

136 FERC ¶ 61,211  
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.

Distrigas of Massachusetts LLC

Docket No. CP11-485-000

ORDER GRANTING AUTHORIZATION UNDER SECTION 3  
OF THE NATURAL GAS ACT

(Issued September 27, 2011)

1. On May 18, 2011, Distrigas of Massachusetts LLC (DOMAC) filed an application seeking Commission authorization under section 3 of the Natural Gas Act (NGA) to construct, install, operate, and maintain a heating value and Wobbe Index Reduction (HVWIR) system at its liquefied natural gas (LNG) import terminal in Everett, Massachusetts. The proposed HVWIR system would replace existing air injection equipment with a liquid nitrogen based system that would be used to conform imported LNG received at DOMAC's terminal to the natural gas quality and interchangeability specifications set forth in the FERC Gas Tariffs of the various downstream interconnecting pipelines. As discussed below, we will authorize DOMAC's proposed HVWIR system, subject to conditions.

**I. Background and Proposal**

2. DOMAC owns and operates an LNG import terminal and re-gasification facility located on the Mystic River in Everett, Massachusetts. DOMAC purchases LNG imported from various international sources and resells the LNG, in liquid and vapor form, to customers located throughout the northeastern United States (U.S.). LNG is delivered in liquid form by highway tanker trailers to storage tanks of local distribution companies (LDC) and end-users and re-gasified LNG is delivered to: (1) the LDC system of Boston Gas Company; (2) the interstate pipeline systems of Algonquin Gas Transmission LLC (Algonquin) and Tennessee Gas Pipeline Company (Tennessee); and (3) the Constellation Mystic Power, LLC generation plant in Everett, Massachusetts.

3. For most of its history, DOMAC's LNG terminal operations and its liquid and vapor sales were regulated pursuant to a certificate of public convenience and necessity issued by the Commission under section 7 of the NGA.<sup>1</sup> In 2008, the Commission issued an order authorizing DOMAC to abandon its section 7 certificate authority and the facilities are now regulated exclusively under NGA section 3.<sup>2</sup>

4. DOMAC states that some of the LNG cargoes that the terminal receives require conditioning before they can be delivered to the interconnecting interstate pipelines for transportation on their systems. DOMAC explains that it currently utilizes its existing air injection system to adjust the heating value and Wobbe Index<sup>3</sup> of the re-vaporized LNG to meet the gas quality and interchangeability tariff provisions of the interstate pipelines which connect to DOMAC's terminal. DOMAC notes that, in addition to the use of its permanent air injection equipment, it is authorized to install and operate temporary supplemental air injection equipment whenever needed.<sup>4</sup> DOMAC explains that this air injection equipment has enabled the terminal to adjust the heating value of LNG as the re-gasified LNG is readied for send-out, by adding a quantity of air sufficient for the heating value and constituents of the re-gasified send-out stream to meet applicable requirements. According to DOMAC, the air injection equipment has provided the terminal the flexibility to receive LNG cargoes sufficient to meet the demands of DOMAC's customers and helped ensure the reliability of DOMAC's deliveries, while meeting the tariff requirements of its interconnecting pipelines.

5. However, DOMAC notes that both of its interconnecting interstate pipelines have recently proposed or implemented revised tariff provisions related to gas quality and interchangeability. Specifically, DOMAC states that Algonquin has implemented revised tariff specifications for gas transported on its system, introducing for the first time limits on maximum heating value, Wobbe Index, and certain constituents of natural gas

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<sup>1</sup> *Distrigas of Massachusetts LLC*, 58 FPC 2589 (1977).

<sup>2</sup> *Distrigas of Massachusetts LLC*, 124 FERC ¶ 61,039 (2008).

<sup>3</sup> The Wobbe Number, or Wobbe Index, of a fuel gas is found by dividing the high heating value of the gas in Btu per standard cubic foot by the square root of its specific gravity with respect to air. The definition of the Wobbe Number is based on the heating value and specific gravity of a gas, and it is related to the thermal input to a burner (Btu per hour).

