135 FERC ¶ 61,034
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. CP10-107-001

ORDER DENYING REHEARING

(Issued April 18, 2011)

1. On October 21, 2010, the Commission issued an order in this proceeding granting to The East Ohio Gas Company, d/b/a Dominion East Ohio (East Ohio), a Hinshaw pipeline, a limited jurisdiction certificate under section 284.224 of the Commission's regulations.[1] The certificate authorized East Ohio to lease capacity to Dominion Transmission Inc. (Dominion), to provide storage service to Dominion using the leased capacity, and to operate and maintain the related facilities. The order also authorized Dominion to lease storage capacity from East Ohio to provide interruptible interstate storage service to others.[2]

2. The City of Richmond, Virginia (Richmond), an existing customer of Dominion's, sought rehearing of the October 21 Order arguing that it is not sufficiently protected against the possibility of subsidizing the costs of Dominion's use of the leased storage capacity. For the reasons discussed below, we will deny rehearing.

[1] 18 C.F.R. § 284.224(b)(3) (2010) (providing 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 of the Commission's regulations).

[2] *The East Ohio Gas Co.*, 133 FERC ¶ 61,076 (2010) (October 21, Order).

## I. Background

3. East Ohio and Dominion are subsidiaries of Dominion Resources, Inc. East Ohio is an Ohio corporation engaged in the business of gathering, purchasing, storing, and distributing natural gas at retail in Ohio and is regulated the Public Utilities Commission of Ohio (Ohio PUC). East Ohio is exempt from Commission jurisdiction as a Hinshaw pipeline under section 1(c) of the Natural Gas Act (NGA).[3] As relevant here, East Ohio operates several storage fields in the vicinity of Akron and Canton, Ohio that, in recent years, have unused storage capacity. Dominion, a Delaware corporation, is engaged primarily in the business of storing and transporting natural gas in interstate commerce for customers in New York, Ohio, Pennsylvania, West Virginia, Virginia, Maryland, and the District of Columbia. Dominion and East Ohio entered into a lease agreement under which Dominion would lease storage capacity from East Ohio.

## II. The October 21 Order

4. The October 21 Order approved Phase I of a two-phase storage project by authorizing East Ohio to lease storage capacity to Dominion and Dominion to provide interruptible storage service using the leased capacity under its existing IT Rate Schedule. The order stated that since the lease costs associated with the capacity are not included in Dominion's current rates, existing Dominion customers will not subsidize the service. The order also required Dominion to 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.

5. The October 21 Order noted comments Richmond filed to East Ohio and Dominion's application requesting the Commission to clarify (1) that Dominion would be at risk for the duration of the lease unless and until the Commission authorizes Phase II of the storage project and (2) that any authorization provided in this proceeding would not constitute predetermination 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.

6. In its answer to Richmond's comments, Dominion agreed that it would continue to be at risk for the lease costs until the Commission authorizes the storage project

[3] 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."

contemplated in Phase II, subject to the clarification that the Commission has the authority to modify that situation in a future order. Dominion did not object to Richmond's requested clarification that any authorization in this proceeding does not constitute a predetermination on the pricing of capacity for the Phase II project, noting that it has not requested predetermination of anything regarding a future application for a project using the leased capacity. Richmond responded that Dominion's refinement would be 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. Although not stated in the order, Richmond's June 1, 2010 answer (at 2) explained why it requested the clarification: it believes that East Ohio and Dominion's application did not provide a basis for the Commission to conclude that the level of the proposed lease costs is appropriate for the proposed service or that Dominion's system needs the storage capacity.

7. The Commission responded that it was authorizing Dominion to recover only the costs associated with the capacity being leased in Phase I through its interruptible services under its existing tariff and rate schedules. The Commission noted that none of those costs are included in Dominion's existing rates and therefore there will be no subsidization of the lease costs by Dominion's existing customers. Further, the order stated that any determination regarding Phase II of the lease proposal, including the appropriate pricing conditions for the leased capacity, would be made in the Phase II proceeding based on the specific facts supporting the application.

## III. Richmond's Request for Rehearing

8. Richmond argues that the Commission erred in failing to adopt Dominion's at-risk proposal as clarified by Richmond – that the certificate authorizations provided in this Phase I proceeding shall not serve as a basis for Commission approval of any future recovery from system customers of costs incurred by Dominion associated with its lease from East Ohio. Richmond argues that this clarification is required by Commission policy and precedent[4] and requests that the Commission impose a condition to Dominion's certificate that Dominion will be at risk for any costs associated with the lease between Dominion and East Ohio unless and until the Commission changes the at-risk condition in a future order, provided that the Commission authorization in this proceeding shall not serve as a basis for approving any future recovery of lease costs. Richmond is concerned that Dominion's customers may be faced with an attempt by Dominion to recover the Phase I lease costs from them if Dominion never files the Phase II construction application.

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[4] Citing *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); *Gulf Crossing Pipeline Co.*, 123 FERC ¶ 61,100, at P 33-34 (2008); and *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 31-33 (2008), *reh'g denied*, 127 FERC ¶ 61,164 (2009).

## IV. Discussion

9. Both the Commission's Certificate Policy Statement and its policy on leased capacity are based on the principle that no existing customer should bear costs associated with new capacity added to a pipeline's system through construction or lease unless the customer benefits from the capacity. The October 21 Order noted that under the Certificate Policy Statement "a pipeline must be prepared to financially support the project without relying on subsidization from its existing customers" and that this no subsidization requirement is equally applicable to leases of capacity (October 21 Order at P 25). This is essentially an at risk condition precluding the pipeline from recovering the costs of unused capacity from customers that do not use the capacity. The authorization for Dominion's Phase I lease provides that the costs will only be collected through Dominion's existing interruptible storage rates and will only be recovered from customers that elect to make use of those services (October 21 Order at P 37). To the extent the capacity is unused, Dominion will bear the risk. As both Dominion and Richmond acknowledge, the appropriate mechanism for recovery of costs associated with the leased capacity may change when and if Dominion and East Ohio file and receive approval for Phase II of this project or for another storage project involving the leased capacity. However, in no event would subsidization of the lease costs by existing customers be appropriate and nothing in the October 21 Order is intended to suggest otherwise.

10. The October 21 Order applied the Certificate Policy Statement's no subsidization requirement to Dominion's proposal and required Dominion to separately account for the lease costs to ensure that costs and revenues associated with the leased capacity can be identified in any future proceeding in which Dominion might seek to recover the lease costs through rates. Richmond will have access to such data should any concerns over subsidies develop. Thus, there is no need to add further at-risk conditions as requested by Richmond. Therefore, we will deny Richmond's request for rehearing.

<u>The Commission orders</u>:

Richmond's request for rehearing is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.