

152 FERC ¶ 61,138
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Dominion Transmission, Inc.

Docket No. CP14-496-000

ORDER ISSUING CERTIFICATE

(Issued August 19, 2015)

1. On June 2, 2014, Dominion Transmission, Inc. (Dominion) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² requesting authorization to construct and operate new compression facilities at existing compressor stations in Marshall County, West Virginia, and Monroe County, Ohio, and certain other facilities, collectively known as the Clarington Project, to enable the provision of 250,000 dekatherms per day (Dth/d) of incremental firm transportation service on its mainline system.
2. For the reasons discussed below, the Commission will grant Dominion's requested authorization, with appropriate conditions.

I. Background and Proposal

3. Dominion is a natural gas company as defined in section 2(6) of the NGA. Dominion stores and transports natural gas in interstate commerce for customers in Maryland, New York, Ohio, Pennsylvania, West Virginia, Virginia, and the District of Columbia.
4. The Clarington Project will enable Dominion to provide 250,000 Dth/d of firm transportation service for CNX Gas Company, LLC (CNX). Dominion will receive the gas at a new interconnect with CNX in Lightburn, West Virginia, and deliver the gas to two new interconnects in Monroe County, Ohio: one with Texas Eastern Transmission

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2015).

called the TET-Aram Hill Interconnect, and the other with Rockies Express Pipeline (REX) called the REX-German Ridge Interconnect.

5. To provide the new service, Dominion proposes to construct, install, operate, and maintain the following facilities:

- a new 6,130 horsepower (hp) gas turbine compressor package and auxiliary equipment and station piping at its existing Burch Ridge Station in Marshall County, West Virginia;
- two new 5,000 hp reciprocating units and auxiliary equipment at its existing Mullett Station in Monroe County, Ohio;
- two new meter stations in Monroe County, Ohio: one meter station at the new TET-Arman Hill Interconnect, and the other at the new REX-German Ridge Interconnect;
- 2,612 feet of 20-inch-diameter suction piping and 2,756 feet of 16-inch-diameter discharge piping to connect the Mullett Compressor Station to the proposed meter stations; and
- 987 feet of 16-inch-diameter pipeline from the REX-German Ridge Interconnect to the tap location on the REX mainline.

6. Dominion estimates that these proposed facilities will cost \$76,560,748.

7. Dominion held an open season and a reverse open season from October 25 through October 31, 2013, for prospective shippers. As a result of the open season, Dominion executed a precedent agreement with CNX for 250,000 Dth/d of firm transportation service for a 15-year primary term. Dominion did not receive any bids to turn back capacity during the reverse open season.

8. As the recourse rate for services using capacity created by the Clarington Project, Dominion proposes an incremental reservation charge designed to recover the costs of the project. However, Dominion states it and CNX have agreed to a negotiated rate for the transportation service.

II. Notice, Interventions, Comments, and Protests

9. Notice of Dominion's application was issued on June 13, 2014, and published in the *Federal Register* on June 20, 2014 (79 Fed. Reg. 35,340). The notice established July 7, 2014, as the deadline for filing comments and interventions. The parties listed in

Appendix A filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.³

10. On August 21, 2014, the Allegheny Defense Project (Allegheny) filed a late motion to intervene in response to Commission staff's July 24, 2014, *Notice of Intent to Prepare an Environmental Assessment for the Clarington Project* (NOI).⁴ Allegheny has demonstrated an interest in the proceeding. Granting Allegheny intervention at this stage will not unduly delay or disrupt, or otherwise prejudice the applicant or other parties. Therefore, the Commission will grant its motion to intervene. Allegheny also filed adverse comments related to environmental scoping issues, which are addressed in Commission staff's Environmental Assessment for the Clarington Project issued on January 15, 2015, or in the Environmental Analysis section of this order.

11. On December 10, 2014, Regency Utica Gas Gathering LLC (Regency), a timely intervenor, filed a protest to Dominion's proposed route. Regency is constructing a meter station on the same right-of-way that will be used for Dominion's Clarington Project in Monroe County, Ohio. Regency stated that Dominion's proposed pipeline facilities would cross the site of Regency's meter station and consequently disrupt the construction and operation of Regency's facilities. On December 14, 2014, Dominion filed an answer in response stating that Dominion was willing to work with Regency to resolve the routing issue. On June 26, 2015, Regency withdrew its protest.

III. Discussion

12. Since Dominion's proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

³ 18 C.F.R. § 385.214(c) (2015).

⁴ Allegheny states that its motion is timely because the Commission's NOI solicited interventions. However, Rule 210 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.210(b) (2015)) provides that only those motions to intervene filed within the time period prescribed by the Commission's notice of the proceeding are deemed timely. As noted earlier, the notice of Dominion's application established July 7, 2014, as the deadline for interventions. While the NOI included information on how to file a motion seeking to intervene in the proceeding, Allegheny's filing in response to the NOI did not make its motion timely.

A. Certificate Policy Statement

13. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.⁵ The Certificate Policy Statement establishes 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, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

14. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from 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 facilities. 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.

