

136 FERC ¶ 61,031
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.

Dominion Transmission, Inc.

Docket No. CP10-448-001

ORDER GRANTING PARTIAL WAIVER OF CONDITION

(Issued July 14, 2011)

1. On June 16, 2011, the Commission issued an order authorizing Dominion Transmission, Inc. (Dominion) to construct, operate, and maintain natural gas pipeline and compression facilities in West Virginia and Pennsylvania (Appalachian Gateway Project).¹ The June 16 Order included a condition requiring Dominion to execute firm natural gas contracts equal to the level of service and in accord with the terms of service represented in the precedent agreements supporting the application before Dominion could begin construction of the project. On June 24, 2011, Dominion filed a request for a partial waiver or, in the alternative, a request for rehearing of that condition. For the reasons set forth below, we are granting the request for partial waiver.

Background

2. Dominion proposed to construct and operate approximately 109 miles of pipeline, to add four new compressor stations, and to upgrade two existing compressor stations as part of its Appalachian Gateway Project. The Appalachian Gateway Project was designed to enable Dominion to transport, in conjunction with the TL-263 Expansion Project facilities,² 484,260 dekatherms of gas per day from supply areas in West Virginia and Pennsylvania to an interconnection with Texas Eastern Transmission, LP in Westmoreland County, Pennsylvania.

¹ *Dominion Transmission, Inc.*, 135 FERC ¶ 61,239 (2011) (June 16 Order).

² The TL-263 Expansion Project was authorized in *Dominion Transmission, Inc.*, 119 FERC ¶ 61,242, *order denying reh'g and granting clarification*, 121 FERC ¶ 61,164 (2007).

3. As a result of an open season, Dominion entered into 22 precedent agreements with supply aggregators in the Appalachian region for all of the design capacity of the proposed Appalachian Gateway Project. Each of the precedent agreements provides for firm transportation service at negotiated rates for a primary term of ten years. Dominion will provide Appalachian Gateway Project service at incremental rates under Rate Schedule FT.

4. The June 16 Order authorized the Appalachian Gateway Project, finding that Dominion's proposal was consistent with the Certificate Policy Statement.³ Specifically, the June 16 Order found that (1) Dominion will not rely on subsidies from existing customers because it is proposing incremental rates to recover the costs associated with project; (2) the project will improve service for existing customers by providing them access to developing sources of gas; and (3) there should be no adverse impact on existing pipelines or their captive customers, and only a minimal impact on landowners. Consistent with our standard practice, the June 16 Order conditioned the certificate authorization so that construction could not commence until after Dominion executed contracts which reflect the levels and terms of service represented in its precedent agreements.⁴

Dominion's Request for Waiver

5. Dominion requests that the Commission partially waive the requirement that it enter into firm contracts for 100 percent of the capacity of the project, consistent with the volumes subscribed under the filed precedent agreements, before commencing construction. Dominion states that at this time it has executed firm transportation agreements for approximately 75 percent of the project's capacity. Although it anticipates that all its project customers will enter into firm transportation agreements in the near future, Dominion states that it cannot be certain how long that process will take. Dominion explains that for it to meet the September 1, 2012 in-service date proposed in its application, it must begin construction by mid-July. Accordingly, Dominion requests that the Commission authorize it to begin construction of the project based on the current level of subscribed capacity and in view of the fact that it has binding precedent agreements for the remaining capacity.⁵

³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁴ See June 16 Order, 135 FERC ¶ 61,239 at Ordering Paragraph (F).

⁵ Dominion states that some project customers have assigned their rights under the precedent agreements to other project customers, which has reduced the number of

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6. In support of its request, Dominion also contends that the level of firm contracted capacity, along with the binding precedent agreements for the remaining capacity, are more than sufficient to confirm the established need for the project, recognizing that the Commission has routinely certificated pipeline projects that have contractual commitments for less than 100 percent of the design capacity. Dominion further states that, even if not all of the project's customers that entered into precedent agreements ultimately execute service contracts, Dominion is willing to proceed with the project without any financial subsidies by existing customers.

Commission Response

7. Where the applicant has supported its assertion of need for its project with evidence of capacity subscribed under precedent agreements, our general policy is to condition the certificate on the applicant's executing contracts for the level of service and for the terms of service represented in the precedent agreements before commencing construction.⁶ The reason for this requirement is that we believe that executed service agreements or contracts, by their very nature, reflect a higher level of commitment than precedent agreements. In addition, since we ultimately balance a project's demonstrated benefits against its environmental impacts, the requirement that final service agreements be executed prior to the commencement of construction helps to ensure that the evidence of need relied upon in assessing the balance was not illusory.⁷

8. Here, Dominion has executed contracts for a considerable portion (i.e. 75 percent) of not only the capacity represented in the precedent agreements, but of the total capacity of its project, in the short time period since we authorized the project, and Dominion remains confident that it will execute contracts for the remaining capacity shortly. Although it is our general policy to require the applicant to execute contracts for the total level of service reflected in the precedent agreements before beginning construction, we find the level of contract support presented by Dominion here is sufficient to demonstrate a need for the project. Thus, this is not a situation in which a significant level of shippers appears to have withdrawn support for a project, calling into question the scope or even the very existence of the project. Moreover, if there is any significant delay in finalizing even a small portion of the remaining contracts, strict application of our executed-contracts requirement could delay construction and jeopardize the proposed in-service date of a project for which significant demand has been adequately demonstrated. Under

customers from 22 to 18.

⁶ See, e.g., *Tennessee Gas Pipeline Co.*, 125 FERC ¶ 61,100, at Ordering Paragraph (E) (2008).

⁷ See *Arlington Storage Co.*, 128 FERC ¶ 61,261 (2009).

the circumstances present here, we have no concerns regarding the continuing viability of the Appalachian Gateway Project. As incremental rates have been approved for the project, there is no danger of subsidization of the project by existing customers even if Dominion does not secure firm contracts for all of the remaining capacity. Moreover, partial waiver of the contract condition will have no impact on our finding that landowners will experience only minimal economic impact. Therefore, we will grant Dominion's request for a partial waiver of the requirement in Ordering Paragraph (F) that it execute firm contracts for all of the project's capacity before beginning construction. Dominion may commence construction with the current level of capacity contracted, upon satisfaction of any other relevant conditions.

The Commission orders:

Dominion's request for partial waiver of Ordering Paragraph (F) of the June 16 Order is granted, as described in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.