsylvania DEP concludes that the EA's air quality analysis of future emissions needs more transparency and detail so commenters can determine whether emissions were estimated properly.

37. As noted above, the EA does not typically include all supporting documentation. Publicly available supporting documentation for the project's fugitive emissions, however, can be found on the Commission's eLibrary website. As reflected in the EA, our environmental staff analyzed the information Dominion provided regarding construction emissions, independently verified the estimated emissions, and determined that the construction emissions would fall below the General Conformity applicability

³⁴ EA at 45-46.

threshold. Further, the EA sufficiently and conservatively estimated the potential impacts of direct and indirect construction and operational emissions.³⁵ We concur with the EA's conclusion that the project would not result in significant adverse impacts on air quality.

Dominion Concerns

38. Dominion requests relief from the June 1 to November 30 waterbody crossing construction time window described in its Erosion and Sediment Control Plan, for Segments 14-20 in Coshocton, Tuscarawas, Harrison, and Carroll Counties, Ohio. Dominion states that it cannot finish construction before November 30, 2015, because it must start no earlier than October 1, 2015, in order to comply with restrictions protecting bat habitats. Dominion states that relief from the June 1 to November 30 restriction would allow it to minimize the outage to a firm transportation customer, American Electric Power.

39. Dominion states that it will abide by the guidelines set forth in the section 7 consultation with the FWS, and in the U. S. Army Corps of Engineers' section 404 and the Ohio Environmental Protection Agency's (Ohio EPA) section 401 waterbody crossing permits. To date, neither the Ohio EPA nor the Corps of Engineers have placed waterbody crossing timing restrictions or waivers on the project. Dominion asserts that, unless specifically required by the Ohio EPA's or Corps of Engineers' permits, the June 1 through November 30 restriction is not needed to protect the two Ohio state-listed endangered northern madtom and the state-listed threatened mountain madtom, if all other prescribed crossing measures and permit conditions are followed. We note that under section V.B.1 of its Erosion and Sediment Control Plan, Dominion could be relieved from the June 1 through November 30 construction time window if it is expressly permitted in writing by the appropriate federal or state agency on a site-specific basis.

40. Dominion also submitted corrections to data in its Resource Report 9, regarding projected construction-related greenhouse gases and criteria pollutant emissions for 2015 and 2016, from which the EA's Table 7 was generated. Our environmental staff reviewed these corrections and concluded that the revised emission numbers do not alter the EA's finding that construction impacts would be temporary and would not result in a significant impact on regional air quality.

41. We have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of the project. Based on our consideration of this information, we agree with the conclusions presented in the EA and find that if constructed and operated in accordance with Dominion's application, as

³⁵ EA at 46-47.

supplemented, and the conditions imposed in Appendix B to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

42. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.³⁶

43. At a hearing held on November 19, 2015, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application(s), as submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

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

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

- (1) completion of construction of the proposed facilities and making them available for service within one year of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable Commission regulations under the NGA 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 in Appendix B to this order; and

³⁶ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

- (4) execution, prior to commencement of construction, of a firm service agreement equal to the level of service and in accordance with the terms of service represented in its precedent agreement.

(C) Dominion's proposed initial incremental rate for transportation on the proposed project is approved, as more fully discussed above.

(D) Dominion must file actual tariff records setting forth its incremental recourse rates in accordance with section 154.207 of the Commission's regulations and other proposed changes to its tariff implementing the project not less than 30 days, nor more than 60 days, prior to placing the proposed project in service.

(E) Dominion shall keep separate books and accounting of costs attributable to the proposed incremental service, as more fully described above.

(F) Dominion 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. Dominion shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(G) The late motions to intervene are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A
Timely Motions to Intervene

Allegheny Defense Project
Atlanta Gas Light Company, Elizabethtown Gas, and Virginia Natural Gas, Inc.
Atmos Energy Marketing LLC
Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works
Exelon Corporation
National Grid Gas Delivery Companies
New Jersey Natural Gas Company
New York State Electric & Gas Corp. and Rochester Gas and Electric Corp.
NJR Energy Services Company
Peoples Natural Gas Company LLC and Peoples TWP LLC

