133 FERC ¶ 61,076
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

The East Ohio Gas Company
Dominion Transmission, Inc

Docket No. CP10-107-000

ORDER ISSUING CERTIFICATES

(Issued October 21, 2010)

1. On March 26, 2010, The East Ohio Gas Company, d/b/a Dominion East Ohio (East Ohio), and Dominion Transmission, Inc. (Dominion) (jointly, Applicants) filed a joint application under section 7(c) of the Natural Gas Act (NGA)[1] and Part 157 of the Commission's regulations[2] requesting authorization for Dominion to lease storage capacity from East Ohio to provide interruptible interstate storage service to others. East Ohio, a local distribution company,[3] requests a limited jurisdiction blanket certificate under section 284.224 of the Commission's regulations[4] authorizing it to lease capacity to Dominion, to provide storage service to Dominion using the leased capacity, and to operate and maintain the related facilities.

2. The Commission will approve Phase I of the lease and issue the requested authorizations as conditioned below.

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[1] 15 U.S.C. § 717f(c) (2006).

[2] 18 C.F.R. Part 157 (2010).

[3] In 1954 the Commission's predecessor agency, the Federal Power Commission, affirmed East Ohio's exemption under NGA § 1(c), the Hinshaw Amendment. *See The East Ohio Gas Co.*, 13 FPC 1397 (1954).

[4] This section of the Commission's regulations provides for the issuance of blanket certificates to Hinshaw pipelines to provide open access transportation service to the same extent that and in the same manner that intrastate pipelines are authorized by Subpart C. 18 CFR § 284.224(b)(3) (2010).

I. Background

3. East Ohio and Dominion are subsidiaries of Dominion Resources, Inc. East Ohio is an Ohio corporation with its principal place of business in Cleveland, Ohio. East Ohio states that it is engaged in the business of gathering, purchasing, storing, and distributing natural gas at retail in Ohio and is regulated by the Public Utilities Commission of Ohio (Ohio PUC).[5] East Ohio is exempt from Commission jurisdiction as a Hinshaw pipeline under NGA section 1(c).[6] East Ohio serves approximately 1.2 million residential, commercial, and industrial customers in Cleveland, Akron, Canton, Lima, Marietta, Youngstown, and other communities primarily in northern and eastern Ohio.

4. The East Ohio system includes 41 interconnections with six interstate pipeline systems: Dominion, ANR Pipeline Company, Panhandle Eastern Pipe Line Company LP, Texas Eastern Transmission LP, Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company. East Ohio states that an interconnection with Rockies Express Pipeline should be operational in the near future.

5. East Ohio operates several storage fields located in the vicinity of Akron and Canton, Ohio that have a total capacity of approximately 140 billion cubic feet (Bcf), consisting of approximately 60 Bcf of working gas capacity and 80 Bcf of base gas, with peak day deliverability of over 1 Bcf per day. East Ohio uses over 25,000 horsepower of compression to inject gas into its storage fields and does not ordinarily compress gas on withdrawal from storage. East Ohio states that historically it would turn approximately its full storage capacity of 60 Bcf annually but, in the most recent years, it has turned only 54 or 55 Bcf of gas, leaving East Ohio with unused storage capacity.

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[5] East Ohio states that it is regulated in Ohio as a “natural gas company,” as defined in § 4905.03(A)(6) of the Ohio Revised Code, and as a “public utility” under § 4905.302(C) of the Ohio Revised Code.

[6] Under NGA section 1 (c), known as the Hinshaw amendment, the NGA does not apply to a pipeline that engages in interstate sales or transportation of natural gas or to the facilities the pipeline uses for such transportation or sales, if it receives such natural gas from another person within or at the boundary of a state, the gas is ultimately consumed within that state, and the facilities, rates and services of the pipeline are subject to regulation by a state commission. Pipelines exempt under NGA section 1(c) are commonly referred to as "Hinshaw pipelines."

6. Dominion is a Delaware corporation with its principal place of business in Richmond, Virginia. Dominion is engaged primarily in the business of storing and transporting natural gas in interstate commerce on an open-access basis for customers principally in New York, Ohio, Pennsylvania, West Virginia, Virginia, Maryland, and the District of Columbia.

7. Dominion states that it currently provides approximately 300 Bcf of top gas storage capacity to the interstate market, all of which is fully contracted under long-term firm service agreements. Dominion states that in the past seven years it has developed a series of storage projects that have added over 25 Bcf of additional storage capacity to its system. Another potential project, the Storage Factory Project, was the subject of the Commission's pre-filing process in Docket No. PF07-12-000. Dominion states that it had entered into precedent agreements for the initial phase of the Storage Factory Project to provide 7.5 million dekatherms (Dth) of storage capacity using a proposed new salt cavern storage in Pennsylvania with an in-service date of April 1, 2014, for injections and November 1, 2014, for withdrawals and related transportation. However, Dominion terminated the pre-filing process in Docket No. PF07-12-000 in November 2008, stating it would file a revised project application after initiating a new pre-filing process in 2011.

8. Dominion states that it intends its lease of capacity in the instant proposal to be part of the revised storage project that ultimately will replace the Storage Factory Project. Dominion states that it anticipates requesting permission to initiate pre-filing review proceedings for the larger project in July 2011, leading to a certificate application by June 2012.

