119 FERC ¶ 61,242
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc. Docket No. CP07-10-000

ORDER ISSUING CERTIFICATE

(Issued June 6, 2007)

1. On October 17, 2006, Dominion Transmission, Inc. (Dominion) filed an application under section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate new natural gas facilities and to upgrade existing facilities in West Virginia. Dominion's new and upgraded facilities, collectively known as the TL-263 Expansion Project, will allow Dominion to accept an additional 21,250 Dth a day of natural gas into Dominion's TL-263 transmission line in southern West Virginia. In conjunction with the new facilities, Dominion also requests approval of a new Rate Schedule Access Service (ACS) for access to Dominion's system and approval of initial recourse rates for this service. For the reasons discussed herein, we are granting Dominion's requested construction proposal. We are, however, denying Dominion's ACS proposal, and instead requiring Dominion to establish an incremental firm transportation rate to recover the cost of service associated with constructing and operating the approved facilities.

Background and Proposal

2. Dominion is engaged primarily in the business of storing and transporting natural gas for customers in the District of Columbia, Maryland, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Dominion also provides non-jurisdictional gathering and processing services for both its own gas production and that of third parties. Dominion states that it is one of a limited number of interstate transmission companies offering transportation services out of southern West Virginia to the wider pipeline grid.

3. Dominion states that because of a lack of pipeline infrastructure, natural gas producers in southern West Virginia, southwestern Virginia, and eastern Kentucky have experienced difficulties delivering their gas supplies to market. Dominion states that the nature of the terrain in these areas combined with a lack of financial support for infrastructure projects have impeded the development of infrastructure necessary to move

gas to market. Dominion conducted an open season extending from January 11, 2006 through January 25, 2006, to determine interest in a new service that would allow Dominion to receive additional production volumes into its TL-263 transmission line to help reduce production constraints and/or shut-ins of producers' gas.[1] The open season resulted in executed precedent agreements with two shippers for a combined 21,250 Dth a day entering the line at various receipt points for an initial contract term of 15 years. The precedent agreements are with Dominion Exploration & Production, Inc. and Penn Virginia Oil & Gas Corporation (Penn Virginia).

4. To provide this service, Dominion proposes the following upgrades to its transmission line TL-263 and its Loup Creek Compressor Station:

- looping a portion of TL-263 in Boone County with approximately 6.43 miles of 12-inch diameter pipe (designated as TL-570), beginning near Pond Fork and heading north towards Cheylan;

- replacing six deteriorated pipeline segments totaling approximately 601 feet of 12-inch diameter pipe on TL-263;

- installing overpressure protection upstream of the Loup Creek Compressor Station on TL-263;

- modifying the existing Loup Creek Compressor Station by splitting the suction header so that gas coming from the Bolt gathering system to the east will be directed to unit number 4 and gas coming from the Huff Creek gathering system to the west will be directed to unit numbers 1, 2, and 3;

- reworking unit number 4 at the Loup Creek Compressor Station by installing a new, smaller, low stage cylinder to compensate for limited driver horsepower and compressor frame rod limits.

5. Dominion estimates the cost of the proposed construction at $14,668,089, if the Commission approves the project in time for Dominion to construct the project in 2007.[2]

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[1] TL-263 is a 12-inch diameter pipeline extending approximately 55 miles from the Oscar Nelson Compressor Station in Wyoming County to the Kanawha River near Chelyan, West Virginia.

[2] Dominion states that construction cannot take place during winter months because of very steep terrain and frequent adverse weather conditions. If construction cannot be accomplished before winter 2007 and must be delayed until spring 2008, avers Dominion, the estimated cost will rise to $15,923,000.

Dominion proposes to recover the costs of the new facilities through a new rate schedule (Rate Schedule ACS) and charge for access to Line TL-263 at certain receipt points. The proposed charge would provide access only and shippers would be responsible for arranging and paying all appropriate charges to transport gas downstream of the access points under separate agreements.

Interventions

6. Notice of Dominion's application was published in the *Federal Register* on November 3, 2006 (71 *Fed. Reg.* 64691). The City of Richmond, Virginia, the Independent Oil & Gas Association of West Virginia, National Fuel Gas Distribution Corporation, Cabot Oil & Gas Corporation, Dominion Exploration & Production, Inc., Charlotte E. Bowles, and KeySpan Delivery Companies,[3] the East Ohio Gas Company dba Dominion East Ohio, the Peoples Natural Gas Company dba Dominion Peoples, and Hope Gas, Inc. dba Dominion Hope, and Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works, 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.[4]

7. CNX Gas Company LLC and Penn Virginia filed motions to intervene out of time. These entities have shown an interest in this proceeding, and their participation will not delay the proceeding or prejudice the rights of any other party. Accordingly, for good cause shown, we will permit their late intervention.[5]

Discussion

8. Because Dominion seeks to construct facilities related to the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities is subject to subsections (c) and (e) of section 7 of the NGA.