15. As discussed above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined, in general, that when a pipeline proposes an incremental rate to recover the cost of proposed expansion that is higher than the generally applicable system rate, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.⁶ Dominion proposes an incremental recourse rate for service utilizing the Clarington Project's expansion capacity that is designed to recover the full cost of the expansion and

⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁶ *See, e.g., Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002).

exceeds the existing system rate for service. Therefore, existing shippers will not subsidize the expansion. Accordingly, we find that the threshold no-subsidy requirement under the Certificate Policy Statement has been met.

16. The Clarington Project will enable Dominion to provide 250,000 Dth/d of incremental firm transportation service for CNX, which has signed a 15-year precedent agreement to contract for all of the capacity. None of Dominion's existing customers have indicated any concerns that the Clarington Project and services using the incremental capacity will adversely affect existing service to Dominion's customers. Nor is there any evidence that Dominion's proposed project will adversely affect any other pipelines or their customers.

17. Dominion states in its application that all construction activities and project facilities will be located on lands owned or leased by Dominion.⁷ Therefore, Dominion will not need to rely on its certificate authority to acquire any property rights by eminent domain.

18. In view of the above considerations, we find that under the criteria of the Certificate Policy Statement the benefits that the Clarington Project will provide to the market will outweigh any adverse effects on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities. We therefore find, subject to the environmental discussion below and other conditions in this order, that the public convenience and necessity requires approval of Dominion's proposal.

B. Rates

19. As stated above, Dominion and CNX have agreed to a negotiated rate. However, as the recourse rate for services using the expansion capacity, Dominion proposes an initial incremental monthly firm reservation charge of \$4.8900 per Dth under Rate Schedule FT. Dominion calculated this monthly reservation charge by dividing the projected incremental first year cost of service of \$14,670,048 by 3,000,000 Dth (250,000 Dth of expansion capacity multiplied by 12 months). Dominion used the last approved pre-tax return of 13.70 percent and system depreciation rate of 2.50 percent underlying the design of its current system rates.⁸ Dominion will also charge shippers

⁷ Dominion's Application at 10.

⁸ *Id.* at Exhibit P. Dominion merged with CNG Transmission Corporation (CNG) in 2000. The pre-tax return and system depreciation rate underlying Dominion's rates were approved in CNG's rate case in Docket No. RP97-406. *See CNG Transmission Corp.*, 85 FERC ¶ 61,261, at 62,051 (1998).

using the incremental capacity all other applicable rates, charges, and surcharges under its Rate Schedule FT, including its Transportation Cost Rate Adjustment and Electric Power Cost Adjustment charge, maximum usage charge, and maximum system fuel retention percentage.

20. We have reviewed Dominion's incremental cost of service and proposed recourse rate for firm service using the expansion capacity and find that they are reasonable. Because the proposed incremental monthly reservation charge of \$4.8900 per Dth is higher than the generally applicable Rate Schedule FT reservation charge of \$3.8820 per Dth, the existing customers will not be subsidizing the project. We therefore will accept Dominion's proposed incremental recourse rate under Rate Schedule FT and direct Dominion to file tariff records that are consistent with the *pro forma* tariff records 30 to 60 days before the date the project facilities go into service. Commission policy requires a pipeline to charge its current system IT rate for any interruptible service rendered on additional capacity made available as a result of an incremental expansion that is integrated with existing pipeline facilities.⁹

21. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are approved.¹⁰ Dominion will be required to keep separate books and accounting of costs and revenues attributable to the Clarington Project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations.¹¹ This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.¹² Such measures serve to protect existing customers, consistent with the Certificate Policy Statement's non-subsidization criterion, from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project.

⁹ See, e.g., *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138, at P 31 (2012); *Gulf South Pipeline Co., LP*, 130 FERC ¶ 61,015, at P 23 (2010); *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at PP 313-14, 326 (2006).

¹⁰ 18 C.F.R. § 154.309 (2015).

¹¹ *Id.*

¹² *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, *FERC Stats. & Regs.* ¶ 31,267, at P 23 (2008).

C. Environmental Analysis

22. On July 24, 2014, Commission staff issued an NOI to prepare an EA for the proposed Clarrington Project, and on July 31, 2014, published the NOI in the *Federal Register*.¹³ Commission staff mailed the NOI to interested parties including: federal, state, and local officials; elected officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; interested individuals and groups; parties to this proceeding; and all affected landowners as defined in the Commission's regulations (i.e., landowners within one-half mile of the compressor station).

23. In response to the NOI, the Commission received comments regarding environmental issues from Allegheny and the U.S. Department of the Interior. The comments addressed cumulative impacts and threatened and endangered species.

24. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an EA for Dominion's proposal. The analysis in the EA addressed geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. On January 15, 2015, Commission staff placed the EA into the public record. In the EA, Commission staff addressed all substantive comments received in response to the NOI.

25. Pursuant to section 7(a)(2) of the Endangered Species Act, on January 28, 2015, Commission staff requested U.S. Fish and Wildlife Service's (FWS) concurrence on Commission staff's determinations that the Clarrington Project would not be likely to adversely affect the Indiana bat or the northern long-eared bat. By letter dated February 5, 2015, the FWS concurred with Commission staff's determinations. Therefore, the EA's recommended environmental condition 11 is no longer required and is not adopted in this order.