II. Proposal

9. East Ohio requests a Section 284.224 limited jurisdiction blanket certificate authorizing it to lease capacity to Dominion, to provide storage service to Dominion using the leased capacity, and to operate and maintain the facilities necessary for such service.[7]

[7] Although East Ohio currently holds a Part 284.224 limited jurisdiction blanket certificate (*see The East Ohio Gas Co*., 13 FERC ¶ 61,028 (1980)), the Commission has found that a separate limited jurisdiction certificate is necessary in order to lease capacity to or from an interstate pipeline. *TriState Pipeline, L.L.C.*, 88 FERC ¶ 61,328, at 62,001-02 (*preliminary determination*) (1999), *vacated*, 90 FERC ¶ 61,258 (2000) (TriState decided not to proceed with the project and withdrew its application).

10. East Ohio states that it can initially make available three million Dth of storage capacity and specific associated deliverability rights for Dominion. East Ohio states that it can make this storage available to the interstate market while continuing to satisfy all its Ohio intrastate market commitments and regulatory requirements and without adversely impacting its existing customers. East Ohio states that it does not propose to devote any particular facilities to provide the interstate service but rather, will provide the capacity and deliverability rights specified in the Lease Agreement between it and Dominion using all of its integrated storage operations.

11. East Ohio further states that its ability to offer storage service to interstate customers currently is constrained because its system typically operates at lower pressure levels than the interstate pipeline systems that interconnect with its system. Therefore, volumes withdrawn from East Ohio's storage fields cannot physically be delivered onto an interstate pipeline system for further transportation to interstate markets. East Ohio and Dominion explain that they have agreed upon terms in the Lease Agreement, including displacement of gas, to address this limitation.[8]

12. Dominion requests authorization to enter into the Lease Agreement with East Ohio. Dominion also requests Commission authority to reserve the capacity acquired under the agreement to provide, in conjunction with other Dominion facilities and assets to be developed in the future, firm storage service beginning in 2014 for customers that entered into precedent agreements as part of the Storage Factory Project.[9] Until that time, Dominion proposes to offer interruptible storage services using the leased storage capacity under the terms of its existing tariff and rate schedules.[10]

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[8] Dominion states that it will propose construction of the compression which will be necessary to enable physical receipts of gas from East Ohio, making firm storage service possible in the future application requesting authorization for the project that will replace the Storage Factory Project.

[9] Because, as discussed below, Dominion will not be able to offer firm storage service using the capacity approved for lease herein, its request to reserve capacity for future use is moot.

[10] As noted above, Dominion intends the instant proposal to be part of the revised storage project that ultimately will replace the Storage Factory Project. The first phase of the lease is all that is under review here. Dominion expects to file an application for the larger second phase by June 2012.

13. Dominion states that in the future application for the project to replace the Storage Factory Project it will propose rates for the firm storage service using the leased capacity which will include the costs of the Lease Agreement. Until it receives Commission approval of the future application, Dominion states it will be at risk for the costs of the Lease Agreement.

The Lease Agreement

14. The Applicants have structured the Lease Agreement as an operating lease. East Ohio will continue to own, operate, and maintain all of its facilities on an integrated basis. Dominion will use the storage capacity and associated injection and withdrawal rights specified in the Lease Agreement to perform services for others as if it were Dominion's own storage. Dominion and East Ohio request a waiver of the Commission's "shipper must have title" rule to allow East Ohio to provide service to Dominion with gas owned by Dominion's customers.[11]

15. The lease of capacity and associated service will continue for a primary term of fifteen years, subject to certain roll-over rights.[12] The leased storage rights are structured in two successive phases, with Phase I commencing upon Commission approval of the instant proposal. Phase II would begin upon East Ohio's notice that it is ready to provide additional capacity (up to five million Dth) to the interstate market, upon completion of the compression which Dominion states it will propose in its future application.[13]

16. Throughout the term of the Lease Agreement, firm injection rights are provided during the months of April through October, equal to one–one hundred eightieth ($1/180^{th}$) of the storage capacity when Dominion's inventory is less than or equal to one half of the capacity, and one-two hundred fourteenth ($1/214^{th}$) of the leased capacity when Dominion's inventory is greater than one half of the capacity.[14] Dominion will deliver gas for injection into storage at mutually-agreed interconnections between the Dominion

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[11] Section 25 of the General Terms and Conditions of Dominion's tariff provides for a waiver of the shipper must have title requirement when Dominion acquires off-system capacity. Such a waiver is necessary for East Ohio as well as Dominion.

[12] Lease Agreement at Article V.

[13] *Id.* at Article III and Exhibits A and B.

[14] *Id.* at Section 3.2. Special terms address a shortened injection period during the first year of the lease.

and East Ohio systems,[15] and East Ohio will transport the gas on its intrastate system to its storage fields as part of the storage service under the Lease Agreement.

17. The withdrawal entitlements associated with the leased storage capacity are subject to varying daily and monthly limits, and differ in the first and second phases of the Lease Agreement.[16] During Phase I, there is a minimum withdrawal requirement in November, no withdrawal entitlements in December or January, and significant deliverability in February and March.

18. The sculpted monthly deliverability entitlements were negotiated to address East Ohio's operational needs (the required November withdrawals to avoid an adverse impact on storage migration and limited deliverability during the December and January peak periods of intrastate demand) and to satisfy Dominion's commercial needs (particularly for late-season deliverability). Gas withdrawn from storage will be transported from the storage fields by East Ohio on its own pipeline system to interconnections with Dominion under a new interstate transportation agreement to be entered into pursuant to East Ohio's existing authority under its section 284.224 limited jurisdiction blanket certificate.[17]

19. East Ohio will deliver the withdrawal volumes to the Dominion interconnects at the pressure existing on the East Ohio system, which currently significantly limits East Ohio's ability to flow gas physically into Dominion. Accordingly, for the Phase I service being considered here, redelivery of nominated withdrawals will be made by displacement; equivalent volumes that were scheduled for delivery by Dominion to the East Ohio system that same day instead will remain on Dominion's system. If the volumes scheduled for delivery on Dominion to East Ohio and available to displace withdrawals are insufficient on any day, East Ohio will have no obligation to provide the nominated withdrawals from storage. Applicants state that this provision, in effect, makes the leased storage deliverability interruptible.

