

155 FERC ¶ 61,106
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket No. CP14-497-000

ORDER ISSUING CERTIFICATE

(Issued April 28, 2016)

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 a certificate of public convenience and necessity for construction and operation of certain compression and related facilities in Chemung, Herkimer, Madison, Montgomery, Schenectady, and Tompkins Counties, New York (New Market Project). As discussed below, the Commission will grant the requested authorization, subject to the conditions discussed herein.

I. Background and Proposal

2. Dominion, a corporation organized under the laws of Delaware,³ is a natural gas company as defined by NGA section 2(6).⁴ It stores and transports natural gas in interstate commerce for customers located primarily in the Mid-Atlantic and the Northeast. Dominion maintains approximately 7,700 miles of pipeline in Maryland, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2015).

³ Dominion is a wholly-owned subsidiary of Dominion Gas Holdings, LLC, which is a wholly-owned subsidiary of Dominion Resources, Inc.

⁴ 15 U.S.C. § 717a(6) (2012).

3. Dominion requests authority to construct and operate two new compressor stations and upgrade and modify three existing compressor stations and one meter and regulating (M&R) station in New York. Specifically, Dominion proposes to construct and operate: (1) a new 11,010 horsepower (hp) compressor station, consisting of one natural gas-fired turbine compressor and associated equipment, and 1,425 feet of 42-inch-diameter pipeline in Chemung County (Horseheads Compressor Station); (2) a new 10,880 hp compressor station, consisting of one natural gas-fired turbine compressor and associated equipment in Madison County (Sheds Compressor Station); (3) a 6,393 hp natural gas fired-turbine compressor, two 2,370 hp reciprocating compressors, and associated equipment, as well as a new M&R facility and station cooler, at the existing Brookman Corners Compressor Station in Montgomery County; (4) a station cooler and modifications to the piping at the existing Borger Compressor Station in Tompkins County; and (5) a station cooler at the existing Utica Compressor Station in Herkimer County. Dominion also proposes to modify its existing facilities at the West Schenectady M&R station in Schenectady County.

4. The New Market Project will enable Dominion to provide 112,000 dekatherms (Dth) per day of firm transportation service for The Brooklyn Union Gas Company d/b/a National Grid NY (Brooklyn Union) and Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk). Dominion will receive the gas at its existing Leidy interconnections with Texas Eastern Transmission, LP or Transcontinental Gas Pipe Line Company, LLC in Clinton County, Pennsylvania, and transport the gas to its existing Brookman Corners Interconnection in Montgomery County for Brooklyn Union, and the West Schenectady Interconnection near Schenectady for Niagara Mohawk.

5. Dominion conducted an open season for the New Market Project from April 25 to May 16, 2013. As a result of the open season, Dominion states that it executed 15-year precedent agreements with Brooklyn Union and Niagara Mohawk for 82,000 and 30,000 Dth per day, respectively, of firm transportation service. This represents all of the capacity associated with the New Market Project. Dominion also conducted a reverse open season during the same time period, but it did not receive any bids for turn back capacity.

6. Dominion estimates that the construction costs associated with the proposed facilities will total \$158,960,570.⁵ Dominion states that the project will be financed from operating funds or funds will be obtained from its parent company, Dominion Gas Holdings, LLC. Dominion has proposed an incremental recourse rate for firm project

⁵ Application at Exhibit K.

transportation service, as described below. Brooklyn Union and Niagara Mohawk have agreed to pay a negotiated rate.

II. Notice, Interventions, and Comments

7. Notice of Dominion's application was published in the *Federal Register* on June 17, 2014.⁶ Appendix A of this order identifies all parties that filed timely and untimely motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁷

8. On September 23, 2015, Freshwater Accountability Project (Freshwater), Heartwood, and Ohio Valley Environmental Coalition (Ohio Valley) each filed untimely motions to intervene,⁸ which sought intervention in multiple proceedings, including this one.⁹ Dominion filed an answer in opposition to the untimely motions to intervene.

9. The Commission's practice in certificate proceedings has generally been to grant motions to intervene filed prior to issuance of the Commission's order on the merits.¹⁰ We find that these movants have demonstrated a sufficient interest in the proceeding and, under the circumstances here, we will grant their late motions to intervene.¹¹

⁶ 79 Fed. Reg. 34,519-34,520 (2014).

⁷ 18 C.F.R. § 385.214 (2015).

⁸ These entities state that they are regional environmental organizations with an interest in protecting and preserving natural resources.