<sup>4</sup> *Distrigas of Massachusetts LLC*, 93 FERC ¶ 62,093 (2000).

including oxygen.<sup>5</sup> DOMAC states that Tennessee also has proposed revised gas specifications that raise the maximum heating value, and add a Wobbe Index maximum, in addition to proposing other changes.<sup>6</sup> DOMAC asserts that because of these changes, certain LNG supplies will require additional conditioning to lower the heating value and Wobbe Index prior to delivery to the interstate pipelines. However, DOMAC notes that utilizing the existing air-injection system puts oxygen into the gas stream, and if too much air is injected into the re-gasified LNG, the blended gas stream may have an oxygen content that exceeds the tariff provisions of the interconnecting pipelines. Thus, DOMAC states that it has determined that it is necessary to install a conditioning system that limits the introduction of oxygen into the gas stream.

6. In order to meet the Wobbe Index, heating value, and oxygen limits set forth in the revised tariff provisions of the interconnecting interstate pipelines, DOMAC requests authorization to replace its existing air injection system with a liquid nitrogen injection system. DOMAC asserts that the HVWIR project will enable it to maintain the flexibility to receive LNG cargoes to meet customer demand, to ensure delivery reliability, and to comply with applicable tariffs of the interconnecting pipelines.

7. As proposed, the HVWIR project will consist of: (1) two liquid nitrogen storage tanks, each with a nominal capacity of 120,000 gallons; (2) ambient pressure coils; and (3) insulated stainless steel piping and associated appurtenances. The liquid nitrogen storage tanks will be installed on an approximately 30,000 square foot portion of a 4.7 acre parcel of land located in Everett, Massachusetts. The parcel is owned and controlled by DOMAC. The tanks will be sited within a diked area within the project site. Following the commissioning of the HVWIR project, the existing air injection equipment will be decommissioned and removed.

8. DOMAC states that the HVWIR system will not be used to condition: (1) LNG with a heating value and Wobbe Index that meet applicable gas quality specifications;

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<sup>5</sup> See *Algonquin Gas Transmission, LLC*, 126 FERC ¶ 61,130, *reh'g denied*, 127 FERC ¶ 61,163 (2009) (approving settlement agreement regarding gas quality and interchangeability issues and accepting tariff sheets effective on March 23, 2009).

<sup>6</sup> By order issued on April 29, 2011, the Commission accepted and suspended Tennessee's proposed tariff records, to become effective October 1, 2011, and established hearing and settlement judge procedures. *Tennessee Gas Pipeline Company*, 135 FERC ¶ 61,098 (2011).

(2) LNG boil-off gas sent directly to Boston Gas Company via National Grid's distribution system;<sup>7</sup> or (3) LNG loaded for highway transport to liquid customers.

## **II. Notice, Interventions, and Comments**

9. Public notice of DOMAC's application was published in the *Federal Register* on May 31, 2011 (76 Fed. Reg. 31,323). Timely, unopposed motions to intervene were filed by Consolidated Edison Company of New York, Inc., National Grid Gas Delivery Companies, and NSTAR Gas Company (NSTAR).<sup>8</sup>

10. In its motion to intervene, NSTAR states it has identified some concerns with respect to DOMAC's proposal and that the two parties have had discussions, but did not reach resolution before the comment deadline in this proceeding. NSTAR does not outline its concerns in its pleading, but states it will update the Commission on whether a resolution between the parties has been reached or whether NSTAR requests an opportunity to supplement the record in this docket. No additional pleadings have been made by NSTAR in this proceeding.

11. Two residents of Chelsea, Massachusetts, Judith W. Simpson and Roger Bolduc, filed comments opposing any further development of the DOMAC facilities because of safety and security concerns. Ms. Simpson's and Mr. Bolduc's concerns are addressed in the environmental analysis section below.

## **III. Discussion**

### **A. Section 3 Authority**

12. Because the LNG terminal facilities will be used to import gas from foreign countries, the siting, construction, and operation of the facilities require approval by the Commission under section 3 of the NGA.<sup>9</sup>

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<sup>7</sup> The boil-off gas, consisting almost entirely of methane, meets the gas quality specifications of Boston Gas Company. Boston Gas Company is a subsidiary of National Grid USA which is included in the National Grid Delivery Companies.

<sup>8</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011).

<sup>9</sup> The regulatory functions of section 3 of the NGA were transferred to the Secretary of Energy (DOE) in 1977 pursuant to section 301(b) of the Department of Energy Organization Act. 42 U.S.C. §7151(b) (2006). In reference to regulating imports

(continued...)