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[15] The following 15 interconnections, all in Ohio, exist between the Dominion and East Ohio systems: Gilmore, Petersburg, Pennline, Meadville, Clarks Corner, Petersburg, Mullet I, Mullet II, Ormet, Augusta, Texas Eastern, Harlem Springs, Wayfarm, Williamstown, and Bowerstown.

[16] See Lease Agreement at Section 3.3 and Exhibits A and B.

[17] Pursuant to Section 3.3(c) of the Lease Agreement, Dominion also will enter into an interstate transportation agreement with East Ohio (under authority of its existing section 284.224 blanket certificate) at the maximum rates on file with the Commission. East Ohio states that it intends to file a separate application soon to update its Operating Statement and the rates applicable under that blanket certificate and to elect to charge the cost-based rates for comparable intrastate transportation service approved by the Ohio PUC in East Ohio's recently concluded rate case.

20. Applicants state that the Lease Agreement requires Dominion to pay East Ohio a Monthly Lease Charge based on the maximum cost-based rates approved by the Ohio PUC for East Ohio's intrastate In/Out Storage Service, which is the East Ohio service which most closely resembles the terms of the Lease Agreement.[18] The Monthly Lease Charge is subject to future adjustment if East Ohio's maximum cost-based rates for its In/Out Storage Service (or another comparable intrastate storage service if that service is eliminated) change in the future. Dominion also will pay an authorized overrun charge based on East Ohio's rates and charges for comparable intrastate services, for authorized injections or withdrawals above the firm entitlements, and for summer withdrawals or winter injections when allowed.

21. Finally, East Ohio will retain 1.4 percent of all quantities withdrawn from storage as an incrementally calculated fuel charge covering injections, withdrawals and the associated transportation of storage volumes on East Ohio's system under the related transportation agreement.[19] East Ohio states that applying the incremental fuel charge to withdrawal volumes transported from storage is consistent with the approach that it takes when providing unbundled intrastate transportation and storage services.

III. Notice and Interventions

22. Notice of the application in this docket was published in the *Federal Register* on May 4, 2010 (75 Fed. Reg. 23,754). Timely, unopposed motions to intervene were filed by the Office of Ohio Consumers' Counsel (OCC), City of Richmond, Virginia (Richmond), New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation, and the Consolidated Edison Company of New York, Inc. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[20]

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[18] *Id.* at Article VI and Application at Exhibit N. Applicants state that the rates set forth in Section 6.2 of the Lease Agreement as applicable to the comparable intrastate In/Out Storage service are set forth in Section 5.2 of East Ohio's FSS Rate Schedule, on East Ohio's Second Revised Sheet No. F-FSS3; that tariff sheet and the maximum storage rates were approved by the Ohio PUC as part of the settlement of East Ohio's recent state rate case. *See* Ohio PUC, *In the Matter of the Application of The East Ohio Gas Co. for Authority to Increase Rates for its Gas Distribution Service,* Case No. 07-829-GA-AIR, Opinion and Order, (October 15, 2008) (approving settlement); Entry on Rehearing in the same docket issued on December 19, 2008. East Ohio filed final revised tariff sheets (including the sheet noted above setting forth the storage rates) in conformance with these orders by the Ohio PUC on December 22, 2008.

[19] Lease Agreement at Section 3.3(c)(4).

[20] 18 C.F.R. § 385.214 (2010).

23. OCC also filed a protest and request for evidentiary hearing. The Applicants filed a motion for leave to answer and an answer. Richmond filed comments and an answer. While answers to protests are not allowed by the Commission's rules, the Commission will permit answers to be filed where they, as here, assist the Commission in its decision making.[21] We will address the protest and comments below.

IV. Discussion

24. Because Dominion proposes to use the capacity at issue to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, its proposal is subject to the requirements of sections 7(c) and (e) of the NGA. East Ohio's operation of capacity that it will lease to Dominion and Dominion's acquisition of such capacity by lease are also subject to such provisions of the NGA.

A. The Certificate Policy Statement

25. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction by establishing criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest.[22] A proposal to lease capacity with no related construction of facilities such as the proposal in this proceeding eliminates the Policy Statement's concerns with overbuilding, disruptions of the environment and the exercise of eminent domain. However, the threshold requirement under the Policy Statement, that a pipeline must be prepared to financially support the project without relying on subsidization from its existing customers, is equally applicable to leases of capacity. Similarly, whether the applicant has made efforts to eliminate or minimize any adverse effects the proposed lease might have on the applicant's existing customers and existing pipelines in the market and their captive customers is also relevant to our evaluation of the proposal.

26. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the

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[21] *See, e.g.*, *Dominion Transmission, Inc.*, 124 FERC ¶ 61,146 (2008); *Westar Energy, Inc.*, 121 FERC ¶ 61,108 (2007).

[22] *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

capacity of the lessor's pipeline.[23] To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.[24]

27. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits from using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease; and (3) the lease arrangement does not adversely affect existing customers.[25] The lease agreement between Dominion and East Ohio satisfies these requirements.

28. As more fully discussed below, we find that benefits from use of the lease will accrue, that the payments are satisfactory, and that the lease arrangement will not adversely affect existing customers. Therefore, we find that the proposed lease is required by the public convenience and necessity, subject to the conditions described herein.

