

135 FERC ¶ 61,239  
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. CP10-448-000

ORDER ISSUING CERTIFICATE

(Issued June 16, 2011)

1. On June 1, 2010, Dominion Transmission, Inc. (Dominion) filed an application under section 7(c) of the Natural Gas Act (NGA) to construct, operate, and maintain natural gas pipeline and compression facilities in West Virginia and Pennsylvania. As part of its proposed Appalachian Gateway Project, Dominion seeks authorization to construct 109 miles of pipeline, to add four new compressor stations, and to upgrade two existing compressor stations. Dominion also seeks approval to integrate its existing TL-263 Expansion Project facilities with these new facilities and to charge incremental rates for firm service on the new and existing facilities. The proposed project will enable Dominion to transport 484,260 dekatherms per day (Dth/d) from supply areas in West Virginia and Pennsylvania to an interconnection with Texas Eastern Transmission, LP (Texas Eastern) in Westmoreland County, Pennsylvania. We will grant the requested authorizations and approvals, subject to conditions, as discussed below.

**Background**

2. Dominion is a jurisdictional natural gas company engaged in the transportation of natural gas in interstate commerce. Its system includes approximately 10,000 miles of pipeline in New York, Ohio, Pennsylvania, West Virginia, Virginia, Maryland, and the District of Columbia.<sup>1</sup> In addition to interstate transportation, Dominion provides gathering and processing services in the Appalachian area to serve both its own production and that of third parties.

3. The proposed Appalachian Gateway Project is designed to transport 484,260 Dth/d of gas on a firm basis from supply areas in West Virginia and Pennsylvania to an interconnection with Texas Eastern in Westmoreland County, Pennsylvania.

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<sup>1</sup> Dominion is a business unit of Dominion Resources, Inc.

4. Dominion proposes to construct and operate the following pipeline segments: (1) TL-570 Ext. 1 - 4.9 miles of 20-inch-diameter pipeline in Kanawha County, West Virginia, looping an existing Dominion line; (2) TL-492 Ext. 5 - 6 miles of 24-inch-diameter pipe in Greene County, Pennsylvania, also looping an existing Dominion pipeline; (3) TL-590 - 42.3 miles of 30-inch-diameter pipeline in Marshall County, West Virginia, and in Greene County, Pennsylvania; (4) TL-591 - 54.2 miles of 24-inch-diameter pipeline in Greene, Washington, Allegheny, and Westmoreland Counties, Pennsylvania; (5) TL-596 - 0.5 miles of 16-inch-diameter pipeline in Wetzel County, West Virginia; (6) TL-597 - 0.1 miles of 10-inch-diameter pipeline in Wetzel County, West Virginia; (7) TL-598, 0.3 miles of 16-inch-diameter pipeline in Harrison County, West Virginia; and (8) TL-599, 0.4 miles of 16-inch-diameter pipeline in Harrison County, West Virginia.

5. Dominion also proposes to construct and operate the following compression facilities: (1) the Burch Ridge Station in Marshall County, West Virginia - a new 6,446 horsepower (hp) facility on the proposed TL-590 pipeline that will compress gas and enable it to flow back into Dominion's existing TL-377 pipeline; (2) the Chelyan Station in Kanawha County, West Virginia - a new 4,735 hp facility at a former compressor station site; (3) the Morrison Junction Station in Harrison County, West Virginia - a new 1,775 hp facility to send gathered gas into Dominion's existing TL-283 pipeline; (4) the Lewis Wetzel Station in Wetzel County, West Virginia - a new 3,550 hp facility to receive gas from Dominion's existing TL-283 pipeline and send it into its existing TL-430 pipeline; (5) the Schutte Station in Doddridge County, West Virginia - an existing facility to be upgraded by recylindering an existing unit; and (6) the Pepper Station in Barbour County, West Virginia - a new 1,775 hp transmission compressor unit at an existing gathering compressor station.

6. In addition, Dominion proposes to add new metering and regulation facilities at its existing Oakford Station in Westmoreland County, Pennsylvania, and at its existing Crayne Station in Waynesburg, Pennsylvania. Dominion will also install other auxiliary facilities such as pig launchers and receivers, valve assemblies, and automation equipment.

7. Dominion estimates the cost of the proposed new facilities will be \$633,757,763, and the cost of the existing facilities which Dominion proposes to integrate with the new facilities is \$13,338,893. Dominion's 2008 TL-263 Expansion Project,<sup>2</sup> a 55-mile long, 12-inch diameter pipeline, allowed for the receipt of 21,250 Dth/d of incremental Appalachian gas supplies into Dominion's system in southern West Virginia. Dominion deemed these volumes of gas insufficient to warrant the construction, as part of that

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<sup>2</sup> See *Dominion*, 119 FERC ¶ 61,242, *order denying reh'g and granting clarification*, 121 FERC ¶ 61,164 (2007).

project, of the additional facilities necessary to create the downstream capacity to provide the 21,250 Dth/d of service on a firm basis.<sup>3</sup> However, in view of the continued growth in Appalachian gas supplies and the increasing demand for take-away capacity, Dominion is now proposing to add the capacity necessary to transport the growing supply volumes to an interconnection with Texas Eastern.

Dominion held an open season from April 1 to April 25, 2008, offering firm transportation services to potential shippers.<sup>4</sup> Dominion states that as a result of the open season and subsequent discussions, it has entered into 22 precedent agreements with supply aggregators in the Appalachian region for the full 484,260 Dth/d design capacity of the proposed Appalachian Gateway Project.<sup>5</sup> The largest prospective customer, which has reserved just over half of the project's capacity, will be Dominion Field Services, Inc., an affiliate of Dominion. Each of the precedent agreements provides for firm transportation service at negotiated rates for a primary term of ten years.

### **Notice and Interventions**

8. Notice of Dominion's application for its proposed Appalachian Gateway Project was published in the *Federal Register* on June 21, 2010.<sup>6</sup>

9. Timely, unopposed motions to intervene were filed by Alpha Natural Resources, Inc. and its affiliates Emerald Coal Resources, LP, Freeport Mining, LLC, Freeport Resources Corporation, Pennsylvania Land Holdings Company, LLC, Coal Gas Recovery, LLC, and Pennsylvania Services Corporation (Alpha Companies); Consolidated Edison Company of New York, Inc.; CNX Gas Company; Dominion Hope; Independent Oil & Gas Association of West Virginia; National Fuel Gas Distribution

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<sup>3</sup> Because Dominion was not operationally capable of using the TL-263 Expansion Project facilities to provide firm transportation service, the Commission allowed Dominion to offer the expansion customers interruptible only service under its existing Rate Schedule IT at negotiated-rates calculated by multiplying a minimum volume level by a usage rate, so long as the shippers were not obligated to actually take service at a minimum level. 121 FERC ¶ 61,164 at P 13 and 16. Dominion states that its two current expansion customers, presently receiving interruptible service on the TL-263 Expansion Project, have requested firm service on the proposed Appalachian Gateway Project.

<sup>4</sup> Both negotiated and cost-based recourse rates were offered during the open season.

<sup>5</sup> This includes 463,010 Dth/d of new capacity from the proposed new facilities and 21,250 Dth/d from the existing TL-263 Expansion Project.

<sup>6</sup> 75 Fed. Reg. 35,008 (2010).

Company; National Grid Natural Gas Companies; New Jersey Natural Gas Company; New York State Electric & Gas Corporation jointly with Rochester Gas and Electric Corporation; NJR Energy Services Company; New York State Public Service Commission; PECO Energy Company; Philadelphia Gas Works; PSEG Energy Resources & Trade LLC; Statoil Natural Gas LLC; Texas Eastern; UGI Distribution Companies; and Washington Gas Light Company.<sup>7</sup>

10. Untimely motions to intervene were filed by Becketts Run Woodlands; Doswell Limited Partnership; Piedmont Natural Gas Company, Inc.; and Steven Garth Smith. We find that those filing untimely motions to intervene have demonstrated an interest in this proceeding, and further find that granting these motions will not unduly delay, disrupt, or prejudice this proceeding or the parties to this proceeding. We will therefore grant the late motions to intervene.<sup>8</sup>

11. Alpha Companies do not oppose the proposed project, but raise concerns which they state will be satisfied if the Commission requires Dominion to implement mitigation and monitoring measures to ensure that the proposed pipeline will not significantly conflict with, or be affected by, past, present, or future subsurface mining activities. Protesting parties raise similar concerns.