13. The Commission's authority over facilities constructed and operated under section 3 includes the authority to apply terms and conditions as necessary and appropriate to ensure that the proposed construction and siting is in the public interest.<sup>10</sup> Section 3 provides that the Commission "shall issue such order on application" if it finds that the proposal "will not be inconsistent with the public interest."<sup>11</sup>

14. The Commission certificated the construction and operation of the DOMAC terminal through a series of orders and the facilities have been in operation since 1971. DOMAC's import terminal is an integral component of the New England energy infrastructure which provides LDCs and end-users, including power generating facilities, with critical supplies of natural gas in both a gaseous and liquid state. The facilities proposed by DOMAC will increase DOMAC's flexibility to receive LNG cargoes sufficient to meet the demands of its customers. Absent the installation and operation of the proposed HVWIR system, the terminal will be limited in its ability to accommodate certain LNG cargoes of varying composition, while maintaining compliance with the specifications of applicable pipeline tariffs. The flexibility created by the HVWIR system will enhance the reliability of the import terminal and increase access to competitively priced supplies of natural gas for DOMAC and its customers.

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or exports of natural gas, the DOE Secretary subsequently delegated to the Commission the authority to approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports. The DOE Secretary's current delegation of authority to the Commission relating to import and export facilities was renewed by the Secretary's Delegation Order No. 00-004.00A, effective May 16, 2006. Section 311 of the Energy Policy Act of 2005 amended section 3 of the NGA to clarify the Commission's exclusive authority to approve or deny an application for the siting, construction, expansion, and operation of LNG terminals. Pub. L. No. 109-58, §311, 119 Stat. 594 (2005). The Commission has no authority to approve or disapprove applications to import or export natural gas. The Secretary of Energy has delegated such authority to DOE's Assistant Secretary for Fossil Energy.

<sup>10</sup> See section 3(e)(3)(A) of the NGA, as enacted by section 311(c) of EPAAct 2005. See also *Distrigas Corporation v. FPC*, 495 F.2d 1057, 1063-64, cert. denied, 419 U.S. 834 (1974); *Dynegy LNG Production Terminal, L.P.*, 97 FERC ¶ 61,231 (2001).

<sup>11</sup> 15 U.S.C. § 717b(a) (2006).

15. DOMAC's proposal will not have an impact on landowners since the HVWIR system will be constructed on land owned by DOMAC and will be completely surrounded by other terminal facilities and nearby industrial facilities. Further, DOMAC's customers will not be adversely affected because the proposed facilities will ensure that they will continue to receive re-vaporized LNG that meets their current gas quality and interchangeability requirements. Therefore, we find that, subject to the conditions imposed in this order, DOMAC's proposal is not inconsistent with the public interest.

## **B. Environmental Analysis**

16. On June 14, 2011, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Heating Value and Wobbe Index Reduction Project and Request for Comments on Environmental Issues (NOI). The NOI was published in the Federal Register<sup>12</sup> and mailed to about 350 parties including federal, state, and local government officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and all affected landowners as defined in the Commission's regulations (i.e., landowners who own property within one-half mile of LNG facilities).

17. The U.S. Fish and Wildlife Service, New England Office, filed a letter stating they had no comments on the proposal. Two private landowners, Ms. Simpson and Mr. Bolduc, commented that the existing LNG facility should be closed and/or moved to an offshore location citing safety and terrorist concerns. These comments are beyond the scope of our environmental analysis in this proceeding that reviewed the proposed nitrogen injection equipment, but did not cover the existing facilities. However, the safety and security of the existing LNG facilities have been continually reviewed since the terminal first began operations in 1971. Currently, the existing terminal undergoes annual inspections by FERC staff to ensure that it is maintained and operated in a manner consistent with its section 3 authorization. In addition, the existing facility is inspected by the U.S. Department of Transportation to ensure compliance with the Federal safety standards for LNG facilities under Title 49, C.F.R., Part 193. The operations and security programs of the existing facility are also regulated by the U.S. Coast Guard under Title 33, C.F.R., Parts, 101, 105, and 127. The U.S. Coast Guard assesses the safety and security of LNG carrier operations during transit to and from the existing LNG facility. In the event the U.S. Coast Guard determines there is a safety issue, the Captain of the Port has the authority to prohibit LNG carrier movements and LNG transfer operations at the existing facility.

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<sup>12</sup> 76 Fed. Reg. 35,882 (2011).

18. To satisfy the requirements of the National Environmental Policy Act of 1969,<sup>13</sup> our staff prepared an environmental assessment (EA) that was placed into the public record on August 29, 2011. The EA addressed geology and soils, water resources, vegetation and wildlife, fisheries, land use, recreation and visual resources, transportation and traffic, cultural resources, air quality and noise, reliability and safety, cumulative impacts, and alternatives.