29. Under the proposal, Dominion will provide interruptible storage service using the leased capacity under its existing IT Rate Schedule. Since the lease costs associated with the capacity are not included in Dominion's current rates, existing Dominion customers will not subsidize the service. Dominion shall maintain separate accounting records to ensure that costs and revenues associated with the leased capacity from East Ohio can be identified in any future proceeding in which Dominion might seek to recover the lease costs through rates. In addition, despite the fact that there appear to be not additional costs associated with East Ohio's lease of a portion of its existing capacity to Dominion, the Commission will nevertheless explicitly condition its approval of the lease on East Ohio's not shifting any costs that may ultimately be associated with the leased capacity to any of its existing interstate customers.[26]

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[23] *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

[24] *Texas Gas Transmission, LLC,* 113 FERC ¶ 61,185, at P 10 (2005).

[25] *Id.*; *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002); *Gulf Crossing Pipeline Co.*, 123 FERC ¶ 61,100, at P 111 (2008) (*Gulf Crossing*); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 31, *reh'g denied,* 127 FERC ¶ 61,164 (2009).

[26] *Midcontinent Express Pipeline LLC,* 124 FERC ¶ 61,089 at P 33.

30. The Commission has found that capacity leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, minimize environmental impacts, and result in administrative efficiencies for shippers.[27] Here, the lease arrangement will allow for additional storage capacity to be available on the interstate market without construction of duplicative facilities.

31. As noted in the application, the Lease Agreement requires Dominion to pay East Ohio a Monthly Lease Charge based on the maximum cost-based rates approved by the Ohio PUC for East Ohio's intrastate In/Out Storage Service, which is the East Ohio service which most closely resembles the terms of the Lease Agreement.[28] The Monthly Lease Charge is subject to future adjustment if East Ohio's maximum cost-based rates for its In/Out Storage Service (or another comparable intrastate storage service if that service is eliminated) change in the future. Dominion also will pay an authorized overrun charge based on East Ohio's rates and charges for comparable intrastate services, for authorized injections or withdrawals above the firm entitlements, and for summer withdrawals or winter injections when allowed.

32. The leased capacity also allows for the efficient use of the available capacity on East Ohio, avoids the environmental impact and impacts on landowners associated with constructing duplicative facilities, reduces the costs of Dominion's storage expansion and allows it to be placed in service earlier than if redundant facilities were constructed. Further, as we find in response to the protests and comments addressed below, there is no evidence that the lease arrangement will adversely affect existing customers.

B. <u>Protests and Comments</u>

1. <u>Cost Recovery</u>

33. OCC contends that the Applicants have failed to provide sufficient information for the Commission to determine whether the proposed lease complies with the Commission's Certificate Policy Statement. OCC states that although Dominion proposes to be at risk for the leased capacity in Phase I and to file a certificate application in which it would propose incremental rates for Phase II, it has not provided sufficient evidence to determine whether rolled-in rate treatment in the future would be more appropriate for the recovery of the lease costs. OCC requests that if the Commission

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[27] *See, e.g., Dominion Transmission, Inc.,* 104 FERC ¶ 61,267, at P 21 (2003); *Islander East Pipeline Co.,* 100 FERC ¶ 61,276, at P 70.

[28] Lease Agreement at Article VI and Application at Exhibit N.

grants approval of the lease it should rule that approval of the transaction is not a predetermination of the appropriate rate treatment for Phase II.

34. Richmond maintains that Dominion should remain at risk for the duration of the lease and requests the Commission to clarify that this will be the case unless and until the Commission authorizes the storage project contemplated in Phase II. Richmond also requests clarification that any authorization provided in this proceeding will not constitute pre-determination as to whether the Phase II storage project should receive Commission authorization or whether the services should be priced on a rolled-in or incremental basis.

35. In its answer, Dominion agrees that it will continue to be at risk for the costs of the lease until the Commission authorizes the storage project contemplated in Phase II subject to the clarification that the Commission has the authority to modify that situation in some future order. Dominion also does not object to Richmond's requested clarification that any authorization in this docket not constitute a pre-determination on the pricing of capacity for the Phase II project, noting that the application does not request predetermination of anything regarding a future application for a project using the leased capacity.

36. Richmond states in its answer it believes Dominion's clarification is acceptable as long as the Commission also clarifies that any certificate authorization provided in this proceeding shall not serve as a basis for approving any future recovery of the lease costs.

Commission Response

37. The Commission is only approving Phase I of the lease proposal in this proceeding; thus, Dominion is only being authorized to recover the costs associated with the capacity being leased in Phase I through its interruptible services under its existing tariff and rate schedules. As none of those costs are included in Dominion's existing rates, there will be no subsidization of the lease costs by existing customers. Applicants state that until Dominion constructs compression and other facilities to be proposed as part of the storage replacement project, Dominion is not able to offer firm storage service using the leased capacity. In addition, Dominion acknowledges that it will have to submit a separate certificate application for the storage project contemplated by Phase II of the Lease Agreement which would replace the authorization being approved here and incorporate additional leased capacity and other proposed facilities. Therefore, any determination regarding Phase II of the lease proposal, including the appropriate pricing conditions for the leased capacity, will be made in that proceeding based on the specific facts supporting the certificate application.