### **Protests**

12. Protests were filed by Kanawha Eagle Coal, LLC (Kanawha Eagle Coal); Penn Virginia Operating Co. LLC (Penn Virginia) jointly with Loadout, LLC (Loadout); and by WWMV, LLC (WWMV). These companies hold rights to coal reserves along the project's proposed route and contend the presence of a pipeline would inhibit their ability to extract these reserves. In addition, individual landowners along the proposed route have expressed concerns that the presence of a pipeline may lower the value or constrain the current or future use of their property. We address these concerns below.

### **Discussion**

13. Since the proposed facilities will be used to transport natural gas in interstate commerce, the facilities and their operation are subject to the Commission's jurisdiction under NGA subsections 7(c) and (e).

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<sup>7</sup> Timely, unopposed motions to intervene are automatically granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 214 (2011).

<sup>8</sup> See 18 C.F.R. § 385.214(d) (2011).

14. The Statement of Policy on the Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement)<sup>9</sup> provides guidance as to how the Commission will evaluate proposals for certificating new construction. The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

15. Under this policy, the threshold requirement for companies proposing new projects is that the applicant must be prepared to support the project financially without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

16. Dominion is proposing incremental rates to recover the costs associated with the Appalachian Gateway Project. Thus, Dominion will not be relying on subsidies from existing customers, and its proposal satisfies the no-subsidization requirement of the Certificate Policy Statement.<sup>10</sup>

17. The full capacity of the proposed Appalachian Gateway Project is subscribed for a 10-year term. Dominion's intent to integrate its existing TL-263 Expansion Project facilities with its proposed new facilities and to recover the existing and new facilities'

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<sup>9</sup> 88 FERC ¶ 61,227 (1999); *orders on clarification*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000); *order further clarifying policy statement*, 92 FERC ¶ 61,094 (2000).

<sup>10</sup> Dominion states that the two existing shippers currently receiving interruptible service on the TL-263 Expansion Project have chosen to become firm shippers on the Appalachian Gateway Project.

costs through incremental rates is consistent with Commission policy, since the two existing customers using the capacity created by the TL-263 Expansion Project have requested, as noted above, to begin receiving firm service as a result of the Appalachian Gateway Project.

18. Dominion's existing customers should not experience any degradation in service or increase in rates as a result of the new project, and none have objected to the proposal. In addition, Dominion's proposal will permit greater volumes of gas from supply areas experiencing increasing production to reach market areas, and will improve existing service for existing customers by providing them access to these developing sources of gas. We do not anticipate any adverse impacts on existing pipelines or their captive customers, as the proposed project will bring additional gas supplies to market and will not replace existing service. No existing pipelines or their customers have objected to the proposal.

19. The economic impact on landowners should be minimal. Dominion points out that the proposed pipelines will lie parallel to existing pipelines for a majority of the route and that new compression facilities will be constructed on lands that Dominion already owns or has an option to purchase. Dominion states it intends to work cooperatively with all affected landowners to address concerns as it acquires the necessary property for the proposed facilities.<sup>11</sup>

20. In view of the above findings, we conclude that Dominion's proposal is consistent with our Certificate Policy Statement. Based on these findings, and the conditions discussed below to mitigate adverse environmental impacts and respond to the concerns of coal mining companies, we further find in accordance with NGA section 7(c) that approval of Dominion's proposed Appalachian Gateway Project is required by the public convenience and necessity. Consistent with our standard practice, we will condition our certificate authorization so that construction cannot commence until after Dominion executes contracts which reflect the levels and terms of service represented in its precedent agreements.<sup>12</sup>

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<sup>11</sup> Several landowners, however, allege misstatements and unwarranted incursions by Dominion's representatives. As we observe in our brochure, *Blanket Certificate Program: Notice to Landowners* (<http://www.ferc.gov/for-citizens/citizen-guides.asp>), which pipeline companies are required to provide to affected landowners (*see* 18 C.F.R. § 157.6(d)(3)(ii) (2011)), "[s]tate or local trespass laws govern a company's access to your land." Consequently, allegations of improprieties concerning access to land are appropriately addressed to state or local law enforcement authorities, rather than the Commission.

<sup>12</sup> *See, e.g., Tennessee Gas Pipeline Company*, 101 FERC ¶ 61,360, at P 21 (2002).

### **Precedent Agreements**

21. Dominion states that all the prospective Appalachian Gateway Project customers have signed precedent agreements for firm service. The terms of these agreements require the prospective customers to sign a “Form of Service Agreement Applicable to Transportation of Natural Gas Under Rate Schedules FT/FTNN,” as reflected in the currently effective Tariff Record 50.1, FOSA – FT/FTNN Rate Schedule, in Dominion’s FERC Gas Tariff Fourth Revised Volume No. 1. Appalachian Gateway Project service will be provided, albeit at incremental rates, under Rate Schedule FT, and will consequently be subject to all the provisions of that rate schedule. All of the 22 prospective customers will have a single Primary Delivery Point, the existing interconnection point between Dominion and Texas Eastern at the Oakford Interconnection, and all have elected the negotiated rate option.

22. Dominion indicates that prior to the in-service date of the new facilities, the Appalachian Gateway Project’s 22 prospective customers will execute firm transportation agreements at negotiated rates, for a primary term of 10 years and extending year-to-year thereafter. As noted above, Dominion is required to file its negotiated-rate agreements prior to commencing construction.

### **Rates**

#### **Initial Recourse Rates**

23. Dominion proposes the following recourse rates for Appalachian Gateway Service: (1) an incremental Appalachian Gateway Recourse FT reservation rate of \$17.6430 per Dth;<sup>13</sup> (2) its existing generally applicable FT rate schedule usage charge of \$0.0000 per Dth;<sup>14</sup> (3) its existing FT rate schedule fuel retention rate of 2.28 percent, plus an Adders charge of 0.57 percent, for a total of 2.85 percent;<sup>15</sup> and (4) a usage charge of \$0.1474 for interruptible transportation service based upon its current system-wide IT rate.<sup>16</sup> The various cost factors underlying these rates are discussed below.

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<sup>13</sup> *Pro Forma* Tariff Record No. 10.50 and *Pro Forma* Tariff Record No. 10.51, to DTI Tariffs, FERC NGA Gas Tariff.

<sup>14</sup> Tariff Record 10.50, Incremental Transportation Rates – Settled Parties, 0.1.0 and Tariff Record 10.51, Incremental Transportation Rates – Severed Parties, 0.1.0, to DTI Tariffs, FERC NGA Gas Tariff.

<sup>15</sup> Tariff Record 10.5, FT, FTNN, FTSC & IT Rates – Settled Parties and Tariff Record 10.6, FT, FTNN, FTSC & IT Rates – Severed Parties, 0.1.0, to DTI Tariffs, FERC NGA Gas Tariff.

<sup>16</sup> *Id.*

24. Dominion estimates a cost of \$633,757,763 for the construction of new facilities, plus a cost of \$13,338,893 for its existing TL-263 Expansion Project facilities, for a combined total facilities cost of \$647,096,656.

25. Dominion calculated a projected cost of service for its Appalachian Gateway Project using historical Operation and Maintenance (O&M) expenses ratios and the existing cost components (e.g. return, taxes, and depreciation) approved in Dominion's most recent rate case.<sup>17</sup> Dominion's proposed initial incremental rates are based on the projected cost of service for the third full year of operation of the Appalachian Gateway Project, which Dominion projects will be lower than the first year cost of service.

