

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Dominion Transmission, Inc.

Docket No. CP06-83-000

ORDER DETERMINING JURISDICTIONAL STATUS OF FACILITIES

(Issued November 27, 2006)

1. On March 6, 2006, Dominion Transmission, Inc. (Dominion) filed an application to reclassify certain natural gas facilities in West Virginia from transmission to gathering. As discussed below, this order grants Dominion's request.

**Background/Proposal**

2. Dominion is the interstate gas transmission unit of Dominion Resources, Inc., a fully integrated natural gas and electric company. Dominion is engaged primarily in the operation of an interstate pipeline system for the transportation and storage of natural gas in the states of New York, Ohio, Pennsylvania, Virginia, West Virginia, Maryland, and the District of Columbia, under authorizations granted by and subject to the jurisdiction of the Commission.

3. Dominion states that as a part of a comprehensive review of its Appalachian pipeline facilities to determine whether those facilities are properly functionalized, Dominion found that nine of its D-lines and one of its H-lines serve a gathering rather than a transmission function. Dominion states that the function of these facilities requires it to reclassify these lines as gathering.

4. Dominion requests authority to refunctionalize Line Nos. D-108, D-13319, D-1489, D-16343, D-1651, D-18970, D-19161, D-171, D-172, and H-181 from transmission to gathering. Dominion states that all the D-Lines are small in diameter, ranging from two inches to four inches; span short distances, from 33 feet to 1,250 feet; and operate at relatively low pressures of 60 psig to 100 psig. Dominion states that Line No. H-181 is 22 miles in length, with a diameter of 10 inches, gathers gas from 49 meters serving an estimated 200 wells and operates at a pressure of 60 psig. Further, Dominion states that all these lines are connected directly to its gathering system, not its transmission system.

5. Dominion states that it will not abandon any service in connection with reclassifying the facilities described herein. Reclassifying these facilities from transmission to gathering will result in no physical change in service to its existing customers. Dominion will continue to operate the facilities reclassified as gathering on an open-access basis in accordance with the rates, terms and conditions set forth in Dominion's FERC Gas Tariff. No producers will be affected by reclassifying the D-Lines from transmission to gathering. Reclassifying Line H-181, however, will result in shippers who bring gas into Dominion's system through a receipt point on Line H-181 being assessed Dominion's currently effective gathering charge. Dominion states that this will affect 49 meters owned by 34 producers with aggregate daily volumes of approximately 2,548 Mcf.

### **Interventions**

6. After notice by publication in the *Federal Register* on March 21, 2006 (71 *Fed. Reg.* 14,190), timely, unopposed motions to intervene were filed by National Fuel Gas Distribution Corporation, Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works (jointly), The East Ohio Gas Company, d/b/a Dominion East Ohio, The Peoples Natural Gas Company, d/b/a Dominion Peoples, Hope Gas, Inc., d/b/a Dominion Hope, Equitable Gas Company, and Atmos Energy Corporation.<sup>1</sup> No protests or motions to intervene in opposition were filed.

### **Discussion**

7. Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for "the production or gathering of natural gas" or to gathering services.<sup>2</sup> The Commission has developed, over the years, a number of legal tests to determine

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<sup>1</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 CFR §385.214(d) (2006).

<sup>2</sup> The courts have narrowly construed the NGA section 1(b) exemption to "the physical act of drawing gas from the earth and preparing it for the first stages of distribution." *See, e.g., Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, 474 U.S. 409, 418 (1986) (*quoting Northern Natural Gas Co. v. State Corporation Commission of Kansas*, 372 U.S. 84 (1963)). However, while section 1(b) of the NGA provides a general exemption for gathering, the Commission does have jurisdiction pursuant to section 4(a) of the NGA over gathering service rates charged by interstate pipelines "in connection with" jurisdictional transportation. *Equitrans, L.P.*, 109 FERC ¶ 61,209 at n. 1 (2004).

which facilities are non-jurisdictional gathering facilities.<sup>3</sup> The Commission presently relies on the modified “primary function test,” which includes consideration of several physical and geographical factors, including: (1) the length and diameter of the pipelines; (2) the extension of facilities beyond the central point-in-the-field; (3) the facilities’ geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressures of pipelines. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.<sup>4</sup> In addition to the factors enumerated above, the Commission also weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria.<sup>5</sup>

8. Applying the primary function test to the subject facilities, the Commission finds that their primary function is gathering. All of the D-lines that are the subject of this filing are small pipelines ranging from two to four inches in diameter, and are operated at relatively low pressures with maximum allowable operating pressures (MAOP) in the range of 60 to 100 psig. Further, all of these D-line facilities are directly connected to Dominion’s gathering system, support the gathering of local production from various natural gas wells, and none flows gas directly into Dominion’s transmission system.<sup>6</sup> The D-lines at issue here are located throughout, and directly connect numerous wells to, Dominion’s reticulated gathering system. Thus, their configuration is consistent with a gathering function.<sup>7</sup>

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<sup>3</sup> See *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

<sup>4</sup> See, e.g., *TOMCAT*, 59 FERC ¶ 61,340, at 62,239 (1992).

<sup>5</sup> *Id.* See also *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990) and *Northern Natural Gas Company*, 116 FERC ¶61,238 at P 53 (2006).

<sup>6</sup> See *Equitrans, L.P.*, 109 FERC ¶ 61,209 (2004); *El Paso Natural Gas Co.*, 57 FERC ¶ 61,186 (1991).