26. Below, we discuss Allegheny's substantive comments to the NOI that require clarification and Dominion's recent correction to its air emission calculations.

D. Scope of the EA

27. Allegheny asserts that the Commission should postpone processing Dominion's application and all other pending applications for facilities in the northeastern U.S. until the Commission prepares a regional programmatic EIS examining the direct, indirect, and

¹³ 79 Fed. Reg. 44,448.

cumulative effects of shale gas extraction and associated activities in the Marcellus shale region. Allegheny predicates its assertion in part on the allegation that the Commission has aligned with both the Obama Administration and the gas industry in developing “a regional plan to exploit the Marcellus (and other shale formations in the region) to increase reliance on natural gas, particularly in the Northeastern U.S.”¹⁴ In turn, Allegheny asserts that all pipeline projects proposed to provide increased capacity to accommodate shale gas in the northeastern U.S. constitute a “broad Federal action.”¹⁵ Allegheny claims that these pipeline projects proposed to be built in the northeast are a series of separate actions that are related to each other closely enough to be, in effect, a single course of action planned together and associated with a regional program.

28. According to Allegheny, the Commission is playing an active role in the Federal government's large-scale regional development plan to “aggressively promote and actively facilitate the extraction of shale gas in the Marcellus Region.”¹⁶ Allegheny alleges the Commission’s promotion of that plan is demonstrated by its processing and approval of numerous applications for increased pipeline capacity in the northeast region of the U.S., including Dominion’s instant application for the Clarington Project. In support of this claim, Allegheny’s July 7, 2014, filing points to a number of major pipeline projects approved by the Commission since 2009 to construct pipeline facilities that can transport gas produced from the Marcellus shale;¹⁷ to then pending applications for other major pipeline projects that could transport Marcellus shale gas;¹⁸ and to a document prepared by the Commission's Office of Energy Projects identifying jurisdictional “major pipeline projects” including a number of pipeline projects in the Marcellus shale region or that could transport Marcellus shale gas to Northeast markets.¹⁹

¹⁴ Allegheny July 7, 2014 Filing at 65.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 11-13.

¹⁸ *Id.* at 13-15.

¹⁹ *Id.* at 27 (citing *Major Pipeline Projects on the Horizon (MMcf/d) January 2010 to February 2014*, available at <https://www.ferc.gov/industries/gas/industry-act/pipelines/horizon-pipe.pdf>). As further support for its assertion that the Commission should suspend processing all pending natural gas infrastructure projects for the transportation of gas produced from the Marcellus shale until a programmatic EIS is prepared, Allegheny also emphasizes that one of the declared objectives of the Commission’s Strategic Plan for FY2014-2018 is “to foster economic and environmental

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Allegheny maintains that these proceedings, together with a host of statements and documents, including those from the Commission itself, other federal and state agencies, the natural gas industry, individual commissioners, and news reports, demonstrate the Commission's "awareness of many companies' plans to increase infrastructure capacity to accommodate and facilitate natural gas extraction in Marcellus Shale."²⁰

29. We disagree with Allegheny's assertion that, before acting on Dominion's application for its Clarington Project, the Commission must prepare a regional programmatic EIS on shale gas extraction in the Marcellus shale region and already approved and pending applications for projects to construct pipeline facilities that might transport Marcellus shale gas. The Council on Environmental Quality's (CEQ) NEPA regulations state that major federal actions for which an EIS may be required include "programs, such as a group of concerted actions to implement a specific policy or plan; [and] systematic and connected agency decisions allocating agency resources to implement a specific statutory program."²¹ The question of whether to prepare a programmatic EIS is initially that of the federal agency.²² The D.C. Circuit has explained that in making this determination an agency should consider whether a programmatic EIS will contribute to the decision-maker's basic planning of the overall program, and whether segmenting the overall program will unreasonably constrict the scope of environmental consideration.²³

30. While the Commission, an independent regulatory agency, is charged with the regulation of certain aspects of the energy industry in the U.S., including the construction and operation of pipeline facilities for the transportation of natural gas in interstate

benefits for the nation through approval of natural gas and hydropower projects." *Id.* at 26 (citing *Federal Energy Regulatory Commission, Strategic Plan, FY 2014-2018*, Objective 2.1, at 17 (March 2014), available at <https://www.ferc.gov/about/strat-docs/FY-2014-FY-2018-strat-plan.pdf>).

²⁰ *Id.* at 11.

²¹ 40 C.F.R. § 1508.18(b)(3) (2015).

²² See *Kleppe v. Sierra Club*, 427 U.S. 390 (1976). Indeed, even where an EIS considers "one of a series of closely related proposals, the decision whether to prepare a programmatic impact statement is committed to the agency's discretion." *Izaak Walton League of America v. Marsh*, 655 F.2d 346, 374 n.73 (D.C. Cir. 1981).