26. The year three annual cost of service of \$102,525,861 reflects: (1) an O&M expense of \$2,472,763; (2) a depreciation expense of \$16,177,416, based upon Dominion's current depreciation rate of 2.5 percent; (3) other taxes of \$10,482,966; and (4) a pretax return of \$73,392,716. Dominion's proposed pretax return of 13.70 percent is based on its Commission-approved capital structure of 37.95 percent debt and 62.05 percent equity.<sup>18</sup> Dominion proposes to use a capital structure for incremental service that reflects the currently approved system-wide capital structure and pre-tax return.

27. As noted above, Dominion projects that the Appalachian Gateway Project's cost of service will decline from year one to year three. Thus, the year three cost of service results in a lower incremental rate, though one which is still higher than Dominion's existing firm reservation rate for service under Rate Schedule FT. Therefore, we will approve Dominion's proposed initial incremental recourse rates based on the third-full year's cost of service for the Appalachian Gateway Project.

28. We will also approve Dominion's request to use its existing system-wide fuel retention rate.<sup>19</sup> Existing customers will not be adversely affected by any additional fuel usage associated with the authorized expansion, because they will continue to pay the existing system-wide fuel costs until Dominion files an NGA section 4 rate proceeding in

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<sup>17</sup> See Settlement Agreement Article 4.1, approved in *Dominion*, 111 FERC ¶ 61,285 (2005), which refers to the settlement approved by *CNG Transmission Corp. (CNG)*, 85 FERC ¶ 61,261 (1998). Dominion was formerly CNG.

<sup>18</sup> *CNG*, 85 FERC ¶ 61,261 (1998).

<sup>19</sup> See, *Dominion Cove Point LNG, LP and Dominion Transmission, Inc.*, 118 FERC ¶ 61,007, at P 125 (2007), accepting that Dominion is unable to separately track fuel for individual customers because it operates a reticulated web-like system without straight line contract paths assigned to shippers, the Commission eliminated the condition that Dominion separately track its additional fuel usage associated with incremental capacity.

which it proposes to change the system-wide fuel retention percentage.<sup>20</sup> In the meantime, Dominion's tariff requires its submission of annual fuel informational filings detailing its system gas requirements.<sup>21</sup>

29. In addition, we will require Dominion to keep separate books and accounts for the costs attributable to the Appalachian Gateway Project's incremental services, provided using the capacity created by the proposed new facilities and the existing TL-263 Expansion Project facilities. The books should be maintained with applicable cross-references as required by the Commission's regulations and Order No. 710.<sup>22</sup>

### **Negotiated Rates**

30. Dominion states that all the prospective Appalachian Gateway Project customers, including the two shippers currently receiving interruptible service on the TL-263 Expansion Project, have agreed upon firm service at negotiated rates, with the negotiated base reservation rate for the first five years of service fixed at the initial incremental base reservation recourse rate. Dominion explains this insulates these initial Appalachian Gateway Project customers from any potential rate changes during that period. Dominion acknowledges that it must file the negotiated rate agreements for Commission review and acceptance prior to commencing service.<sup>23</sup>

### **Pro-Forma Tariff Issues**

#### **Section 11E – Appalachian Aggregation Points**

31. Dominion intends to provide firm transportation service for Appalachian supplies by modifying the way it receives gas for transportation at its two Appalachian Aggregation Points. Dominion's currently effective tariff – General Terms and

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<sup>20</sup> *Id.*

<sup>21</sup> Second Revised Sheet No. 1120 of Dominion's FERC NGA Gas Tariff, Third Revised Volume No 1.

<sup>22</sup> *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

<sup>23</sup> *See Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076; *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

Conditions (GT&C) section 11E.1 – defines two virtual Appalachian Aggregation Points.<sup>24</sup>

32. Dominion explains that to be able to provide firm transportation on its proposed project facilities, it needs to alter the definition of the physical points that feed supplies to these two virtual pooling points. To do so, Dominion proposes to add a new provision to GT&C section 11E.1<sup>25</sup> that subdivides its current two virtual Appalachian Aggregation Points into 16 physical Supply Aggregation Points. Under this proposed tariff provision, Appalachian Gateway Project customers' transportation contracts will include firm points of receipt at one or more of the newly defined Supply Aggregation Points. Dominion reiterates that it will continue to require customers using its gathering service to have separate service agreements for gathering service to the Supply Aggregation Points and for firm transportation service from the Supply Aggregation Points (or from other Appalachian receipt points), as reflected in the proposed modifications to its tariff's GT&C sections 11E.2, E.3, and E.4.<sup>26</sup>

33. Dominion proposes to revise the definition of gas receipt points by subdividing its two virtual pooling points into 16 physical Supply Aggregation Points to accommodate the provision of 484,260 Dth/d of firm transportation on its proposed project's facilities. Dominion explains the provision of this level of firm service necessitates a disaggregation of the virtual points into physical points for purposes of nominating and scheduling. Dominion states this proposed change will allow it to more precisely allocate capacity to the Appalachian Gateway Project customers, matching each individual physical point's capacity within the context of overall system capacity, with the nominations at each point.

34. Dominion proposes tariff changes in (1) *Pro Forma* Tariff Record No. 40.18, GT&C section 11E.5, detailing new procedures for submitting nominations from gathering receipt points to the Supply Aggregation Points, as well as from those points (or other Appalachian receipt points) to Delivery Points on its system, and (2) *Pro Forma* Tariff Record No. 40.18, GT&C section 11E.6, detailing how Dominion will allocate capacity and interrupt service if there is a mismatch between receipts, nominations, or available capacity at a Supply Aggregation Point. These proposed tariff revisions describe changes in procedures for nominating and scheduling that will affect not only Appalachian Gateway Project customers, but other Dominion customers as well.

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<sup>24</sup> Tariff Record 40.18, GT&C Section 11E - Appalachian Aggregation Points, 0.1.0, to DTI Tariffs, FERC NGA Gas Tariff.

<sup>25</sup> *Pro Forma* Tariff Record No. 40.18, to DTI Tariffs, FERC NGA Gas Tariff.

<sup>26</sup> *Id.*

Accordingly, these proposed revisions are properly presented in a section 4 proceeding, rather than this section 7 proceeding.

### **Elimination of TL-263 Expansion Project Service**

35. Dominion plans to eliminate its TL-263 Expansion Project service under Rate Schedule IT, since its only two TL-263 Expansion Project customers have elected to begin receiving firm transportation service on the proposed Appalachian Gateway Project. Accordingly, Dominion requests that effective upon the in-service date of the Appalachian Gateway Project, its tariff be revised to eliminate the provision for TL-263 IT Expansion Project service<sup>27</sup> and the tariff references to the two existing TL-263 Expansion Project shippers' negotiated rate agreements.<sup>28</sup>

### **Creditworthiness**

36. The precedent agreements contain creditworthiness provisions that are different from the "Creditworthiness" provisions set forth in Dominion's tariff's GT&C section 7 - Creditworthiness, 0.1.0. Appalachian Gateway Project customers must provide credit support equal to three times the annual reservation rate, which would be reduced to two times the annual reservation charges for the second to last year of the primary term and to one time the annual reservation charges for the last year of the service agreement.

37. We have recognized that pipelines constructing new or expanded facilities may require higher collateral requirements in order to satisfy lending arrangements. We also have found that collateral requirements between the pipeline and its expansion customers should be contained in precedent agreements or in executed service agreements,<sup>29</sup> and that the requirements may continue after the new or expanded facilities are in service.<sup>30</sup> However, if Dominion continues to require higher collateral requirements of its Appalachian Gateway Project customers, such agreements must be filed, regardless whether they provide for negotiated rates, in accordance with section 154.112(b) of the

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<sup>27</sup> Tariff Record 10.50, Incremental Transportation Rates – Settled Parties, 0.1.0 and Tariff Record 10.51, Incremental Transportation Rates – Severed Parties, 0.1.0, to DTI Tariffs, FERC NGA Gas Tariff.