Appendix B Environmental Conditions

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

0. Dominion shall follow the 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.
1. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during activities associated with 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 abandonment, construction, and operation.
2. **Prior to any abandonment or construction activities**, Dominion shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspector (EI), 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 abandonment, construction, and restoration activities.
3. The authorized facility locations shall be as shown in the EA. **As soon as they are available, and before the start of abandonment or construction activities**, Dominion shall file with the Secretary any revised construction workspace configuration drawings at a scale not smaller than 1:6,000 with station positions for all activities 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'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's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline and facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

4. Dominion shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying any 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 abandonment or construction activities occur in or near that area.**

This requirement does not apply to extra workspace allowed by Dominion's Erosion & Sediment Control 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.
5. **Within 60 days of the acceptance of the certificate and prior to abandonment or construction activities**, Dominion shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Dominion will implement the mitigation measures required by the Commission Order. Dominion must file revisions to the plan as schedules change. The plan shall identify:

- a. how Dominion will implement the 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 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, 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 will give to all personnel involved with abandonment or construction activities and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Dominion's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Dominion 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 mitigation training of onsite personnel;
 - (3) the start of abandonment or construction activities; and
 - (4) the start and completion of restoration.
6. Beginning with the filing of its Implementation Plan, Dominion shall file updated status reports with the Secretary on a **biweekly basis until all abandonment, 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's efforts to obtain the necessary federal authorizations;
 - b. the 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 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 Commission Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Dominion from other federal, state or local permitting agencies concerning instances of noncompliance, and Dominion's response.
7. **Prior to receiving written authorization from the Director of OEP to commence abandonment or construction of any project facilities**, Dominion shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
 8. Dominion 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.
 9. **Within 30 days after completing the abandonment and construction**, Dominion shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been abandoned or constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Dominion 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.
 10. **Prior to abandonment or construction**, Dominion shall file with the Secretary an updated list of the location of all water wells within 150 feet of the proposed construction workspaces. **Within 30 days of placing the facilities in service**, Dominion shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.
 11. **Prior to abandonment and construction**, Dominion shall file with the Secretary the location by milepost of source water protection areas that will be affected by the project, any correspondence with the Ohio Environmental Protection Agency regarding impacts, and mitigation measures that Dominion will implement.

12. Dominion shall not exercise the eminent domain authority granted under section 7(h) of the NGA to acquire a permanent right-of-way exceeding 50 feet in width for replacement Segments 14 and 17, and exceeding 50 feet in width from the centerline of the existing TL-400 Pipeline for Segments 16 and 20.
13. **Prior to abandonment and construction**, Dominion shall file with the Secretary documentation that the Ohio State Historic Preservation Office (SHPO) reviewed and accepted the project-specific Unanticipated Discovery Plan. If the SHPO does not find the plan acceptable, Dominion shall file a revised Unanticipated Discovery Plan that addresses its concerns, for the review and approval of the Director of OEP.
14. Dominion **shall not begin abandonment or construction** of facilities and/or use of staging, storage, or temporary work areas and new or to-be-improved access roads in Ohio **until**:
 - a. Dominion files with the Secretary comments from the Ohio SHPO on all cultural resources survey and testing reports, and required treatment plans;
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. Commission staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Dominion in writing that any required mitigation measures (including archaeological data recovery) 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.”**

15. Dominion shall file a noise survey with the Secretary **no later than 60 days** after placing the modified Rural Valley Compressor Station into service. If a full power load condition noise survey is not possible, Dominion shall provide an interim survey at maximum possible horsepower load and provide the full load survey **within six (6) months**. If the noise attributable to the operation of all of the equipment at the Rural Valley Compressor Station under interim or full horsepower load conditions exceeds an L_{dn} of 55 dBA at any nearby noise-sensitive areas, Dominion shall file a report on what changes are needed and shall install the additional noise control measures to meet the acceptable level **within one year** of the project in-service. Dominion shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after installation of the additional noise controls.

16. **Prior to any abandonment activities**, Dominion shall file the following information with the Secretary for the review and written approval of the Director of OEP:
- a. identify any known facilities to be abandoned or disturbed having asbestos containing materials (ACMs);
 - b. develop protocols to comply with the appropriate requirements found at 40 C.F.R. Part 61, Subpart M, to identify asbestos containing materials that might be encountered;
 - c. if facilities with asbestos containing materials would be abandoned or disturbed, identify the methods to separate the asbestos containing materials for proper disposal; and
 - d. develop worker protection protocols and provide for proper disposal of asbestos containing materials.

Document Content(s)

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