²³ See *National Wildlife Federation v. Appalachian Regional Commission*, 677 F.2d 883, 888 (D.C. Cir. 1981).

commerce, the Commission has no jurisdiction over the development and production of shale gas or any other natural gas production activities. Therefore, the Commission has no program, policy, or plan to promote development and production of shale gas or the use of or reliance on shale gas. Further, the Commission considers individual proposed pipeline infrastructure projects on their own merits pursuant to its statutory obligation under NGA section 7(c).²⁴ The Commission will issue a certificate to authorize a proposed pipeline project if it finds in accordance with section 7(e) of the NGA that the construction and operation of the proposed facilities “is or will be required by the present or future public convenience and necessity.”²⁵

31. Allegheny emphasizes that our Strategic Plan for FY2014-2018 states that “[t]he responsible development of interstate natural gas infrastructure – pipelines, storage, and LNG facilities – is a critical link to ensuring that natural gas supply can reach market areas.”²⁶ Private industry, however, not the Commission, proposes and develops interstate natural gas infrastructure, as reflected in the applications filed with the Commission by natural gas companies. The Commission processes these applications as they come, and evaluates them based on the individual facts and circumstances involved to assess the need for the proposed facilities.

32. Further, rather than supporting its assertion that the Commission’s approval of pipeline projects that can or may be used to transport Marcellus shale gas is part of a federal plan or program to promote the development and production of Marcellus shale gas, all evidence relied upon by Allegheny actually illustrates that the regional development of Marcellus shale gas is solely initiated by private industry. In *Kleppe v. Sierra Club (Kleppe)*, the Supreme Court found that a programmatic EIS is not required to evaluate the regional development of a resource by private industry that is not part of, or responsive to, a federal plan or program in that region.²⁷ Therefore, contrary to Allegheny’s assertion, the Commission’s “awareness of many companies’ plans to increase infrastructure capacity to accommodate and facilitate natural gas extraction in

²⁴ 15 U.S.C. § 717f(c) (2012).

²⁵ 15 U.S.C. § 717f (e) (2012).

²⁶ FERC, *FY 2014-2018 Strategic Plan*, at 17 (March 2014), available at <http://www.ferc.gov/about/strat-docs/FY-2014-FY-2018-strat-plan.pdf>.

²⁷ *Kleppe*, 427 U.S. 390 at 400 (1976).

Marcellus Shale”²⁸ does not equate to a Commission policy to encourage the shale gas production.

33. Allegheny also cites to the CEQ’s 2014 Final Guidance for Effective Use of Programmatic NEPA Reviews²⁹ to support its contention that the Commission should prepare a programmatic EIS. That CEQ guidance indicates that a programmatic EIS may be helpful to an agency when analyzing similar actions, including energy development programs proposed in the same region of the country.³⁰ In its August 25, 2014, and January 12, 2015, filings, Allegheny identifies eight projects by Dominion and its affiliates that Allegheny asserts the Commission should consider as similar actions, connected actions, and cumulative actions: the Appalachian Gateway Project (Docket No. CP10-448), the Allegheny Storage Project (Docket No. CP12-72), the Cove Point Liquefaction Project (Docket No. CP13-113),³¹ the New Market Project (Docket No. CP14-497), the Lebanon West II Project (Docket No. CP14-555), the Monroe to Cornwell Project (Docket No. CP15-7), the Southeast Reliability Project (now the Atlantic Coast Pipeline Docket No. PF15-5), and the non-jurisdictional Natrium Processing and Fractionation Facility (Natrium Facility).³²

34. We disagree with Allegheny’s contention that the cited projects are similar actions for purposes of our NEPA analysis. Similar actions are those which, when viewed with other reasonably foreseeable or proposed agency actions, provide a basis for evaluating their environmental consequences together, such as common timing, location, impacts, alternatives, or implementation methods.³³

²⁸ Allegheny July 7, 2014 Filing at 11.

²⁹ CEQ Guidance, *Effective Use of Programmatic NEPA Reviews* (Dec. 2014), available at http://www.whitehouse.gov/sites/default/files/docs/effective_use_of_programmatic_nepa_reviews_18dec2014.pdf.

³⁰ *Id.* at 21.

³¹ The Cove Point Liquefaction Project is owned and operated by Dominion Cove Point LNG, LP.

³² The Natrium Facility is owned and operated by Blue Racer Midstream, LLC, which is a subsidiary of Dominion’s parent, Dominion Resources, Inc.

³³ 40 C.F.R. § 1508.25(a)(3) (2014).

35. All of the projects cited by Allegheny are distinct and separate projects. Except for the non-jurisdictional Natrium Facility, all of the projects have been or are being addressed in individual Commission proceedings. Further, each project's timing or geography differs from that of the other projects.

36. While the already approved Appalachian Gateway Project and Allegheny Storage Project involved the construction of the Burch Ridge and Mullett Compressor Stations, respectively, and the instant Clarington Project will add compression at both of those stations, the Appalachian Gateway and Allegheny Storage Projects do not share common timing with the Clarington Project. Dominion proposes to begin construction of the Clarington Project in October 2015. The Commission issued a certificate to Dominion to construct the Appalachian Gateway Project in June 2011,³⁴ and granted Dominion's request to place the authorized facilities into service in August 2012.³⁵ Similarly, the Commission issued a certificate to Dominion to construct the Allegheny Storage Project in December 2012,³⁶ and granted Dominion's request to place the authorized facilities into service in October 2014.³⁷

37. Likewise, the Cove Point Liquefaction Project, the New Market Project, the Natrium Facility, and the Atlantic Coast Pipeline do not share common timing with the Clarington Project. The Commission authorized Dominion Cove Point LNG's liquefaction project in September 2014,³⁸ and the project facilities have been under construction since October 2014.³⁹ Dominion's affiliate completed and began operating the non-jurisdictional Natrium Facility in 2013. Dominion's pending application for the

³⁴ *Dominion Transmission Inc.*, 135 FERC ¶ 61,239 (2011).