<sup>28</sup> Tariff Record 40.46.17, GT&C section 39.17 - Negotiated Rate - Penn Virginia, 0.1.0 and Tariff Record 40.46.18, GT&C section 39.18 - Negotiated Rate - DEPI, 0.1.0, to DTI Tariffs, FERC NGA Gas Tariff.

<sup>29</sup> *Policy Statement on Creditworthiness of Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking*, FERC Stats. & Regs. ¶ 31,191, at P 18 (2005). See also *Southeast Supply Header, LLC*, 119 FERC ¶ 61,153 (2007).

<sup>30</sup> *Id.* at P 19.

Commission's regulations as executed non-conforming service agreements, clearly identifying the non-conforming provisions for review and approval. Dominion must file the agreements at least 30 days, but not more than 60 days, prior to placing the Appalachian Gateway Project facilities in service.

### **Accounting**

38. Dominion proposes to capitalize a total allowance for funds used during construction (AFUDC) of \$25,531,645 in its rates for services using the Appalachian Gateway Project facilities. Dominion represents that the amount of AFUDC included in project costs is in compliance with the Commission's current policy on AFUDC accruals.<sup>31</sup> Dominion states that it commenced accruing AFUDC in October 2008. Dominion affirms that it began to incur capital expenditures for the project on that date, and that activities necessary to prepare the project for its intended use were in progress at that time.

39. The Commission revised its policy on the commencement of AFUDC in *Florida Gas Transmission Company LLC*<sup>32</sup> and *Southern Natural Gas Company*<sup>33</sup> to allow natural gas pipelines to begin accruing AFUDC when the following conditions are met: (1) capital expenditures for the project have been incurred; and (2) activities that are necessary to get the construction project ready for its intended use are in progress. Based on Dominion's representations, the AFUDC that it seeks to include in Appalachian Gateway Project appear to be consistent with the revised policy conditions.<sup>34</sup>

### **Environmental Review**

40. Dominion made use of the Commission's pre-filing process prior to submitting its application on June 1, 2010.<sup>35</sup> On December 4, 2009, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment (NOI)* for the proposed project seeking comments on the proposal.<sup>36</sup> The *NOI* was published in the *Federal Register* and was sent to over 1,400 parties including federal, state, and local officials, agency

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<sup>31</sup> Dominion's Application at 9.

<sup>32</sup> 130 FERC ¶ 61,194 (2010).

<sup>33</sup> 130 FERC ¶ 61,193 (2010).

<sup>34</sup> See Accounting Release No. 5 (Revised).

<sup>35</sup> Dominion's pre-filing request was approved on October 6, 2009, in Docket No. PF09-15-000.

<sup>36</sup> 74 Fed. Reg. 66,125 (2009).

representatives, conservation organizations, newspapers, Native American groups, and affected property owners.

41. On January 8, 2010, the Commission issued a *Notice of Public Scoping Meetings* for the proposed project<sup>37</sup> and held meetings in West Newton, Pennsylvania, on January 20, 2010; Waynesburg, Pennsylvania, on January 21, 2010; Pine Grove, West Virginia, on January 27, 2010; and in Belle, West Virginia, on January 28, 2010.<sup>38</sup> Excluding representatives of Dominion and the Commission, about 27 people attended the public scoping meetings, and we received verbal statements from 14 individuals. During the pre-filing and scoping periods, we received 37 written comment letters from landowners, a pipeline company, a coal company, a railroad company, Indian tribes, and the following state resource agencies: the Pennsylvania Department of Conservation and Natural Resources, Bureau of Forestry, the Pennsylvania Emergency Management Agency, and the Pennsylvania Department of Environmental Protection (PADEP). Following the June 1, 2010 Filing of the application, we received nine written comment letters from landowners and one from the U.S. Department of Interior's Fish and Wildlife Service (FWS).

42. On March 31, 2011, the Commission issued its *Notice of Availability of the Environmental Assessment for the Proposed Appalachian Project*.<sup>39</sup> Following issuance of the Environmental Assessment (EA), we received comments on the EA, which we address below.

### **Pipeline Route**

43. Kanawha Eagle Coal, and Penn Virginia jointly with Loadout, and WWMV argue against Dominion's proposed TL-570 route and advocate an alternative route that they claim will allow for greater access to coal reserves and better avoid disrupting ongoing mining restoration efforts. As a result of discussions among Dominion and these coal companies, Dominion submitted an alternative route for the project's proposed TL-570, Ext. 1 pipeline, which we will adopt.<sup>40</sup> The coal companies nevertheless remain concerned that the presence of a pipeline will preclude underground and surface mining of coal located on, as well as for several hundred feet on either side of, the right-of-way.

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<sup>37</sup> 75 Fed. Reg. 3,225 (2010).

<sup>38</sup> Transcripts of these public scoping meetings are available on the Commission's internet website: <http://www.ferc.gov>.

<sup>39</sup> 76 Fed. Reg. 19,349 (2011).

<sup>40</sup> The merits of the initially proposed route and alternatives are discussed in detail in the EA.

44. These companies state that activities associated with coal extraction, such as blasting and excavation, are incompatible with pipeline operations. In addition, underground long-wall mining causes a predictable surface subsidence of several feet, which can be expected to damage pipelines if no preventative measures are taken.<sup>41</sup> The coal companies are apprehensive that to avoid interfering with pipelines, they may have to leave coal reserves intact along and below the route of a pipeline, or at best extract only a portion of the recoverable reserves, and so forego revenues they would otherwise realize. Landowners along the proposed route are similarly concerned about potential lost revenues due to land use restrictions, contending that the presence of a pipeline could degrade the overall value of their property. Penn Virginia comments that the proposed project would interfere with the ongoing restoration of areas previously subjected to surface mining, destroy vegetation, increase sedimentation, degrade water quality, and potentially disrupt efforts to collect and treat acid mine drainage.

45. As an initial matter, we observe that the Commission does not seek to resolve concerns regarding potential economic losses or constraints on current or future uses of property attributable to the proposed pipeline. Determining compensation for necessary rights-of-way is a matter for negotiation among the applicant and affected property owners. If negotiations are not successful, the appropriate forum for establishing compensation is in court.<sup>42</sup>

46. Where coal mining in the vicinity of a proposed pipeline is a “reasonably foreseeable future action,”<sup>43</sup> we consider the impacts that mining activities might have on the proposed pipeline as part of our environmental review of the project.<sup>44</sup> In general, we have determined that while certain surface mining activities must be curtailed, if proper

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<sup>41</sup> In contrast, room-and-pillar mines are designed to leave ‘pillars’ of unexcavated coal in place to prevent collapse. However, if a room-and-pillar mine does fall in, it typically will cause a more abrupt subsidence than would a long-wall mine.

<sup>42</sup> See NGA section 7(h).

<sup>43</sup> See NEPA regulations describing cumulative impacts, 40 C.F.R. § 1508.7 (2011),

<sup>44</sup> See, e.g., *Rockies Express Pipeline LLC (REX)*, 123 FERC ¶ 61,234, *order clarifying prior order and denying reconsideration*, 125 FERC ¶ 61,160 (2008), *order on reh’g*, 128 FERC ¶ 61,045, *order denying stay*, 128 FERC ¶ 61,075 (2009), *aff’d sub nom.*, *Murray Energy Corp. v. FERC*, 629 F.3d 231 (D.C. Cir. 2011); *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,342 (2008), *reh’g denied*, 127 FERC ¶ 61,162 (Northern Bridge Project) and 129 FERC ¶ 61,151 (2009), *order on reh’g*, 131 FERC ¶ 61,164 (2010) (TEMAX and TIME III Projects); and *Steckman Ridge, LP*, 123 FERC ¶ 61,248, *reh’g denied*, 125 FERC ¶ 61,217 (2008).

safeguards are in place, most types of underground mining can proceed while overlaying pipelines remain in service. We expect Dominion to collaborate with companies planning to extract coal beneath the approved right-of-way and to follow procedures to maintain its facilities' integrity when mining operations undercut a pipeline. As discussed in the EA, Dominion is subject to the oversight of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), and thus must adhere to any measures PHMSA requires to mitigate risks when mining operations occur in proximity to pipelines, and is also subject to certain state requirements related to the project's construction and operation.<sup>45</sup>

47. General concerns have been raised regarding the potential for Dominion's proposed project to impede coal companies' ongoing restoration efforts. Because no specific objections are presented, we can only make the general observation that those activities of Dominion that might conflict with restoration efforts should be temporary; thus, we expect the parties involved to be able to reach accommodations to permit both construction and restoration to proceed either in turn or in tandem.