⁹ Freshwater's and Ohio Valley's motions sought intervention in five proceedings: Dominion's Lebanon West II Project (Docket No. CP14-555-000), Leidy South Project (Docket No. CP15-492-000), Monroe to Cornwell Project (Docket No. CP15-7-000), and New Market Project (instant proceeding) and Columbia Gas Transmission, LLC's (Columbia) Utica Access Project (Docket No. CP15-87-000). Heartwood's motion sought intervention in all but the Leidy South Project proceeding. The Commission granted Freshwater's, Heartwood's, and Ohio Valley's motions to intervene in *Dominion Transmission, Inc.*, 153 FERC ¶ 61,203 (2015) (Lebanon West II Project) and *Dominion Transmission, Inc.*, 153 FERC ¶ 61,382 (2015) (Monroe to Cornwell Project).

¹⁰ See, e.g., *Algonquin Gas Transmission, LLC*, 151 FERC ¶ 61,118, at P 7 (2015).

¹¹ While Freshwater's, Heartwood's, and Ohio Valley's assertions that they only recently became aware of the projects are not adequate to demonstrate good cause

(continued ...)

10. Numerous parties filed protests or comments about environmental and safety matters including air quality, noise, impact on land values, improper segmentation, cumulative impacts, the need for an Environmental Impact Statement (EIS), and requests for an extended comment period. These comments are addressed in the Environmental Assessment (EA) and, as appropriate, in the environmental section of this order.

11. Mr. William Huston requests that the Commission hold a formal hearing for this project. Although our regulations provide for a hearing, neither section 7 of the NGA nor our regulations require that such hearings be trial-type evidentiary hearings. When, as is usually the case, the written record provides a sufficient basis for resolving the relevant issues, it is our practice to provide for a paper hearing.¹² That is the case here. We have reviewed Mr. Huston's motion and conclude that all issues of material fact relating to Dominion's proposal are capable of being resolved on the basis of the written record. Accordingly, we will deny Mr. Huston's request for a formal hearing.

III. Discussion

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

sufficient to justify their late requests to intervene in this proceeding, *see, e.g., Dominion Transmission, Inc.*, 153 FERC ¶ 61,203, at P 6 (2015) and *California Department of Water Resources and the City of Los Angeles*, 120 FERC ¶ 61,057 (2007), *order rejecting reh'g*, 120 FERC ¶ 61,248 (2007), *aff'd California Trout and Friends of the River v. FERC*, 572 F.3d 1003 (9th Cir. 2009), they are correct that the Commission has, to date, been liberal in granting late motions to intervene in natural gas infrastructure proceedings. In addition, we find that granting the untimely motions to intervene at this stage of the proceeding will not delay, disrupt, or unfairly prejudice any other party to this proceeding.

¹² *See NE Hub Partners, L.P.*, 83 FERC ¶ 61,043, at 61,192 (1998), *reh'g denied*, 90 FERC ¶ 61,142 (2000); *Pine Needle LNG Co., LLC*, 77 FERC ¶ 61,229, at 61,916 (1996). Moreover, the courts have repeatedly recognized that even where there are disputed issues "[the Commission] need not conduct such [an evidentiary] hearing if they may be adequately resolved on the written record." *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993). *See also Environmental Action v. FERC*, 996 F.2d 401, 413 (D.C. Cir. 1993); *Alabama Power Co. v. FERC*, 993 F.2d 1557, 1565 (D.C. Cir. 1993).

¹³ 15 U.S.C. §§ 717f(c), (e) (2012).

A. Application of the Certificate Policy Statement

13. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁴ 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 facilities construction.

14. Under this policy, 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 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 construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we 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 we 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 existing customers. The Commission has determined, in general, that where a pipeline proposes to charge incremental rates for new construction that are higher than the company's existing system rates, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.¹⁵ Here,

¹⁴ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

¹⁵ *See, e.g., Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155, at 61,552 (2002).

Dominion proposes an incremental firm transportation base reservation rate, which is higher than its existing system-wide rate, to recover the costs of the project. The proposed incremental rates are calculated to recover all construction, installation, operation, and maintenance costs associated with the project. Accordingly, we find that the New Market Project will not be subsidized by existing customers and satisfies the threshold no-subsidy requirement under the Certificate Policy Statement.

16. We also find that the proposal will not adversely affect Dominion's existing customers because there will be no degradation of existing service. In addition, other pipelines and their captive customers will not be adversely impacted because the proposal is not intended to replace service on other pipelines. Rather, the project would allow Dominion to provide additional transportation services to two shippers on its system. Further, no pipeline or their captive customers have protested the application.