2. Exhibits Q, R, and S

38. OCC argues that the application in this proceeding should be rejected because it fails to include certain exhibits required under 18 C.F.R. § 157.16 (2010), i.e., Exhibits Q (Effect of Acquisition on Existing Contracts and Tariffs), Exhibit R (Acquisition Contracts), and Exhibit S (Accounting Statements). OCC states that such exhibits are required since the Commission views a lease of pipeline capacity as an acquisition of a property interest[29] and that East Ohio is accomplishing a transfer of an asset.[30]

39. Applicants respond that section 157.16 is not applicable here since Dominion is not acquiring any facilities from East Ohio, and the Commission has not withheld approval from prior certificate applicants seeking approval of leases, none of which filed Exhibits Q, R, or S.[31]

Commission Response

40. Section 157.16 refers by its own terms to acquisitions of facilities and thus does not apply to the application here. Nor is OCC's argument that East Ohio is transferring an asset to Dominion an accurate reflection of the nature of the commercial transaction involved here. East Ohio will continue to exercise management and control over its storage facilities, which will not be acquired by Dominion as it uses the capacity therein, just as East Ohio does regardless of the identity of a customer using its facilities. Further, the information included in the application allows the Commission to consider fully the issues relevant to whether the application is required by the public convenience and necessity. For these reasons, OCC's request that we reject the application is denied.

3. Request for Evidentiary Hearing

41. OCC states that the resolution of certain factual issues presented in this proceeding cannot be made in the absence of a formal evidentiary hearing. The issues include: (a) whether any harm to East Ohio and its in-state Ohio residential customers will result from approval of the proposed lease, especially by East Ohio's passing on any increased costs incurred by East Ohio; (b) whether the on-system storage to be made available to Dominion is excess to East Ohio's available capacity for intrastate needs; and (c) whether potential affiliate abuses, including open season concerns, require rejection of the application.

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[29] OCC Protest at 4-7.

[30] OCC Answer at 12.

[31] Applicants Answer at 5.

42. As demonstrated by the discussion below, we find that OCC has presented no material issue of fact that cannot be resolved on the basis of the material before us. Since the Commission is not required to conduct a formal evidentiary hearing where issues are efficiently and effectively resolved on the basis of a written record, we will deny OCC's request for an evidentiary hearing.[32]

a. <u>Harm Through Increased Costs</u>

43. OCC states that the Commission must examine closely whether East Ohio's existing local customer base will be faced with unnecessary and harmful charges resulting from the operation of the lease.[33] OCC states that East Ohio "will no doubt seek to pass on any increased costs to East Ohio's captive retail customers in Ohio."[34]

44. Applicants respond that, as explained in the Application, "the structure of the Lease Agreement enables East Ohio to make this storage [i.e., the quantities leased to Dominion] available to the interstate market while continuing to serve its traditional Ohio market and to satisfy all its Ohio intrastate commitments and regulatory requirements without any adverse impact on its existing customers."[35] Applicants state that the amount of capacity leased to Dominion is phased so that East Ohio can make additional limited investments in facilities to ensure that the protection of existing intrastate customers remains over time,[36] and that there will be no reduction in the amount of storage capacity or deliverability offered to East Ohio's existing intrastate customers as a result of the Lease Agreement.

45. During Phase I of the Lease, all withdrawals for the Dominion storage will be accomplished by displacement with volumes that otherwise would have been delivered to East Ohio by Dominion, limiting East Ohio's requirement to withdraw gas physically

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[32] *CNG Transmission Corp. v. FERC*, 40 F.3d 1289, 1293 (D.C. Cir. 1994); *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993); *Cascade Natural Gas Corp.,* 955 F.2d 1412 (10th Cir. 1992). *See also NE Hub Partners, L.P.*, 90 FERC ¶ 61,142, at 61,437 (2000) ("[o]ur practice is to hold a 'paper hearing' in those cases where the written record provides a sufficient basis for resolving the relevant issues rather than a formal in-person trial-type evidentiary hearing.").

[33] *Citing Midcontinent Express Pipeline LLC, Enogex, Inc.*, 124 FERC ¶ 61,089 (2008).

[34] OCC Answer at 9.

[35] Application at 6.

[36] *Id.*

from storage.[37] During Phase I, the minimum withdrawal requirement in November avoids an adverse impact on storage migration while the absence of any withdrawal entitlements at all in December or January coincide with the peak period of intrastate demand.

46. Applicants also note that all of East Ohio's existing intrastate customers will receive the same amount and quality of storage service and will pay the same rates after commencement of the lease as they do now and that the lease will not affect the storage allocation in East Ohio's customer choice program or the amount of intrastate storage service offered to marketers and end-use customers in the annual open season East Ohio conducts each February. Applicants also state that the lack of incremental demand for additional Ohio intrastate storage service is reflected in the fact that no existing or potential customer has protested the application.

47. Applicants state that issues related to the allocation of costs to Ohio consumers, as raised by OCC, are outside the scope of this proceeding. Applicants note that Dominion will pay East Ohio lease charges based on the maximum cost-based rates approved by the Ohio PUC for East Ohio's intrastate storage service that most closely resembles the terms of the lease. Applicants also note that the application provides that East Ohio does not expect to include any incremental costs associated with the leased storage in its intrastate storage rates or in the rates of any other interstate service that it may provide in the future. Applicants also note that East Ohio has not sought to recover from its existing intrastate customers any of the costs of its investments made since its last rate case or of any future storage-related investments and that the Ohio PUC will determine the proper cost allocation and revenue attribution in its next rate case.

48. With regard to OCC's comments about Dominion's recovery of its costs, Applicants state that Dominion has not yet proposed any mechanism to recover the costs of the lease (other than by selling Phase I capacity as interruptible service at its existing approved rates) and the proper pricing of any planned future expansion project utilizing the leased capacity will be decided in a future Commission proceeding.