### **Comments in Response to the EA**

#### **Dominion**

48. Dominion has provided clarification on several aspects of its proposed project, none of which alter the findings and conclusions of the EA.

49. Dominion clarifies that it will not use the 11.1 acre Basinger Pipe Yard in Greene County, Pennsylvania. Accordingly, we remove this pipe yard from the facilities authorized by this order.

50. Dominion contends that statements on pages 1-21 and 2-21 of the EA do not accurately reflect the timing of restoration or re-establishment of vegetative cover described in its Erosion and Sediment Control Plan (ESCP). Whereas the EA states Dominion is to begin restoration within ten days, Dominion clarifies that its ESCP states every effort must be made to complete final clean up within ten days after a trench is

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<sup>45</sup> We anticipate that compliance with the applicable environmental and operational conditions will satisfy the Alpha Companies' request that we include subsidence mitigation measures comparable to those set forth in *Dominion*, 129 FERC ¶ 61,012 (2009) and *REX*. Alpha Companies observe that two of its ongoing mining projects "have, in their 30 years of operation, undermined many miles of gas pipelines without incident when subsidence mitigation measures were used." *Motion to Intervene and Comments*, at 20 (July 1, 2010).

backfilled, weather permitting. As noted on page 1-18 of the EA, Dominion's ESCP revegetation and restoration measures are based on and consistent with the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan.

51. Dominion observes that page 1-21 of the EA incorrectly refers to a figure in Appendix D that is described as depicting the "highwall/two-tone method," when the figure only shows the highwall construction method. In response, Dominion includes a new figure depicting the two-tone construction method.

52. Dominion provides more detail on its plans for water used for hydrostatic testing. Dominion notes that the method for discharging hydrostatic test water is described differently on pages 1-22 and 2-38 of the EA, and suggests that a more accurate reflection of its discharge method is the statement on page 2-38 that hydrostatic test water is to be discharged "using a pumped water filter bag or an energy dissipating device." Dominion includes a table showing hydrostatic test volumes and locations to supplement Table 2.2.5-1 on page 2-37 of the EA.

53. Dominion claims that the statement on page 2-4 of the EA – that "for wells located more than 50 feet from the proposed pipeline, Dominion would place orange safety fencing around the well area to protect it from the pipeline construction work area" – is incorrect. Dominion clarifies that it does not intend to install orange safety fence around any wells located more than 50 feet from a proposed pipeline if those wells are located outside of the workspace approved by the Commission.

54. Page 2-72 of the EA states that Dominion "would be required to obtain approval from the Director of OEP" if an additional 20 feet of workspace is needed for access roads at sharp bends or intersections with main roads. Dominion proposes that during construction the third-party compliance manager be allowed to approve a request for additional workspace in the field as a Level 1 variance. We deny this, as Commission staff needs to review all such requests in order to be sure it can fully ascertain the impacts of expanding the workspace.

55. Dominion requests that Environmental Condition No. 7 be changed from requiring weekly status reports to requiring bi-weekly reports during construction. Dominion contends that because it is participating in the Third-Party Environmental Compliance Monitoring Program and will employ its own Environmental Inspectors with reporting requirements, weekly reports are not necessary. We disagree. Given the concurrent construction of multiple pipeline construction spreads and compressor stations, weekly reports are necessary to track and resolve compliance issues in a timely manner.

56. Page 2-90 of the EA states that "Dominion has developed both general and site-specific emergency procedures for the proposed Project facilities that it would share with local emergency responders." Dominion explains that Project Supervisors will establish communications with local fire and rescue responders in work areas to develop a project

emergency contact list that will be provided to all project personnel. Dominion clarifies that any emergency that might occur on its existing system as a result of construction (e.g., a contractor damages an existing line which causes a fire) will be handled through the procedures outlined in Dominion's general emergency plan.

57. Dominion's application, and pages 2-111 through 2-116 of the EA, describe the initially proposed compressor station facilities. Dominion explains that it has since made modifications to these facilities, and provides a final list of proposed compressor station equipment. Dominion states it has received air permits from the West Virginia DEP for the compressor equipment as modified as described in its April 30, 2011 submission.

58. Dominion's proposed compressor equipment modifications include changes to the auxiliary/emergency generators at the Chelyan, Lewis Wetzel, Morrison, and Pepper Compressor Stations, as well as a small increase in horsepower (from 6,130 to 6,446) at the Burch Ridge Compressor Station. Because these proposed modifications would result in only minor differences in the air emissions from those outlined in the EA, we expect the environmental impacts should not differ significantly, and thus provide no cause to alter the conclusion on page 2-117 of the EA that the construction and operation of the Appalachian Gateway Project will not have regionally significant impacts on air quality. In addition, we observe that to conform to the noise conditions in the EA, Dominion must submit a noise survey for its new and modified compressor stations to verify that any increase in noise does not exceed our specified standards.

### **Beckets Run Woodlands**

59. Beckets Run Woodlands (Beckets Run), located within the Beckets Run Biological Diversity Area<sup>46</sup> in Forward Township, Pennsylvania, does not oppose the proposed project, but seeks to ensure project impacts will not affect its status as a certified sustainable forestry business.<sup>47</sup> In comments filed in response to the EA, Beckets Run explains that to retain this status, it must follow its Forest Stewardship Plan and its Conservation Plan (Forest and Conservation Plans). The Forest and Conservation

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<sup>46</sup> A Biological Diversity Area (BDA) is an area that contains one or more occurrences of plant, animal, or natural communities recognized as state or federal species of special concern. The Beckets Run BDA is described on page 2-82 of the EA.

<sup>47</sup> Beckets Run states it is a sustainable forestry business sponsored by the U.S. Department of Agriculture through the U.S. Forest Service and the Pennsylvania Department of Conservation and Natural Resources, funded through the Natural Resources Conservation Services, and certified by the American Tree Farm System. In addition to comments on the EA filed on May 5, 2011, Beckets Run previously submitted comments expressing similar concerns on July 6, 2010 (under the name Raul Chiesa) and on February 17, 2011.

Plans require Becketts Run to adhere to specific forest conservation practices, e.g., to limit the spread of invasive species and limit the access of off-road vehicles. Becketts Run is concerned that if the Commission does not require Dominion to adhere to similar conservation practices along its proposed right-of-way through the Becketts Run Woodlands, the state and federal agencies that oversee Becketts Run may find that it has failed to fulfill the mandates of its Forest and Conservation Plans.

60. Regarding invasive species, Becketts Run observes that while Dominion has committed to use certified weed-free mulches, seed mixes, and desirable native vegetation following construction in accordance with recommendations by Natural Resources Conservation Services or in accord with landowners' requests,<sup>48</sup> it believes these measures are insufficient to prevent and control invasive species that are already on the property.<sup>49</sup> Whereas weed-free post-construction restoration measures are important, Becketts Run insists they do not deter the spread of invasive species that already exist in current and proposed pipeline rights-of-way. Thus, Becketts Run proposes monitoring vegetation restoration for invasive species for at least three growing seasons, rather than the two seasons specified in Dominion's ESCP and the Commission's Plan. Becketts Run asks the Commission to require Dominion to comply with a comprehensive site and species specific invasive species management plan containing provisions similar to its Forest and Conservation Plans.