³⁵ See August 31, 2012 Letter Granting Dominion Transmission, Inc.'s Request to Place Into Service the Appalachian Gateway Project Facilities issued by Commission's Office of Energy Projects in Docket No. CP10-448-000.

³⁶ *Dominion Transmission Inc.*, 141 FERC ¶ 61,240 (2012).

³⁷ See October 29, 2014 Letter Granting Dominion Transmission, Inc.'s Request for Authorization to Commence Service of All Remaining Facilities issued by Commission's Office of Energy Projects in Docket No. CP12-72-000.

³⁸ *Dominion Cove Point LNG, LP*, 148 FERC ¶ 61,244 (2014).

³⁹ See October 29, 2014 Notice to Proceed with Construction Activities issued by Commission's Office of Energy Projects in Docket No. CP13-113-000 (approving Dominion Cove Point LNG's request to proceed with grading activities).

New Market Project that will add compression facilities on its pipeline system in New York was filed on June 2, 2014, with planned in-service date on or about November 1, 2016. Finally, Dominion's contemplated Atlantic Coast Pipeline Project is in the pre-filing stage, and if Dominion files an application for the project, current plans are for construction to begin in 2016.

38. Dominion's proposed Monroe to Cornwell Project, Lebanon West II Project, and New Market Project, and Dominion Cove Point LNG's approved liquefaction project also do not have a common geography with the Clarington Project. While the facilities proposed for the Monroe to Cornwell Project are located in West Virginia, the nearest activity is proposed to occur over 30 miles from the Clarington Project in Wetzel County, West Virginia. Similarly, while the Lebanon West II Project includes some proposed construction activities in Ohio, the nearest activity to the Clarington Project is proposed to occur over 45 miles away in Harrison County, Ohio. Dominion Cove Point LNG's liquefaction project will be located at its LNG terminal in Calvert County, Maryland, and its compression and metering facilities authorized as part of the project will be at its existing compressor station and metering site in Fairfax County, Virginia. Dominion's pending proposal for the New Market Project will add compression to its pipeline system in several counties in New York. Similarly, Dominion's contemplated Atlantic Coast Pipeline Project does not share common geography with the Clarington Project as it will originate over 50 miles from the Clarington Project in Harrison County, West Virginia, run to Virginia and then into eastern North Carolina.

39. The fact that each of identified projects may be used to process or transport Marcellus shale gas does not mean that the projects are so closely related to each other that NEPA requires concurrent analysis. Further, as discussed in more detail below, the Commission can only speculate about the extent, scale, scope, and timing of the gas production industry's future development of the Marcellus shale or the new interstate pipeline projects that might ultimately be proposed to transport Marcellus gas. Given the substantial disparity in time and place and that future development that may be related to any these projects is not reasonably foreseeable, the EA for the Clarington Project appropriately did not include the eight identified projects as similar actions and found that developing a programmatic EIS would not be helpful for our analysis.⁴⁰

⁴⁰ Even if, for the sake of argument, the Commission conceded that the Clarington Project and any of the projects identified by Allegheny were similar actions, our determination as to whether to prepare a programmatic EIS is discretionary. CEQ states, "[a]n agency *may* wish to analyze [similar] actions in the same impact statement. It *should* do so when the *best way* to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact

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40. The eight projects identified by Allegheny also do not meet the definition of connected actions. Actions are “connected” if they “[a]utomatically trigger other actions which may require environmental impact statements,” “[c]annot or will not proceed unless other actions are taken previously or simultaneously,” or “[a]re interdependent parts of a larger action and depend on the larger action for their justification.”⁴¹ The eight identified projects are not interdependent or otherwise interrelated or connected to Dominion’s proposed Clarington Project, either physically or in purpose, as the new compression and pipeline facilities constituting the Clarington Project will increase capacity on Dominion’s system to enable the provision of 250,000 Dth/d of firm transportation service for CNX from a new interconnect with CNX in Lewis County, West Virginia, to new interconnects with two other interstate pipelines in Monroe County, Ohio. Allegheny has not shown any interrelationship or connectedness between this project and the various other pipeline projects approved or proposed to provide capacity to accommodate additional gas supplies sourced in the northeastern U.S. beyond the fact that they might share a general regional proximity to the Marcellus shale region. Neither the Clarington Project’s or any of the other identified projects’ utility is shown to be functionally or financially dependent on any other project; nor are any of these projects shown, or claimed to be, dependent on the timing of another project’s approval or service date. Based on each project’s independent utility, none of the projects trigger any of the other projects and each project can proceed on its own.