<u>Commission Response</u>

49. No evidence before us reasonably suggests that East Ohio's existing customer base will be forced to shoulder increased costs resulting from the operation of the lease and any attempt by East Ohio to recover increased costs incurred as a result of the lease must be approved by the Ohio PUC. The Monthly Lease Charge imposed upon Dominion established in the lease is based on the maximum cost-based rates approved by

[37] *Id* at 10-12.

the Ohio PUC for East Ohio's most comparable intrastate storage service[38] and is subject to future adjustment if East Ohio's maximum cost-based rates change in the future.

50. In addition, Dominion will pay East Ohio the maximum rate for intrastate transportation service pursuant to East Ohio's Operating Statement as filed with the Commission. East Ohio will also retain a fixed percentage of 1.4 percent of all quantities withdrawn from storage as a fuel charge to cover injections, withdrawals and the associated transportation of storage volumes on East Ohio's system under the related transportation agreement. Applicants state that the cost of the leased storage service is significantly less than the costs of constructing new storage on Dominion's system. Therefore, we find that the monthly lease charge that Dominion will pay under the lease will be equal to the comparable firm storage service charge on the East Ohio System.

b. Available and Excess East Ohio Storage Capacity

51. OCC argues that the Applicants have failed to demonstrate that the storage capacity included in the lease is excess to East Ohio's retail customer needs over the proposed term of the lease. OCC maintains that approval of the lease may have long-term adverse consequences for East Ohio's retail customers under the Commission's treatment of leased capacity, since East Ohio would no longer have any control over, or right to use, the capacity. OCC states the Ohio PUC's Management Performance audits have provided varying storage capacity levels and argues that there may be increased demand for intrastate storage in Ohio, citing a June 2006 long-term forecast by East Ohio and suggesting that the statements in the Application about declining load reflect only transient recent developments reflected nationally in post-2008 economic difficulties.[39]

52. OCC states that East Ohio recently submitted an application to the Ohio Power Siting Board claiming that it needed to construct a 20-inch pipeline to increase its gas storage capacity by 10 Bcf. OCC states the Commission should set the matter of the amount of excess on-system storage capacity East Ohio actually has to accommodate the proposed lease transaction for hearing.

53. Applicants respond that there can be no question that East Ohio's customer demand has decreased significantly, as summarized below: [40]

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[38] The Monthly Lease Charge is based on the maximum cost-based rate approved by the Ohio PUC for East Ohio's intrastate In/Out Storage Service as set forth in Section 5.2 of East Ohio's FSS Rate Schedule. The jurisdiction of the Ohio PUC to protect East Ohio's existing customer base is not affected by our order in this proceeding.

[39] OCC Protest at 10 and Answer at 15.

[40] Answer of Applicants at 10-12.

	Total Throughput	Number of Customers
2005 (Last actual year in 6/1/06 long-term forecast)	274.1 Bcf	1,218,714
2007 (Test Year in last rate case)	254.8 Bcf	1,213,037
2009 (Last actual year)	232.4 Bcf	1,193,758

54. Moreover, Applicants state that the suggestion that the declining need for Ohio intrastate storage results only from the economic downturn of the last two years is contradicted by the Ohio PUC Staff's Report of Investigation in East Ohio's last rate case (at page 45), which shows an 18 percent decline in normalized residential usage from 2000 through 2007.[41]

55. As to how much storage capacity East Ohio has, Applicants note that the Liberty Consulting Group in 2006 stated: "The Columbiana storage field has been decommissioned during the prior audit period (November 2001 through October 2003), and due to storage migration problems the total working gas inventory is now considered to be about 55,000 MMcf."[42] Applicants note also that due to declining base load and winter season usage on its system in recent years, East Ohio has experienced increasing difficulty in turning the amount of storage capacity available in its system. As noted above, in previous years, East Ohio generally would turn approximately its full storage capacity of 60 Bcf; but, in the most recent years, it has turned only 54 or 55 Bcf of gas.[43]

56. Applicants state that this decline in Ohio intrastate demand and usage is a major contributor to East Ohio's increased difficulty in turning its working gas inventory each year, exacerbated by increases in local production adding more baseload supply during the winter periods, with winter deliveries of Ohio production increasing by nearly 4 Bcf since 2003. Applicants state that the combination of reduced demand and increased

[41] Applicants Answer at 11.

[42] *Id.* at 12, n.25 (citing The Liberty Consulting Group, *Final Report of Management/Performance Audit of East Ohio in Ohio PUC Case No. 05-219-GA-GCR* (May 19, 2006), II-11 to II-12).

[43] Application at 5-6.

winter baseload supply have made it impossible for East Ohio to turn its historical volume of storage inventory, and that the Lease Agreement will help address this problem, while making incremental storage available to the interstate market.

57. As to the import of a 20-inch pipeline recently constructed by East Ohio, Applicants note that the 9-mile, 20-inch line, extending from East Ohio's Shoop Station to its Chippewa Station, allows gas from East Ohio's Stark-Summit base pools to be transported to the Cleveland market area. The pipeline construction responded to East Ohio's declining ability to withdraw gas from the base pools resulting from: (1) the downrating and subsequent removal of a pipeline previously used to deliver storage withdrawals to the Cleveland area; and (2) declining load in the Akron area, the remaining major market for the withdrawals.[44] The pipeline allows for increased storage withdrawals and injections into the base pools and effectively increases East Ohio's useable storage capacity by providing access to a larger market, but does not add to East Ohio's physical storage capacity.

58. In addition to the 20-inch pipeline, Applicants note that East Ohio has made a series of additional investments in its storage infrastructure since the 2007 test year of its last Ohio rate case, and it is continuing to make additional investments.[45] East Ohio has drilled five new storage wells, all of which will be tied into the storage system in 2010 after being hydraulically fractured. This year, East Ohio also will complete the installation of a new compressor unit at its Chippewa Station, increasing maximum storage injection rates.