61. Becketts Run is also concerned about off-road vehicles trespassing on pipeline rights-of-way, as this can lead to the degradation of soil, vegetation, and wildlife habitat. Becketts Run contends that while page 1-27 of the EA lists several measures to control off-road vehicles (i.e., posting signs, installing fences with locking gates, and placing slash, shrubs, timber, boulders, and pipe barriers across the right-of-way), the EA states that it is contingent on the landowner to request such measures through easement negotiations. Becketts Run states that it has met with Dominion representatives to demonstrate and discuss problems resulting from off-road traffic on and adjacent to existing and proposed rights-of-way, but that Dominion has halted negotiations, indicating it finds Becketts Run's requested measures unreasonable and unduly costly. Becketts Run proposes that if Dominion will not negotiate the terms of an easement, then the Commission should require Dominion to develop, disclose, and implement comprehensive plans that address invasive species, off-road vehicles, and reforestation

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<sup>48</sup> See page 2-53 of the EA.

<sup>49</sup> Becketts Run cites the requirements of Executive Order No. 13112 (64 FR 6,183 (Feb. 8, 1999), amended by Executive Order No. 13,286 (Feb. 28, 2003)), which recognizes the need for actions to prevent the introduction of, detect, rapidly response to, and control, populations of invasive species.

for all phases of the proposed project. Beckets Run is concerned that Dominion will exercise eminent domain to secure an easement without negotiating with landowners and without implementing any measures beyond those required by the Commission certificate conditions.

62. We expect Dominion will make good faith efforts to reach rights-of-way agreements with affected landowners. Beckets Run's concerns regarding the restoration and continued protection of the rights-of-way across its property, as outlined in its May 5, 2011 letter, appear reasonable. In response to the apparent impasse in the parties' negotiations, we direct the parties to continue discussions in Environmental Condition No. 24.

63. Because the business of Beckets Run is to harvest trees, it contends that right-of-way impacts are long-term, and therefore allowing the construction right-of-way and extra work spaces to revegetate naturally is not appropriate and inconsistent with its Forest and Conservation Plans. Beckets Run requests the Commission require Dominion to undertake an active reforestation effort. We decline to do so, finding that this is a matter appropriately addressed by the parties in negotiations.

64. Beckets Run claims that tree removal for construction constitutes a long-term impact and disagrees with the statements on pages 2-49 and 2-55 of the EA classifying tree farms such as Beckets Run Woodland as agricultural land, and therefore as incurring only short-term impacts. We acknowledge that impacts on tree farms are long-term; however, the intended use of the Beckets Run Woodland is to grow and harvest trees, and in view of this, the likely effect of construction is not the loss of forest, but rather a change in the timing of the tree harvest.

### **Bruce Razillard**

65. The proposed TL-492, Ext. 5 pipeline will cross a property owned by Bruce Razillard. In comments filed April 29 and May 9, 2011, Mr. Razillard provides additional details on a planned housing development on his property.<sup>50</sup> Initially, Mr. Razillard was concerned primarily about the location of the proposed pipeline in relation to houses he plans to build. As a result of pre-filing discussions, Dominion made adjustments to the proposed pipeline route to diminish impacts and reflected these adjustments in the route described in its application. Mr. Razillard remains concerned about the depth of burial of the proposed pipeline. Because his future housing development will involve grading, he would like the pipeline to be buried deeper in anticipation of future grading.

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<sup>50</sup> The planned Razillard development is discussed on page 2-77 of the EA. In addition to his response on the EA, Mr. Razillard attended the scoping meeting in Waynesburg, Pennsylvania, and submitted comments during pre-filing and after the application was filed.

66. In commenting on the EA, Dominion notes that page 2-77 of the EA states that subdivision plans for the Razillard property are on file with Franklin Township, in Green County, Pennsylvania, but that as of the April 30, 2011, subdivision plans had yet to be filed. Following the submission of Dominion's comments, Mr. Razillard filed schematics of his subdivision plans, and although plans for all the lots have not been completed by his engineer, he has provided two plats in a May 9, 2011 submission that show the general location and grading requirements for the overall development. We find Mr. Razillard has clearly progressed beyond the conceptual stage in planning the future residential development of his property; therefore, we believe it is in the best interest of both parties to continue working to finalize details for construction of the TL-492, Ext. 5 pipeline segment. In its comments, Dominion affirms that it remains committed to working with Mr. Razillard. Accordingly, we include Environmental Condition No. 25, directing Dominion to renew discussions with Mr. Razillard in light of the plats he has provided.

### **Steven Garth Smith**

67. Mr. Stephen Garth Smith states that while he is not opposed to the project, he is concerned that repeated attempts to engage Dominion in discussions have been dismissed by Dominion. We reiterate our expectation that all applicants will engage in meaningful negotiations with all affected landowners. Mr. Smith is concerned primarily with the width and location of Dominion's proposed right-of-way.

68. Mr. Smith believes that Dominion is seeking to obtain a 65-foot-wide operational right-of-way across his property, which would be inconsistent with the 50-foot-wide operational right-of-way described in Dominion's application and in the EA. Mr. Smith states that a 65-foot-wide right-of-way has already been flagged on his property, which extends the right-of-way to his water well. We stress that this order grants Dominion only a 50-foot-wide operational right-of-way for the portion of its proposed right-of-way route across the Smith property. Consequently, Dominion may not rely on the eminent domain authority conferred by NGA section 7(h) to enlarge the width of its right-of-way beyond this limit.<sup>51</sup>

69. Mr. Smith asserts the proposed route would require removing all the trees from the south and southwest side of his home, including a large row of trees that have historically marked his property line. Mr. Smith explains these trees are of particular importance, as his home was deliberately sited to utilize the shade of the tree line to provide natural cooling for the house. He also relies on these trees to provide a break from the wind and

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<sup>51</sup> This does not preclude Dominion and Mr. Smith, or Dominion and any other landowner, from entering into easement agreements to enlarge the authorized right-of-way, but this requires both parties to agree to such terms.

weather, to dampen traffic noise from Pisgah Road (located approximately 200 feet from his house), and to sever off-road vehicles' access to his property. Because the proposed Dominion pipeline is adjacent to and parallel with a Texas Eastern right-of-way used by off-road vehicles, Mr. Smith is concerned that if the tree line is removed, these vehicles' access will be no longer be blocked. Mr. Smith states that Dominion has informed him that he cannot replant the trees after construction is complete. We clarify that while trees cannot be planted within the *operational* pipeline right-of-way, trees could be replanted within the *construction* right-of-way and any adjacent extra work areas after construction is complete.

70. To avoid losing his trees, Mr. Smith has presented Dominion with variations to the proposed route that he believes would lessen the environmental impacts on his property. He suggests three variations.

71. The first variation would relocate Dominion's pipeline from its currently proposed position along a Texas Eastern right-of-way, which Mr. Smith characterizes as "abandoned," into that right-of-way. To assess this proposal, Commission staff contacted Spectra Energy, Texas Eastern's parent company, regarding the status of this right-of-way. Mr. Berk Donaldson of Spectra Energy stated that Texas Eastern's right-of-way contains two pipelines, one active and one inactive. Because Texas Eastern is still using the right-of-way, Dominion could not use it for the proposed project. Thus, this variation is not feasible.

72. The second variation would move the proposed route approximately 190 feet to the southeast so it would parallel three existing and active Texas Eastern rights-of-way located on an adjacent property. As currently proposed, this pipeline route would skirt the property line between these two properties, with the majority of the construction right-of-way on the commentor's property. We note that this variation would reroute the proposed pipeline from approximately MP37.5 to MP38.3 near the Water Dam Road crossing. Mr. Smith declares that the landowner of the adjacent property approves of this variation.<sup>52</sup> We note that this variation would affect two other property owners, Mr. George Grooms and the Southwestern Pennsylvania Water Authority. The currently proposed route runs through their properties, and this proposed variation would shift the location of the route through their properties to the southeast.