41. Neither are any of the eight identified projects and the Clarington Project cumulative actions. “Cumulative actions” are those “which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.”⁴² To determine the scope of the cumulative impact analysis, Commission staff establishes a “region of influence” to define the area affected by the proposed action in which existing and reasonably foreseeable future projects may also result in cumulative impacts. The EA concluded that all of the projects that Allegheny identified are outside of the Clarington Project’s region of influence; therefore,

statement.” 40 C.F.R. § 1508.25(a)(3) (2014) (emphasis added). *See also Klamath-Siskiyou Wildlands Center v. Bureau of Land Mgt.*, 387 F.3d 989, 1001-01 (9th Cir. 2004) (similarly emphasizing that agencies are only required to assess similar actions programmatically when such review is necessarily the best way to do so).

⁴¹ 40 C.F.R. § 1508.25(a)(1) (2014).

⁴² 40 C.F.R. § 1508.25(a)(2) (2014).

Commission staff did not assess cumulative impacts from those projects on any environmental resources.⁴³

E. Indirect and Cumulative Upstream Impacts

42. Allegheny argues that the Commission must consider the indirect and cumulative effects of past, present, and reasonably foreseeable actions, including induced conventional and unconventional gas production in the Marcellus and Utica shale regions, and the effects that production has on wildlife habitat, water and air quality, and recreation.

43. Indirect impacts are “caused by the proposed action” and occur later in time or farther removed in distance than direct impacts but are still “reasonably foreseeable.”⁴⁴ Indirect impacts may include growth inducing effects and other effects related to induced changes in the pattern or land use, population density or growth rate, and related effects on air and water.⁴⁵ For an agency to consider an impact in its NEPA analysis as an indirect effect, approval of the proposed project and the related secondary effect must be causally related.

44. The potential environmental effects associated with additional natural gas production are not sufficiently causally related to the Clarington Project to warrant a detailed analysis.⁴⁶ Allegheny fails to identify any induced natural gas production causally associated with the Clarington Project, other than to note Dominion’s application states the capacity created by the Clarington Project will be well-positioned to transport Appalachian production. Moreover, while the capacity created by the Clarington Project may be used to transport conventional or unconventional gas production in the Marcellus or Utica shale regions, the purpose of the Clarington Project is to enable the provision of

⁴³ EA at 39.

⁴⁴ 40 C.F.R. § 1508.8(b) (2014).

⁴⁵ *Id.*

⁴⁶ *See, e.g., Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh'g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review denied, sub nom, Coalition for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2d Cir. 2012) (upholding the Commission’s analysis of the development of Marcellus shale natural gas reserves where the Commission reasonably concluded that the impacts of that development were not sufficiently causally-related to the projects to warrant a more in-depth analysis).

250,000 Dth/d of firm transportation service for CNX, regardless of where the gas is produced; the project purpose is not to facilitate additional natural gas production in any particular region, which may occur for reasons unrelated to the project and over which the Commission has no jurisdiction. In any event, unconventional production will likely continue regardless of whether the Clarington Project is approved because multiple existing and proposed transportation alternatives are available for regional production.

45. Even if a causal relationship between approval of Dominion's Clarington Project and induced gas production were shown, the impacts from induced production on the environment are not reasonably foreseeable as contemplated by CEQ's regulations and case law. An impact is "reasonably foreseeable" if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision."⁴⁷ Courts have noted that the starting point of any NEPA analysis is a "rule of reason" under which NEPA documents "need not address remote and highly speculative consequences."⁴⁸ Even considering Dominion's statement that the capacity created by the Clarington Project will be well-positioned to transport Appalachian production, we can only speculate on the exact location, scale, scope, and timing of future production-related facilities. Such speculation would not meaningfully inform our decision here, and therefore, the impacts from shale production are not reasonably foreseeable.

46. Commission staff also appropriately determined that any impacts of the Clarington Project will not be incremental cumulative environmental impacts of Marcellus and Utica shale gas production. The CEQ regulations define cumulative impacts as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."⁴⁹ The CEQ guidance on cumulative impacts assessments recognizes that agencies have substantial discretion in determining the appropriate level of the cumulative impacts assessments. CEQ states that "it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful."⁵⁰ An agency is

⁴⁷ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

⁴⁸ *Hammond v. Norton*, 370 F. Supp. 2d 226, 245-46 (D.D.C. 2005).

⁴⁹ 40 C.F.R. § 1508.25(a)(2) (2014).

⁵⁰ CEQ Guidance, *Considering Cumulative Effects Under the National Environmental Policy Act*, at 8 (January 1997). The Supreme Court has similarly held that "determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies." *Kleppe*, 427 U.S. 390, 414 (1976).

only required to include “such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible.”⁵¹

47. As noted above, and consistent with CEQ guidance, to determine the scope of the cumulative impact analysis in an EA or Environmental Impact Statement (EIS), Commission staff establishes a “region of influence” to define the area affected by the proposed action in which existing and reasonably foreseeable future actions may also result in cumulative impacts. For Dominion’s proposed Clarington Project, the region of influence considered by the EA included areas within five miles of the proposed project construction sites.⁵² Given the geographic scope of the Marcellus and Utica shale, development of the Marcellus and Utica shale resources will extend well beyond the region of influence considered for inclusion in the cumulative impact analysis for the Clarington Project. Therefore, the broader cumulative effects analysis sought by Allegheny is not required under NEPA.