19. We have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of the Heating Value and Wobbe Index Reduction project. Based on our consideration of this information, we agree with the conclusions presented in the EA and find that if constructed and operated in accordance with DOMAC's application, as supplemented, and the conditions imposed herein, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

20. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this authorization. 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 and operation of facilities approved by this Commission.<sup>14</sup>

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

The Commission orders:

(A) DOMAC is authorized under section 3 of the NGA to construct, install, and operate its proposed HVWIR system, as more fully described in this order and in DOMAC's application, subject to the environmental mitigation conditions contained in the Appendix to this order.

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<sup>13</sup> 42 U.S.C. §§ 4321-4370f (2006).

<sup>14</sup> 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., et al.*, 52 FERC ¶ 61,091 (1990), *order on reh'g*, 59 FERC ¶ 61,094 (1992).

(B) The construction of the proposed facilities shall be completed and made available for service within 18 months of the date of this order.

(C) DOMAC shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state/commonwealth, or local agencies on the same day that such agency notifies DOMAC. DOMAC shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Appendix

### Environmental Conditions for Distrigas of Massachusetts LLC Docket No. CP11-485-000

1. DOMAC shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. DOMAC must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (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 receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take all steps necessary to ensure the protection of life, health, property and the environment during construction and operation of the project. This authority shall include:
  - a. stop-work authority and authority to cease operation; and
  - a. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of the Order.
3. **Prior to any construction**, DOMAC shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI'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. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, DOMAC shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

5. **Within 60 days of the acceptance of this authorization and before construction begins**, DOMAC shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. DOMAC must file revisions to the plan as schedules change. The plan shall identify:
- a. how DOMAC will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
  - b. how DOMAC will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and date of the environmental compliance training and instructions DOMAC will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of DOMAC's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) DOMAC will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
6. Beginning with the filing of its Implementation Plan, DOMAC shall file updated status reports with the Secretary on a **monthly** basis **until all construction and restoration activities 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. an update on DOMAC's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project and work planned for the following reporting period;

- c. a listing of all problems encountered and each instance of noncompliance observed by the EI 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);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by DOMAC from other federal, state, or local permitting agencies concerning instances of noncompliance, and DOMAC's response.
7. DOMAC must receive written authorization from the Director of OEP **before placing the proposed facilities into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas of project-related disturbance are proceeding satisfactorily.
8. **Within 30 days of placing the authorized facilities in service**, DOMAC shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the authorization conditions DOMAC has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

**Recommendation numbers 9 through 15 shall apply to the design and construction details associated with the liquid nitrogen system. Information pertaining to these specific recommendations shall be filed with the Secretary for review and approval by the Director of OEP either prior to construction of final design or prior to commissioning as indicated by each specific condition. This information shall be submitted a minimum of 30 days before approval to proceed is required.**

9. A complete set of the Issue for Construction Piping and Instrumentation Drawings shall be filed **prior to construction of final design**.

10. The action taken, with justification, for each Hazard and Operability review recommendation shall be filed **prior to construction of the final design**.
11. The safety instrumented system block diagram shall be provided **prior to construction of the final design**.
12. The power requirements, transformer list, single line drawings, and emergency lighting drawings, shall be filed **prior to construction of the final design**.
13. DOMAC shall provide low oxygen monitoring for the liquid storage tank dike area and all ventilation air intake equipment associated with the electrical building. Alternatively, a technical justification that demonstrates these areas are adequately covered by other hazard detection devices shall be provided. DOMAC shall confirm compliance with this requirement **prior to construction of the final design**.
14. An updated fire protection evaluation carried out in accordance with the requirements of National Fire Protection Association *Standards for the Production, Storage, and Handling of LNG* (NFPA 59A), chapter 9.1.2, shall be filed **prior to construction of final design**. The information shall include: the action taken, with justification, for each fire protection evaluation recommendation; hazard detection and hazard control plan drawings; a hazard detection and hazard control list indicating the instrument tag number, manufacturer, model, and location of the equipment; and alarm locations, shutdown functions, and any automatic and manual remote signals that initiate discharge of hazard control equipment.
15. A tabulated list of the proposed hand-held fire extinguishers shall be filed **prior to commissioning**. The information shall include a list with the equipment number, type, size, and location. Plan drawings shall include the type, size, and number of all hand-held fire extinguishers.