73. The third variation would move the proposed route to the north of Mr. Smith's house, avoiding the trees on the south/southwestern side of his house. Similar to the second variation, this revision would require that the proposed location of the route through Mr. Grooms' property be shifted northward at approximately MP37.5, then run

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<sup>52</sup> This adjacent property is owned by Steven D. Smith, the father of the commentor Steven Garth Smith.

north of Mr. Smith's house across his property, and rejoin the proposed route before Water Dam Road (~MP38.3) on the Southwestern Pennsylvania Water Authority property. This variation would remove substantially more forested lands than either the current proposed route or the second variation. In addition, this variation would establish a new right-of-way that does not parallel an existing right-of-way, which is contrary to the Commission's preference for routing along an established right-of-way where possible, as this generally reduces the impacts of a new right-of-way.

74. Based on our review of the variations provided by Mr. Smith, only the second alternative appears to be viable, as it appears it would not add additional environmental impacts. Therefore, we will require, in Environmental Condition No. 26, that Dominion incorporate Smith Variation 2 into its project route and include updated alignment sheets, or provide sufficient justification for retaining its original route.

### **Herbert Smith and Amy Notovich**

75. In comments on the proposed project, Mr. Herbert Smith had requested the pipeline be moved off his property and suggested four variations that were analyzed in the EA on pages 3-8 to 3-12. The EA recommended Dominion's proposed route, based on Commission staff's assessment of obstacles to construction, environmental impacts, and impacts to additional landowners presented by the suggested variations. Amy Notovich, on behalf of her father Mr. Smith, states that prior to the completion of the EA, she contacted Dominion concerning the particulars of an easement agreement, stating that her father believed there were similar pros and cons to the proposed route and Variation 4, which had been flagged on his property. Ms. Notovich states that her father remains concerned about: the replacement of any drain tiles damaged during construction; the correct marking of survey pins and replacing those that are moved; the replacement of fence wire; avoiding damage to a walnut tree near the right-of-way; and reimbursement for the value of coal reserves that will be lost as a result of placing a pipeline on the property. Ms. Notovich complains that Dominion has effectively suspended easement negotiations regarding these matters, as Dominion's land agent representatives have declined to engage in meaningful discussions.

76. As previously discussed, while the Commission does not participate in easement negotiations, we expect Dominion to work with landowners to resolve outstanding issues. Accordingly, we urge Dominion to continue discussions with Ms. Notovich and Mr. Smith to verify that the flags describe the approved route, to accommodate reasonable requests to diminish damages, and to this end, to implement minor field realignments where appropriate. We note that the repair and/or replacement of drain tiles damaged during construction is required.<sup>53</sup>

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<sup>53</sup> See page 2-22 of the EA.

### Additional Comments

77. One comment claims the EA is insufficient and imprecise in general, and in particular faults the EA for failing to give adequate consideration to the impact of drilling operations on water supplies. Section 2.2 of the EA provides a detailed assessment of the potential impacts of the proposed project on water resources, fisheries, and wetlands. The EA identifies the potential for pipeline construction activities such as blasting, equipment fueling, and accidental spills of hazardous substances to impact water quality and nearby water supply wells. In response, we require Dominion to adhere to the mitigation measures described in its Blasting Plan, Spill Prevention Control and Countermeasure Plan, and Erosion and Sedimentation Control Plan. These measures specify that Dominion: (1) not conduct fueling within 200 feet of a private well and 400 feet of a public well; (2) offer pre- and post-construction well testing to the owner of any well within 150 feet of construction work areas; (3) provide an alternative water source or other compensation to landowners whose wells are temporarily affected by construction; and (4) repair or replace any wells that are permanently damaged. We believe these mandatory construction conditions ensure the proposed project will have no significant adverse impacts on water supplies.

78. The EA also considered the potential cumulative impacts of the proposed project with respect to water withdrawals for nonjurisdictional drilling activities in the region. The EA found that impacts of the ongoing withdrawal of surface waters in the region to stimulate oil and gas wells by hydro-fracturing (and for other associated activities such as dust control and tire cleaning), in conjunction with Dominion's withdrawal of water for hydrostatic testing, would have no more than a minor impact on wetlands and waterbodies. We note that because Dominion's hydrostatic test water will be returned to surface waters, with these discharges monitored in accordance with permit requirements, Dominion's actions should result in no more than a minimal net loss of surface water.

79. The EA observed that water withdrawal, by drilling operators and by Dominion, is subject to approval and regulatory review by the West Virginia Division of Natural Resources and the PADEP. We affirm the EA's finding that because the water withdrawal application process identifies and regulates other concurrent projects involving water withdrawals, drilling operations in combination with Dominion's planned hydrostatic testing and construction dewatering activities should not result in any significant cumulative impacts. Finally, given that production and gathering activities are exempt from the Commission's jurisdiction under NGA section 1(b), we observe that concerns related to such activities are more appropriately directed to those state and federal agencies that have regulatory authority over these activities.

80. Don Tappan requests clarification of the federal noise requirements applicable to the proposed Morrison Junction Station and an existing Payne compressor facility. The Payne facility is owned by Antero Resources and is nonjurisdictional; therefore, the Commission has no authority to assess or regulate noise from this facility. We are not

aware of any specific West Virginia state or local regulations that apply specifically to noise from natural gas compressor stations.

81. The proposed Morrison Junction Station is expected to result in a small increase in noise at noise sensitive areas (NSAs). Page 2-122, Table 2.8.2-3 of the EA shows that the predicted noise increase due to this compressor station will be between 0.1 and 3.9 decibels. We impose a strict 55 day-night averaged A-weighted decibels (55 dBA Ldn) criterion on new facilities and modifications to existing facilities. We impose Environmental Condition No. 21, which states that the Morrison Station shall not result in noise impacts at the NSAs that exceed our criterion.

82. The ambient noise survey prepared by Dominion for the Morrison Junction Station was filed by Dominion on June 1, 2010, and is located in Appendix 9-I of Resource Report 9 in the Environmental Report Exhibit F-1. Within this report are the locations where Dominion measured ambient noise levels. We do not specify the exact locations that the acoustical survey must take measurements, however it is typical to measure at the nearest point to the NSA that is practicable. We will review the post-construction noise survey and determine if it is acceptable. If we deem it insufficient, we will require additional information from Dominion. This will ensure that the new station will not exceed the specified noise levels.

83. The Commission reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of the project. Based on the consideration of this information, the Commission concludes that if constructed and operated in accordance with Dominion's application, as supplemented, and in compliance with the environmental conditions in the appendix to this order, the Commission's approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

84. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.<sup>54</sup>

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<sup>54</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 108 S. Ct. 1145, 99 L. Ed. 2d 316 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

85. At hearing held on June 16, 2011, 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) Dominion is issued a certificate of public convenience and necessity under NGA section 7(c) to construct and operate its Appalachian Gateway Project, as described herein and more fully in its application.

(B) The certificate authorization granted by Ordering Paragraph (A) is conditioned on Dominion's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

(C) The certificate authorization granted in Ordering Paragraph (A) is conditioned on Dominion's compliance with the environmental conditions listed in the Appendix to this order.

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

(E) Dominion shall submit final tariff sheets between 60 and 30 days prior to the proposed facilities being placed in service

(F) Dominion must execute firm natural gas transportation contracts equal to the level of service and in accordance with the terms of service represented in its precedent agreements prior to commencing construction.

(G) Dominion and the representations it makes with respect to AFUDC accrual are subject to audit to determine whether Dominion is in compliance with the Commission's revised policy and related rules and regulations.

(H) Dominion's request for authority to charge incremental rates for services on its Appalachian Gateway Project is approved.