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[3] The KeySpan Delivery Companies are Brooklyn Union Gas Company (dba KeySpan Energy Delivery NY), KeySpan Gas East Corporation (dba KeySpan Energy Delivery LI), and Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company.

[4] 18 C.F.R. § 385.214 (2006).

[5] 18 C.F.R. § 385.214(d) (2006).

The Certificate Policy Statement

9. On September 15, 1999, the Commission issued its Certificate Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.[6] The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement 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. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

10. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to support the project financially 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.

11. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' 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 then proceed to complete the environmental analysis where other interests are considered.

12. Dominion's customers for the new service have agreed to pay an incremental rate that will recover the project's costs. Thus, Dominion will not be relying on subsidies from existing customers. Our engineering analysis shows that the facility modifications will allow Dominion to provide up to 21,250 Dth per day of additional capacity through its constrained Line TL-263 while maintaining its existing operational flexibility. Thus, the project will not adversely impact Dominion's existing contractual obligations, and no

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[6] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

existing customers have objected to the proposal. There should likewise be no adverse effect on existing pipelines or their captive customers as the project will bring new gas supplies to market and will not replace existing service. No existing pipelines or their customers have objected to the proposal.

13. The economic impact on landowners will be minimal. The majority of the facilities installations will be constructed using existing access roads, within existing corridors or on property that is adjacent to current facility installations, thus minimizing impact on property. No landowners have objected to the proposal, and Dominion states that it will continue to work cooperatively with all affected landowners to address any concerns as it acquires the necessary property for the proposed facilities.

14. We find that the proposed TL-263 Expansion Project will benefit the public by providing additional much needed infrastructure for producers to transport natural gas from a capacity constrained area to the marketplace. The fact that the project is fully subscribed for long-term incremental service demonstrates market support for the project. The Commission finds that the TL-263 Expansion Project will provide substantial benefits without adverse impacts on shippers or other pipelines. As discussed below, we are imposing conditions to mitigate any environmental impacts. Therefore, the proposal is consistent with the Certificate Policy Statement and section 7(c) of the NGA and we conclude that Dominion's proposed project is required by the public convenience and necessity.

15. Consistent with our standard practice, we will condition our certificate authorization so that construction cannot commence until after Dominion executes contracts that reflect the levels and terms of service represented in its precedent agreements.[7]

<u>Rate Treatment</u>

16. The proposed facilities will create expansion capacity on the TL-263 line, enabling Dominion to receive and transport an additional 21,250 Dth per day of gas quantities. To recover the costs of the project, Dominion proposes to charge Penn Virginia and Dominion Exploration and Production for the right to access the TL-263 line at the points where the additional volumes will be received from Dominion's gathering system. As proposed by Dominion, the costs would be recovered through a reservation access charge as described in *pro forma* Rate Schedule ACS included in Exhibit P of the application. According to precedent agreements submitted as Exhibit I of the application, the prospective customers would enter into ACS service agreements with 15-year terms for a

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[7] *See, e.g., Tennessee Gas Pipeline Company*, 101 FERC ¶ 61,360, P 21 (2002).

combined 21,250 Dth per day of access quantities, corresponding to the amount of additional transmission capacity that will be created by the project on the TL-263 line. Penn Virginia would subscribe to 15,000 Dth per day of access quantities and Dominion Exploration and Production would subscribe to 6,250 Dth per day of access quantities.

17. Section 2 of *pro forma* Rate Schedule ACS provides that access service would consist of Dominion's receipt of gas volumes. Section 2.1 also states that the ACS customer is "responsible for making arrangements to transport gas from Receipt Point(s) . . . under another Rate Schedule, or through arrangements with various pool operators operating on [Dominion's] system." Under sections 3 and 4 of the rate schedule, Dominion would bill the customer a monthly reservation charge for each Dth of daily access quantity (DAQ) under contract, plus in-kind fuel. Dominion proposes a maximum reservation access charge of $9.1865 per Dth per month, plus 0.74 percent fuel retainage. The proposed rate is based on an annual cost of service for the TL-263 expansion facilities of $2,342,562 and annual billing determinants of 255,000 Dth (21,250 Dth per month X 12 months).