48. Allegheny contends that the Commission’s practice of limiting cumulative effects analysis to the “region of influence” is inconsistent with both the CEQ’s and the Commission’s NEPA regulations. Further, Allegheny disagrees with the Commission’s position that it is highly difficult and speculative to identify and quantify cumulative impacts of Marcellus shale gas production beyond the regions of influence considered in the Commission’s EAs. In support, Allegheny references reports published by the U.S. Geological Survey (USGS), Carnegie Mellon University (Carnegie Mellon), and Nature Conservancy in cooperation with Western Pennsylvania Conservancy. Allegheny also cites to U.S. Forest Service’s (Forest Service) EIS for the Allegheny National Forest Land and Resource Management Plan,⁵³ which recorded existing wells and projected additional wells that would be developed by 2020.

⁵¹ *New York Natural Res. Def. Council, Inc. v. Kleppe*, 429 U.S. 1307, 1311 (1976) (citing *Natural Res. Def. Council v. Calloway*, 524 F.2d 79, 88 (2d Cir. 1975)).

⁵² EA at 39. As discussed above, we have rejected Allegheny’s argument that the Natrium Facility operated by Dominion’s affiliate, Blue Racer Midstream, is a “similar” action in view of its different timing. The Natrium Facility, however, was one of the past, present, and reasonably foreseeable actions that the EA identified in the region of influence for purposes of considering the Clarington Project’s incremental cumulative impacts. *Id.* at Table 10, “Other Projects in the Vicinity of the Proposed Project.”

⁵³ U.S. Forest Service, *Allegheny National Forest Record of Decision for Final Environmental Impact Statement and Land and Resource Management Plan*

49. Allegheny fails to show that the explanatory information in the cited USGS's, Carnegie Mellon's, or the Nature Conservancy's reports, or elsewhere, identifies information that would assist the Commission in determining the timing and location of wells and related infrastructure, much less the associated potential impacts of natural gas drilling, in the project area. As we have found, the full range of Marcellus shale development is both widespread and uncertain in nature and timing, making it highly difficult and speculative to identify and quantify cumulative impacts of possible future drilling relating to pipeline projects.⁵⁴

50. As noted above, CEQ guidance recognizes that agencies have substantial discretion in determining the appropriate scope of their cumulative impacts analyses.⁵⁵ Therefore, the fact that the Forest Service found cumulative effects of natural gas development sufficiently reasonably foreseeable for purposes of informing its actions in developing the Land and Forest Management Plan of the Allegheny National Forest is not controlling here. The Forest Service was developing a plan to guide the management of the Allegheny National Forest. Among other things, it is a goal of the Forest Service to protect publicly-owned surface resources from disturbance by oil and gas development.⁵⁶ The Forest Service's action covered a geographically distinct area, i.e., the Allegheny National Forest, and the EIS focused on the existing activity within that area, estimating that there were 8,000 wells in production and 1,250 miles of oil and gas roads.⁵⁷ Those circumstances are quite different from the situation here.

51. Allegheny also cites *Northern Plains Resource Council et al. v. Surface Transportation Board et al. (Northern Plains)*⁵⁸ to support its contention that future production is reasonably foreseeable. *Northern Plains* addresses the issue of the extent to which the Surface Transportation Board (Board) should have considered the cumulative

(March 2007) (Forest Service EIS), *available at* http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5044088.pdf.

⁵⁴ See *Central New York Oil & Gas Co. LLC*, 138 FERC ¶ 61,104, at P 7 (2012), *upheld by Coalition for Responsible Growth and Resource Conservation v. FERC*, 485 Fed. Appx. 472 (2d Cir. 2012).

⁵⁵ See CEQ Guidance, *supra* note 51.

⁵⁶ See Forest Service EIS, *supra* note 54.

⁵⁷ See *id.* at 3-163.

⁵⁸ 668 F.3d 1067 (9th Cir. 2011).

impacts of coal bed methane well development as part of its NEPA analysis of a proposed railroad line to transport coal from coal mines in three Montana counties. *Northern Plains* is distinguishable because the Bureau of Land Management (BLM) and State of Montana (Montana) had prepared a programmatic EIS to estimate the reasonably foreseeable number of coal bed methane wells, and field compressors as well as the miles of roads and gathering lines that would be constructed over the next twenty years in the three counties that the railroad would cross.⁵⁹ The Board had not taken into account any of the programmatic document's findings beyond the first five years based on its conclusions that the railroad would be completed within that time frame and that any cumulative impacts from construction of the railroad and activities associated with development of the coal bed methane wells would be limited to that five-year period. In view of the three-decade long history of delays with the railroad project, the court concluded that the Board's assumption that there would be no cumulative impacts after the first five years was not reasonable and that the Board should have taken into account the programmatic EIS's findings regarding the reasonably foreseeable impacts that development of coal bed methane would have over the next twenty years.