(I) Pursuant to section 157.20(b) of the Commission's regulations, the facilities authorized in Ordering Paragraph (A) must be constructed and placed in service within one year of the date of this order.

(J) Late filed motions to intervene filed by Becketts Run Woodlands, Doswell Limited Partnership, Piedmont Natural Gas Company, Inc., and Steven Garth Smith are granted.

(K) Protests filed by Kanawha Eagle Coal and WWMV, and by Penn Virginia jointly with Loadout, are denied, for the reasons discussed in this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## APPENDIX

### Dominion Transmission, Inc., Appalachian Gateway Project

#### Docket No. CP10-448-000

#### Environmental Conditions

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Dominion 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 environmental EA, unless modified by the Order. Dominion must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission;
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of OEP **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - e. the modification of conditions of the Order; and
  - f. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Dominion shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), 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, and shall include all of the staff's recommended facility locations identified (on page 3-18) of the EA. **As soon as they are available, and before the start of construction**, Dominion 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.

Dominion's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Dominion's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Dominion shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to route variations required herein, extra workspace allowed by Dominion's Erosion and Sediment Control Plan (ESCP) described in the document and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and

- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction begins**, Dominion shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Dominion must file revisions to the plan as schedules change. The plan shall identify:
- a. how Dominion 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 Dominion 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 per spread, 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 dates of the environmental compliance training and instructions Dominion will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
  - f. the company personnel (if known) and specific portion of Dominion's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) Dominion 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.
7. Beginning with the filing of its Implementation Plan, Dominion shall file updated status reports with the Secretary on a weekly 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 Dominion's efforts to obtain the necessary federal authorizations;
  - b. the construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs 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 Dominion from other federal, state, or local permitting agencies concerning instances of noncompliance, and Dominion's response.
8. Dominion shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, Dominion shall mail the complaint procedures to each landowner whose property would be crossed by the project.
- a. In its letter to affected landowners, Dominion shall:
    - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
    - (2) instruct the landowners that if they are not satisfied with the response, they should call Dominion's Hotline and; the letter should indicate how soon to expect a response; and
    - (3) instruct the landowners that if they are still not satisfied with the response from Dominion's Hotline, they should contact the Commission's Dispute Resolution Service Helpline at 877-337-2237 or at [ferc.adr@ferc.gov](mailto:ferc.adr@ferc.gov).
  - b. In addition, Dominion shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:

- (1) the identity of the caller and date of the call;
  - (2) the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
  - (3) a description of the problem/concern; and
  - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Dominion shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Dominion must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Dominion 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 Certificate conditions Dominion 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.
12. **Prior to construction**, Dominion shall revise the relevant section of its ESCP to conform to section 4.F.1 of our Plan which specifies a minimum spacing of temporary slope breakers on the construction right-of-way near the crossings of streams, wetlands, and roads.
13. **Prior to September 1, 2011**, Dominion shall file with the Secretary a complete Winter Construction Plan that includes:
  - a. details of snow removal and site preparation, soil handling under frozen soil conditions, excavation and backfilling of frozen soils, and other special considerations involved for winter construction;
  - b. measures to be implemented to address construction and reclamation efforts during and immediately after winter construction; and

- c. a description of the right-of-way stabilization, including temporary and permanent erosion control measures that Dominion would implement where final clean-up, restoration, and decompaction is delayed over the winter period.
14. **Prior to the start of construction on the TL-591 pipeline route**, Dominion shall file a site-specific plan development in consultation with the EPA and appropriate state agencies to address handling and disposing of contaminated sediments.
15. **Within 30 Days of placing the facilities in service**, Dominion shall file a report with the Secretary identifying all water supply wells/systems damaged by construction and how they were repaired. The report shall also include a discussion of any other complaints concerning well yield or water quality and how each problem was resolved.
16. **Prior to construction of the TL-591 pipeline between Collinsburg Road (MP 30.6) and State Route 3041 (MP 31.3)**, Dominion shall file with the Secretary for the review and written approval by the Director of OEP, a revised version of its report titled *Model Analysis for the Youghiogheny River*. The revised report shall be based on geotechnical samples collected along the centerline of the proposed pipeline within the river at depths representative of the full trench depth. The report shall provide revised turbidity estimates, revised laboratory analysis for pesticides, PCBs, and mercury potentially in the sediments, and a revised determination of the potential effects of contaminant exposure and transport.
17. **Prior to construction**, Dominion shall submit to the Secretary, for review and written approval by the Director of OEP, a site-specific justification for each of the private access roads requested for permanent access to the proposed Project.
18. **Prior to construction**, Dominion shall file with the Secretary evidence of landowner concurrence for any residence closer than 10 feet to the construction work area.
19. **Dominion shall not begin implementation** of any treatment plans/measures (including archaeological data recovery); construction of facilities; and use of any staging, storage, or temporary work areas and new or to-be-improved access roads); **until**:
  - a. Dominion files with the Secretary cultural resource survey reports, any necessary treatment plans, and State Historic Preservation Office's comments on the reports and plans;
  - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment on the project; and

- c. the FERC staff reviews and the Director of OEP approves the cultural resource reports and plans, and notifies Dominion in writing that treatment plans/mitigation measures (including archaeological data recovery) may be implemented and/or construction may proceed.

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

20. **Prior to construction**, Dominion shall submit a final construction schedule outlining the dates of construction for TL-590 and TL-591. The schedule should indicate the emissions of NO<sub>x</sub> and PM<sub>2.5</sub> per year for the Pittsburgh-Beaver County Air Quality Control Region. If the final schedule results in emissions of NO<sub>x</sub> and PM<sub>2.5</sub> greater than the general conformity applicability threshold of 100 tpy, Dominion shall document all mitigation measures it would implement to reduce the emissions below the applicability threshold.
21. Dominion shall file noise surveys with the Secretary **no later than 60 days** after placing the Chelyan, Morrison, Burch Ridge, and Lewis Wetzel Compressor Stations in service. If the noise attributable to the operation of all of the equipment at the Compressor Stations at full load exceeds an L<sub>dn</sub> of 55 dBA at any nearby noise sensitive areas (NSAs), Dominion shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Dominion shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
22. Dominion shall conduct a noise survey at the Pepper Compressor Station to verify that the noise from all the equipment operated at full capacity does not exceed the previously existing noise levels that are at or above an L<sub>dn</sub> of 55 dBA at the nearby NSAs and that the noise attributable to the operation of all of newly authorized equipment at the Compressor Stations at full load does not exceed an L<sub>dn</sub> of 55 dBA. The results of this noise survey shall be filed with the Secretary **no later than 60 days** after placing the modified units in service. If any of these noise levels are exceeded, Dominion shall, **within 1 year of the in-service date**, implement additional noise control measures to reduce the operating noise level at the NSAs to or below the previously existing noise level. Dominion shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.
23. **Prior to construction of the TL-591 pipeline**, Dominion shall file for review and written approval by the Director of OEP, revised construction alignment sheets

that incorporate the Borchin Variation 5 as identified in the EA and provide the revised alignment sheets or comparable mapping to all affected landowners.

24. **Prior to the construction on the Beckets Run Woodland property (~MP26.2-26.5) of the TL-591 pipeline**, Dominion shall file for review and written approval by the Director of OEP, a specialized construction plan developed in consultation with Mr. Raul Chiesa for the property. The plan should include measures for the control and monitoring of invasive species, limiting off-road vehicle access, and reforestation of the TL-591 pipeline right-of-way.
25. **Prior to the construction from MP1.3 to MP1.6 (Bruce Razillard property) of the TL-492, Ext. 5 pipeline**, Dominion shall file a summary of communications with Mr. Bruce Razillard and any proposed construction modifications, such as the depth of burial of the pipeline.
26. **Prior to construction from MP 37.8 to MP 38.0 (Stephen Garth Smith property)**, Dominion shall incorporate Smith Variation 2 into its project route and include updated alignment sheets, or provide sufficient justification for retaining its original route.