59. Applicants note also that East Ohio has completed well bore cleanouts and acid cleaning on 9 existing, underperforming storage wells, returning the wells close to their original deliverability. East Ohio has also installed 60 ultrasonic meters at existing storage wells, allowing for real-time flow monitoring of operations and maintenance and the ability to test the wells remotely. In the coming years, East Ohio plans to drill an additional ten storage wells, to continue its maintenance and acid cleaning program for underperforming wells, and to add additional ultrasonic meters. The cost of these investments in the new 20-inch pipeline and in the storage facilities during 2008 and 2009, since the filing of East Ohio's last state rate case, has totaled nearly $30 million. For 2010 and 2011, East Ohio plans additional storage-related investments of approximately $16 million. All of these investments, applicants state, will help East Ohio to meet its commitments to existing intrastate customers with increased operational efficiencies, as well as provide the incremental capability contemplated under both phases of the Lease.

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[44] Applicant Answer at 13, n.29.

[45] *Id.* at 13-14.

Commission Response

60. A review of the lease shows that Applicants have structured the lease to ensure that existing customers of both applicants are not adversely affected. The leased capacity is provided in two successive phases, with Phase I (3,000,000 Dths) commencing when the application is approved by the Commission and Phase II (5,000,000 Dths) upon East Ohio's notice that it is ready to provide the additional capacity to the interstate market. In addition, the lease contains sculpted monthly deliverability entitlements that were negotiated to address East Ohio's operational needs (i.e., Dominion is required to withdraw gas in November to avoid an adverse impact on storage migration and has limited deliverability during the December and January peak periods of intrastate demand) as well as to satisfy Dominion's commercial needs.

61. In addition, East Ohio will deliver the withdrawal volumes to the Dominion interconnects at the pressure existing on the East Ohio system, which currently significantly limits East Ohio's ability to flow gas physically into Dominion. Until Dominion constructs facilities for the purpose of receiving the leased capacity, the redelivery of nominated withdrawals will be made via displacement by which equivalent volumes that were scheduled for delivery by Dominion to the East Ohio system that same day instead will remain on the Dominion system. If the volumes scheduled for delivery on Dominion to East Ohio and available to displace withdrawals are insufficient on any day, East Ohio will have no obligation to provide the nominated withdrawals from storage.

62. We believe that East Ohio and Dominion have made reasonable decisions concerning the storage capacity to be made available for lease in this proceeding. We note that it is not possible to conclude, as OCC would have us do on the basis of the evidence before us, that the relevant Ohio economies will rebound to the point of making East Ohio's lease of storage capacity to the interstate markets problematic in terms of Ohio's intrastate storage needs. The evidence is strong, however, that East Ohio's customer demand for service has diminished substantially over a number of recent years.

63. Ultimately the record of direct impacts of the lease on East Ohio's intrastate customers will be available to the Ohio PUC, which has not participated here. We note, however, that all of East Ohio's existing intrastate customers will receive the same amount and quality of storage service and pay the same rates after commencement of the lease as they do now. Further, the lease will not affect the storage allocation in East Ohio's customer choice program or the amount of intrastate storage service offered to marketers and end-use customers in the annual open season East Ohio conducts each February.

64. Applicants also note that the lack of incremental demand for additional Ohio intrastate storage service is reflected in the fact that no existing or potential customer has

protested the application. OCC questions the total amount of on-system storage capacity East Ohio has and requests the Commission set that issue for hearing. However, the Commission does not believe an exact determination of East Ohio's on-system storage capacity, above and beyond the close approximations provided in the record, is required in order to approve the lease agreement. Applicants have shown that existing customers will not be adversely affected and all of East Ohio's existing intrastate customers will receive the same amount and quality of storage service and pay the same rates after commencement of the lease as they do now.

c. Open Season/Affiliate Concerns

65. The OCC suggests both that East Ohio awarded the storage capacity to its affiliate Dominion in an unduly discriminatory manner, without holding an open season, and that East Ohio's contracting for storage service from Dominion is questionable. OCC notes that East Ohio's on-system storage has long been used to serve the needs of Ohio retail customers, that the cost of such system storage has been built into the rates of East Ohio's retail customers, and that Dominion could turn around and lease the capacity to others, obtaining windfall profits, while East Ohio could also receive revenues above the cost of the system storage, which would also constitute windfall profit.[46]

66. Applicants state that East Ohio has an annual open season for intrastate storage service, but is currently unable to offer interstate storage service to the market generally, forcing the reliance on withdrawals by displacement of gas that otherwise would be delivered to its system, until new compression is constructed, as Dominion has committed to do as part of the Lease Agreement. East Ohio also requires very specific limitations on the timing of deliverability with this incremental storage, especially in Phase I when there are no entitlements in December or January. For these reasons, East Ohio elected to proceed with a lease of its storage capacity.

67. Applicants argue that open seasons are not required to select a counterparty for a lease, and there is no evidence of any undue discrimination in East Ohio contracting here with Dominion for a capacity payment based on Ohio PUC-approved rates. No customer or potential lessee for East Ohio's storage has raised any concerns. Moreover, Dominion will make the interstate storage available to the market, and its allocation of the capacity has not been challenged.[47] Dominion proposes to reserve the capacity to serve firm

[46] OCC Protest at 17-18.