18. We approve the proposed annual cost of service and billing determinants for the TL-263 Expansion Project. However, we reject Dominion's proposal to recover such costs through a separate access charge. Dominion must propose incremental transportation rates under its existing rate schedules to recover the costs of the project.

19. To describe the TL-263 Expansion project as simply creating access to Dominion's transmission system does not accurately characterize the project or the service that it will provide utilizing the incremental transportation capacity resulting from the project. This project will create incremental expansion capacity on the TL-263 line not only at points where additional volumes will be received, as described in the precedent agreements with Penn Virginia and Dominion Exploration and Production, but also on the line itself. In fact, most of the project will consist of modifications to the line. Line improvements will consist of 6.43 miles of 12-inch looping, 601 feet of replacement 12-inch pipe sections, and overpressure protection. Dominion estimates the cost of line modifications to be $13,174,979.[8] In addition, compressor station modifications include reconfiguring a suction header and installing a smaller low stage cylinder at the Loup Creek Compression Station at an estimated cost of $1,493,110.[9]

20. The expansion capacity created by the project will be constructed for, and fully subscribed by, the two customers that responded to the open season. Charging

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[8] Exhibit K. This estimate includes intangible associated costs.

[9] *Id.*

Dominion's existing system rates for the incremental 21,250 Dth per day of firm service would not recover the annual cost of service.[10] Therefore, it is appropriate for Dominion to establish incremental transportation rates to recover the project's costs. It will also be necessary, however, for Dominion to recover such expansion costs consistent with the cost recovery design required under section 11E of the General Terms and Conditions (GT&C) of its tariff.

21. The TL-263 transmission line is part of Dominion's Appalachian System, a network of gathering and transmission lines connecting supply areas in West Virginia, Pennsylvania and New York to distribution markets and storage locations. Section 11E of Dominion's GT&C sets forth rules regarding gas transportation on the Appalachian System. Section 11E.1 divides the Appalachian System into northern and southern aggregation areas, each with a virtual pooling point (Appalachian Pooling Point South and Appalachian Pooling Point North) located at the downstream terminus of the respective area, just north and south of a liquids extraction plant at Valley Gate junction in Pennsylvania.[11] The TL-263 transmission line is located within the southern aggregation area, and gas received into that line is pooled at the Appalachian Pooling Point South.

22. Under GT&C section 11E.2, all shipments of gas from a receipt point upstream of, and to an aggregation point must be under two separate transportation agreements: an initial IT agreement for service from the receipt point to the aggregation point, and a second agreement for service from the aggregation point to a downstream delivery point. Section 11E.3 provides that if transportation will be through and downstream of an aggregation point, the only applicable charges for IT service to the aggregation point are Dominion's gathering and applicable products extraction rates. However, section 11E.3 also provides that transportation to a delivery point upstream of the aggregation point

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[10] We note that although Dominion is currently subject to a rate moratorium under a settlement approved in Docket No. RP05-267-000, *et al.* (111 FERC ¶ 61,285 (2005)), section 4.4 of Article IV of the settlement provides that Dominion is not precluded from making a filing to construct new facilities. Thus, this order is consistent with the settlement.

[11] Generally, a virtual gas pool is an accounting mechanism under which various gas supplies are contractually packaged together for the purpose of sales and transportation. Gas must be nominated into and out of a pool in accordance with the NAESB nomination process, requiring the location of a virtual point on the system at which pools are deemed to function. Such virtual points are typically located as far downstream as possible to increase the amount of participation from supply sources, thereby increasing flexibility within the pools operating at the point.

may be billed at the applicable rates under Rate Schedule FT or IT. Section 11E.4 provides that transportation of gas downstream from an aggregation point may be under Rate Schedules IT, MCS, FT or FTNN.

23. To be consistent with the contractual requirements in section 11E and also recover the costs approved herein, Dominion must propose incremental recourse transportation rates that will be applicable to all incremental volumes on Dominion's system resulting from this project. Moreover in this regard, we note that Dominion has previously entered into negotiated rate IT contracts with pool operators which specify the Appalachian Pooling Point South as the delivery point. Dominion will not be precluded from entering into such contracts for transportation of the incremental volumes.

24. Although we will permit Dominion to derive incremental recourse rates using its currently projected costs, we reject its proposal to charge a separate fuel retention percentage of 0.74 percent for access service in addition to fuel retained under a separate transportation service agreement for service downstream of the access point. Instead, we direct Dominion to apply the same fuel retention percentage to transportation utilizing the expansion capacity that is currently applicable to transportation on the line. Exhibit G-II of the application states that "there is no requirement for any additional horsepower to accomplish this project." Therefore, the fuel requirements for transporting the incremental volumes should be no different from currently existing fuel requirements on the line.