52. Here, the Commission has no similar information in the present case about the timing, location, and scope of future shale (or conventional) gas well development in the project area. Moreover, as the Commission has previously explained, while *Northern Plains* establishes that agencies must engage in reasonable forecasting in considering cumulative impacts, neither that court decision nor NEPA support the position that an agency should "engage in speculative analysis" or attempt "to do the impractical, if not enough information is available to permit meaningful consideration."⁶⁰

F. Correction to Air Emission Calculations

53. On June 29, 2015, Dominion filed comments stating that in its application it mistakenly based air emission calculations for the Mullett Compressor Station on two engines rated at 4,735 hp, rather than at 5,000 hp as proposed for the Clarington Project. In its comments, Dominion provides updated air emission calculations using the correct rating of 5,000 hp. The updated figures and calculations show that the emissions from the Mullett Compressor Station will remain below all federal permitting thresholds,

⁵⁹ For example, BLM's and Montana's programmatic EIS concluded that it was reasonably foreseeable that in the next 20 years at least 3,500 to 9,800 coal bed methane wells, 140 to 350 field compressors, and 2,050 to 5,850 miles of gathering lines would be built in the counties traversed by the railroad.

⁶⁰ See *Sabine Pass Liquefaction LLC*, 140 FERC ¶ 61,076, at P 17 (2012) (citing *Northern Plains*, 668 F.3d 1067 (9th Cir. 2011)).

and therefore, do not alter any of the air quality conclusions in the EA. Dominion also states that it is updating its Ohio state air permit application and will file its new air permit with the Commission when Dominion receives the new air permit from the Ohio Environmental Protection Agency.

G. Environmental Conclusion

54. The Commission has reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effects of Dominion's project. Based on our consideration of this information, the Commission agrees with the conclusions presented in the EA and finds that if constructed and operated in accordance with Dominion's application and supplements, and in compliance with the environmental conditions in Appendix B to this order, our approval of this proposal will not constitute a major federal action significantly affecting the quality of the human environment.

55. 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.

IV. Conclusion

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Dominion to construct and operate the Clarington Project, as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Dominion's:

(1) completion of construction of the authorized facilities and making them available for service within one year of the date of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) compliance with all applicable Commission regulations including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) compliance with the environmental conditions listed in Appendix B to this order;

(4) execution of firm service agreement(s) prior to commencing construction for levels and terms of service equivalent to those represented in its precedent agreement supporting the certificate application.

(C) Dominion's initial incremental firm recourse rate for the Clarington Project's expansion capacity is accepted.

(D) Dominion shall keep separate books and accounting of costs attributable to the proposed incremental capacity and service, as more fully discussed above.

(E) Dominion shall file actual tariff records with the incremental rate no earlier than 60 days, and no later than 30 days, prior to the date the project facilities go into service.

(F) 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.

(G) Allegheny Defense Project's late motion to intervene is granted pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Timely, Unopposed Interventions

- Atlanta Gas Light Company, Pivotal Utility Holdings, Inc., and Virginia Natural Gas, Inc.
- Consolidated Edison Company of New York, Inc., and Philadelphia Gas Works
- Exelon Corporation
- National Fuel Gas Distribution Corporation
- National Grid Gas Delivery Companies
- New Jersey Natural Gas Company
- New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation
- NiSource Distribution Companies⁶¹
- NJR Energy Services Company
- Peoples Natural Gas Company LLC, and Peoples TWP LLC
- Piedmont Natural Gas Company, Inc.
- PSEG Energy Resources & Trade LLC
- Regency Utica Gas Gathering LLC

⁶¹ NiSource Distribution Companies include: Columbia Gas of Ohio, Inc.; Columbia Gas of Pennsylvania, Inc.; and Columbia Gas of Virginia, Inc.

Appendix B

Environmental Conditions for Dominion's Clarington Project

Docket No. CP14-496-000

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 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 (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
 - d. 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 whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. 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 (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**, 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 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 Natural Gas Act 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 extra workspace allowed by our Upland Erosion Control, Revegetation, and Maintenance Plan 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. **At least 60 days 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, 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);
 - 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 **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 Dominion's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, 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 EI(s) 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. **Prior to receiving written authorization from the Director of OEP to commence construction of the 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).
9. 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 areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing their respective authorized facilities in service**, Dominion shall each 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.
11. Dominion shall **not begin construction** of the Mullett Compressor Station facilities and/or use of staging, storage, or temporary work areas, and new or to-be-improved access roads **until**:
- a. Dominion files with the Secretary the remaining cultural resources survey reports, and any necessary evaluation reports treatment plans, and the Ohio Historic Preservation Office's comments on the reports and plans;
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. the FERC staff reviews and the Director of the OEP approves all cultural resources reports and plans, and notifies Dominion in writing that treatment plans/mitigation measures may be implemented and/or construction may proceed.

All materials 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."**

12. Dominion shall conduct noise surveys at the Burch Ridge and Mullett Compressor Stations to verify that the noise from all the equipment operated at full power load does not exceed a day-night sound level of 55 decibels on the A-weighted scale at the nearby noise sensitive areas (NSA). The results of the noise surveys 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 meet the above-listed criteria. 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.