<sup>7</sup> Given the characteristics of gas operations in the Appalachian region, the Commission does not consider the central point in the field test a reliable indicator of the primary function of the facilities at issue here. See *Mahue Construction Co.*, 94 FERC ¶ 61,118 at p. 61,449 (2001); *Columbia Natural Resources, Inc.*, 79 FERC ¶ 61,038 at p. 61,168 (1997).

9. Line H-181, as described above, is a 22-mile long, 10-inch diameter pipeline located in Ritchie County, West Virginia, in Dominion's Bubble No. 3219 production area. While Line H-181 is significantly larger than any of the subject D-lines, longer and larger-diameter lines have been found to be gathering.<sup>8</sup> Further, Line H-181 is used to gather local production from five gathering lines tied directly to it and through 49 metering points along its length serving an estimated 200 wells. Thus, Line H-181 serves as the spine of a spine-like configuration of gathering facilities, which is also consistent with a gathering function.<sup>9</sup>

10. Dominion's predecessor, CNG Transmission Corporation (CNG), also sought to have Line H-181 reclassified from transmission to gathering in 1999.<sup>10</sup> However, at that time, Line H-181 an interconnection with Cranberry Pipeline Corporation (Cranberry), an intrastate pipeline, near Elm Run, in Ritchie County, West Virginia, creating the potential that Line H-181 would receive gas being transported by Cranberry under section 311 of the Natural Gas Policy Act subject to the Commission's jurisdiction. Therefore, it was not clear that Line H-181 would be used solely for transportation qualifying the NGA's gathering exemption, and the Commission declined to grant CNG's request for reclassification of Line H-181.<sup>11</sup>

11. Due to a permanent change in the physical configuration of Dominion's pipeline system in late 2005 and a transfer of pipeline facilities feeding the Elm Run Interconnect, Cranberry is no longer physically capable of delivering gas to Dominion via the Elm Run Interconnect. With this change, the possibility that Line H-181 could be used to provide transportation service that does not qualify as gathering no longer exists, eliminating that basis for not reclassifying Line H-181 as a gathering facility.

12. The D-line facilities have no compression tied to them, and H-181 feeds into Dominion's Craig Compressor Station with an average suction pressure of 13 psig and an

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<sup>8</sup> See, e.g., *Eastern America Gathering Corp.* 67 FERC ¶ 61,258 at p. 61,888 (1994) (finding 56 mile long, 12-inch diameter pipeline to be gathering facility and the spine of a spine-like configuration of gathering facilities).

<sup>9</sup> *Id.*

<sup>10</sup> *CNG Transmission Corporation (CNG)*, 86 FERC ¶ 61,138 (1999), *order on rehearing*, 90 FERC ¶ 61,290 (2000).

<sup>11</sup> *Id.*, 86 FERC at p. 61,489.

average discharge pressure of 290 psig. All of the subject facilities are upstream of Dominion's Hastings processing facility. The Commission has previously found these characteristics consistent with a gathering function.<sup>12</sup>

13. The subject facilities all operate at low pressure, the majority of lines having an MAOP of 60 psi and the highest a MAOP of 100 psi. The Commission has stated that operating pressures of less than 300 psi are typical of gathering pipelines in the Appalachian region.<sup>13</sup>

14. Dominion states that the facilities at issue in this proceeding are physically and operationally separate and distinct from Dominion's transmission system. The fact that the facilities at issue here were classified as transmission by Dominion is not a bar to a pipeline's seeking to refunctionalize them as gathering; the historical classification of facilities does not necessarily dictate their actual function.<sup>14</sup>

15. Based on the above considerations, the Commission finds that gathering is the primary function of all subject facilities, and Dominion's request to reclassify the subject facilities from transmission to gathering is approved.<sup>15</sup>

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<sup>12</sup> *Id.* and *GPM v. El Paso*, 81 FERC ¶ 61,208 at p. 61,888; *El Paso Natural Gas Co.*, 81 FERC ¶ 61,209 at pp. 61,892-93 (1997), *reh'g denied*, 82 FERC ¶ 61,337 (1998), *aff'd*, *Williams Field Services Group, Inc. v. FERC*, 194 F.3d 110 (D.C. Cir. 1999); *ANR Pipeline Co.*, 77 FERC ¶ 61,230 at p. 61,936 (1996).

<sup>13</sup> *CNG*, 86 FERC at p. 61,489.

<sup>14</sup> Prior to the Commission's open-access policies requiring unbundling of pipeline services, there was no need, as a practical matter, to review pipelines' applications for certificate authority to ascertain whether the proposed facilities included gathering facilities. Thus, in many instances, gathering facilities were constructed under certificate authority and the costs associated with those facilities were part of the rate base of pipelines' sales rates. During and subsequent to unbundling, many of these facilities were found by the Commission to perform a gathering function. *Equitrans, L.P.*, 109 FERC ¶ 61,209 at P 59 (2004).

<sup>15</sup> If Dominion desires in the future to transfer any of the subject facilities with the result that any of its gathering services using those facilities would be terminated, Dominion will need to make a filing under section 4 of the NGA and in compliance with Part 154 of the Commission's regulations at least 30 days prior to terminating such services. *CNG*, 86 FERC at p. 61, 489.

**Environmental**

16. The Commission finds that approval of Dominion's request to reclassify the subject facilities from transmission to gathering does not constitute a major federal action significantly affecting the quality of the human environment. Dominion is not proposing to abandon the facilities at this time. Dominion will continue to use the facilities to provide gathering services in connection with its jurisdictional transmission services. Therefore, for environmental review purposes, the Commission finds approval of the requested reclassification qualifies as a categorical exclusion under section 380.4 (a)(27).

**The Commission orders:**

Dominion is authorized to reclassify the ten subject pipeline segments described in its application and in the body of this order from transmission to gathering.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.