Environment

25. On January 9, 2007, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed TL-263 Expansion Project and Request for Comments on Environmental Issues (NOI). No comments were received in response to the NOI.

26. Our staff prepared an environmental assessment (EA) for Dominion's proposal. The EA addresses geology and soils, surface water resources, ground water resources, vegetation, wildlife and fisheries, threatened and endangered species, land use, cultural resources, air and noise quality and alternatives.

27. Based upon the analysis described in the EA, we conclude that if constructed and operated in accordance with Dominion's application, supplements, and the conditions in the appendix to this order, approval of this proposal will not constitute a major federal action significantly affecting the quality of the human environment.

28. 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 or operation of facilities approved by this Commission.[12] Dominion shall notify the Commission's environmental staff by telephone, e-mail, 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 within 24 hours.

29. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

<u>The Commission orders</u>:

(A) A certificate of public convenience and necessity is issued authorizing Dominion to construct and operate facilities as described more fully in the body of this order and in Dominion's application, subject to the environmental mitigation conditions contained in the Appendix.

(B) The authorization granted in ordering paragraph (A) above is conditioned upon Dominion's compliance with Part 154 and section 157.20(a), (c), (e), and (f) of the Commission's regulations.

(C) Dominion shall establish incremental recourse rates based on the annual cost of service and billing determinants in Exhibit P of Dominion's application, and file actual tariff sheets consistent with the discussion in this order not less than 45 days prior to commencing service.

(D) Dominion's *pro forma* tariff sheets setting forth Rate Schedule ACS and the ACS rate are rejected.

(E) Dominion shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Dominion. Dominion

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[12] *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), *order on reh'g*, 59 FERC ¶ 61,094 (1992).

shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(F) Dominion shall comply with the environmental conditions set forth in the Appendix.

(G) The facilities authorized in this order shall be completed and made available for service within one year of the date of issuance of this order pursuant to section 157.20(b) of the Commission's regulations.

(H) Prior to construction, Dominion must execute firm service agreements equal to the level of service represented in its precedent agreements with its customers.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

<u>Appendix</u>
Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Dominion shall follow the construction procedures and mitigation measures described in its application and supplemental filings (including responses to staff data requests) and as identified in the EA, unless modified by this 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 OEP before using that modification.

2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

    a. the modification of conditions of this Order; and
    b. the design and implementation of any additional measures 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 shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.

4. Dominion 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 Upland Erosion Control, Revegetation, and Maintenance Plan or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

a. implementation of cultural resources mitigation measures;
b. implementation of endangered, threatened, or special concern species mitigation measures;
c. recommendations by state regulatory authorities; and
d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

5. Dominion shall employ at least one environmental inspector on its project. The environmental inspector shall be:

a. responsible for monitoring and ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates or other authorizing documents;

b. responsible for evaluating the construction contractor’s implementation of the environmental mitigation measures required in the contract and any other authorizing document;

c. empowered to order correction of acts that violate the environmental conditions of this Order, and an other authorizing document;

d. responsible for documenting compliance with the environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and

e. responsible for maintaining status reports.

6. Dominion shall file updated status reports prepared by the environmental inspector with the Secretary on a **bi-weekly** basis **until** all construction-related activities, including restoration, are complete. On request, these status reports will also be provided to other Federal and state agencies with permitting responsibilities. Status reports shall include:

a. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;

b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies);

c. corrective actions implemented in response to all instances of noncompliance, and their cost;

d. the effectiveness of all corrective actions implemented;

e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and

f. copies of any correspondence received by Dominion from other Federal, state, or local permitting agencies concerning instances of noncompliance, and Dominion's response.

7. Dominion must receive written authorization from the Director of OEP **before commencing service** from its project. Such authorization will only be granted following a demonstration that rehabilitation and restoration of the sites are proceeding satisfactorily.

8. Dominion shall defer construction and use of facilities and staging, storage, and temporary work areas and new or to be improved access until: it files with the Secretary a treatment plan for Site 46Bo419; the Advisory Council on Historic Preservation and the SHPO comments as appropriate; Dominion files detail maps showing the avoidance and protection measures for sites 46Bo418,

46Bo43, 46Bo99, 46Bo97, and 46Rg269; and the Director of OEP reviews and approves all reports and notifies Dominion in writing that it may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **CONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE**.