[47] Concerning the significant need for incremental working gas capacity in the markets served by Dominion, Applicants cite *Columbia Gas Transmission Corp.*, 126 FERC ¶ 61,231, at P 27 (2009); *FERC Staff Report: Current State of and Issues Concerning Underground Natural Gas Storage* at p. 15 (Sept. 30, 2004).

customers who were previously awarded capacity, following an open season process that led to the Storage Factory project. In the interim, Dominion will make the leased capacity available to the market generally in accordance with its existing procedures for providing interruptible services.

68. Applicants state that the OCC's challenge to East Ohio's contracting for storage service from Dominion is beyond the scope of this Commission's jurisdiction. In any case, East Ohio states that it cannot substitute the capacity to be leased for contract storage for a number of important operational reasons, including the following: (1) operational balancing relies on firm withdrawal and winter reinjection rights, which are not present in the Phase I Lease capacity; (2) the Phase I Lease has no December or January deliverability rights, which are essential to provide operational balancing during those peak months; (3) unlike the leased capacity, contract storage provides an opportunity to carry an inventory balance out of the withdrawal season, which is essential to manage season-ending warmer than projected weather; and (4) on-system storage cannot provide operational balancing for East Ohio's West Ohio system, which relies exclusively on contracted storage service. Most importantly, Applicants state, East Ohio's usage of on-system and contract storage for operational balancing is a matter to be decided by the Ohio PUC, not by this Commission in this proceeding.

Commission Response

69. The Commission sees nothing in the structure of the lease or in the lease terms that raises issues of affiliate preference. Dominion will be paying rates for the lease capacity based on the maximum cost-based rates approved by the Ohio PUC for East Ohio's most comparable intrastate storage service and it will be offering the capacity to the market in Phase I of the lease at the Commission-approved interruptible rates in its tariff. The Commission is not granting to Dominion the authority to charge market-based rates for the leased capacity, as OCC alludes to in its protest.

70. In addition, the treatment of East Ohio's lease revenues is for the Ohio PUC to address. Finally, as to the process undertaken by East Ohio in entering into the lease with Dominion, we note that lease arrangements are viewed differently from transportation services. The Commission views a lease of what is to be used as interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor requiring NGA section 7 certificate authorization. As such, this type of arrangement is only available to a natural gas company subject to the NGA. Lessees are not treated as shippers and the Commission does not consider them to be similarly situated to interstate shippers on the lessor's pipeline.[48] Therefore, there is no

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[48] *Midcontinent Express Pipeline LLC,* 124 FERC ¶ 61,089, at P 51 (2008).

requirement for East Ohio to have conducted an open season for the leased capacity and, given the unique operational requirements of East Ohio in designing the lease, the Commission finds East Ohio did nothing improper under our regulations in entering into the lease with Dominion.

C. East Ohio's Limited Jurisdiction Certificate

71. We will grant East Ohio's request for a Part 284.224 limited jurisdiction certificate to enable it to carry out its responsibilities under the lease agreement. The Commission looks closely at proposals such as this one that would create dual jurisdiction facilities, i.e., facilities that would be subject to state and federal jurisdiction, in order to avoid duplicative and/or potentially inconsistent regulatory schemes over the same facilities. However, although federal regulation of East Ohio will be "limited," East Ohio and Dominion will both be subject to exclusive federal regulation regarding the lease and the capacity on the East Ohio system and any issues that may arise thereunder.

72. The limited jurisdiction certificate will enable East Ohio to operate the leased capacity being used for NGA jurisdictional services subject to the terms of the lease and subject to Dominion's open-access tariff. The limited jurisdiction certificate will require East Ohio to operate the leased capacity in a manner that ensures Dominion's ability to provide services, including interruptible transportation, using the leased capacity on an open-access, non-discriminatory basis. Our finding that East Ohio is NGA-jurisdictional is limited to its role as lessor-operator of capacity used by Dominion to provide Dominion's interstate services. East Ohio will remain non-jurisdictional as to its intrastate activities and may continue to provide NGPA section 311 transportation services on its system under its existing Part 284.224 certificate.

E. Environmental Review

73. Environmental review of this proposal under section 380.4(b) confirms that the proposed actions qualify as a categorical exclusion under section 380.4(a)(27).

Conclusion

74. Based on the benefits the proposed lease will provide to the market and the lack of adverse effect on existing customers, we find that the public convenience and necessity requires approval of the proposed lease arrangement. Dominion will recover the lease charge through its interruptible rates and as such will only recover the costs of the leased

capacity from those shippers that will use the leased capacity.[49] Therefore, we approve use of Dominion's interruptible rates for the leased capacity.

75. The Commission on its own motion, received and made a part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Dominion authorizing it to lease the subject capacity from East Ohio, as described herein, The "shipper must have title" requirement is waived for Dominion and East Ohio.

(B) Dominion's proposal to use its interruptible rates for shippers using the Lease Capacity is approved.

(C) A Part 284.224 limited-jurisdiction certificate of public convenience and necessity is issued to East Ohio authorizing it to lease the capacity to Dominion as described herein. This limited jurisdiction certificate will enable East Ohio to operate the leased capacity being used for NGA jurisdictional services subject to the terms of the lease and subject to Dominion's open-access tariff, and will require East Ohio to operate the leased capacity in a manner that ensures Dominion's ability to provide services using the leased capacity on an open-access, non-discriminatory basis. East Ohio shall not shift any unrecovered costs of leased capacity to customers for whom it is providing jurisdictional interstate services under section 311 of the NGPA.

(D) OCC's request for an evidentiary hearing is denied.

[49] It is possible that Dominion's recovery of the lease costs may change in a future proceeding; however, that determination will be based on the specific facts in the certificate application to be filed and will be decided at that time in accordance with the evidence presented.

(E) Motions for leave to file answers are granted and the answers of the parties are accepted as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.