17. Dominion states that all of the proposed facilities will be constructed on land it currently owns or leases or that it will purchase.¹⁶ Thus, we find that Dominion has designed the New Market Project to minimize adverse effects on landowners and surrounding communities.

18. Dominion has entered into 15-year precedent agreements with Brooklyn Union and Niagara Mohawk, which fully subscribe the project. Based on the benefits the New Market Project will provide to the shippers, the lack of adverse effects on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of Dominion's proposal, subject to the conditions discussed below.

B. Rates

1. Recourse Rates

19. Dominion's New Market Project will make available an additional 112,000 Dth per day of firm transportation service on its system under its existing Rate Schedule FT. Dominion proposes, as its initial recourse rate, an incremental firm transportation rate for service using the expansion capacity created by the New Market Project. Specifically, Dominion proposes an initial incremental monthly firm recourse reservation charge under Rate Schedule FT of \$22.6194 per Dth. The proposed recourse rate is based on a Year 1

¹⁶ Construction of the Horseheads Compressor Station and the Sheds Compressor Station would occur on properties that Dominion has the option to purchase upon issuance of the certificate. EA at 17-18.

cost of service of \$30,400,535¹⁷ and an estimated total capital cost of \$158,960,570¹⁸ for the project facilities.

20. Dominion's total first year cost of service of \$30,400,535 includes \$2,451,343 for Operation and Maintenance (O&M) expenses for the new compression and M&R facilities. In response to a data request, Dominion provided a breakdown of the O&M expenses by FERC account number and between labor and non-labor costs.¹⁹ Dominion's response identified a total of \$1,442,545 in non-labor O&M expenses for FERC account numbers 853, 857, 864, and 865. Consistent with the Commission's regulation requiring the use of a straight fixed-variable rate design,²⁰ these costs are classified as variable costs. Thus, Dominion should recover these variable costs through a usage charge and not through the reservation charge, as proposed. Accordingly, we will direct Dominion to classify its costs consistent with straight fixed-variable rate design and to recalculate its New Market Project incremental recourse reservation rate to recover only fixed costs when it files actual tariff records.

21. Dominion's proposed incremental recourse reservation rate for the project is higher than the system recourse rates for firm transportation service contained in Dominion's tariff.²¹ While we have not recalculated the New Market Project reservation rate, removal of the improperly classified variable costs from the costs recoverable through the reservation rate does not appear to result in the recalculated reservation rate being less than Dominion's system reservation rate. Since the resulting incremental reservation rate will be higher than Dominion's existing Rate Schedule FT system rate, we will approve, subject to the conditions discussed above, Dominion's proposed incremental reservation rate as the initial recourse reservation rate for firm service using the incremental capacity created by the New Market Project.

¹⁷ Application at Exhibit P.

¹⁸ *Id.*

¹⁹ Dominion November 3, 2014 Response to Data Request.

²⁰ 18 C.F.R. § 284.7(e) (2015).

²¹ Effective November 1, 2015, Dominion's monthly system transportation reservation rate for Rate Schedule FT service is \$3.882 per Dth. Dominion Transmission, Inc., FERC NGA Gas Tariff, Dominion Tariffs, 10.6, FT, FTNN, FTSC & IT Rates - Severed Parties, 15.0.0.

22. Dominion's proposed maximum base usage rate for the New Market Project capacity is \$0.0083 per Dth.²² Consistent with the Commission's regulations, pipelines are required to base their minimum rates on the variable costs which are properly allocated to the service.²³ As an incremental usage rate for the New Market Project capacity would appear to be greater than the system usage rate, we will require Dominion to calculate an initial incremental base usage rate for this project.

23. Dominion did not indicate what transportation rate it would apply for interruptible service provided on the New Market Project capacity. Dominion should use its system interruptible transportation rates.²⁴

24. To ensure that costs are properly allocated between Dominion's existing shippers and the incremental services proposed in this proceeding, we direct Dominion to keep separate books and accounting of costs attributable to the New Market Project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations.²⁵ 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. 710.²⁶

2. Negotiated Rates

25. Both expansion shippers have agreed to pay negotiated rates. Dominion must file either its negotiated rate agreement or tariff records setting forth the essential terms of the agreement associated with the project, in accordance with the Alternative Rate Policy

²² Dominion Transmission, Inc., FERC NGA Gas Tariff, Dominion Tariffs, 10.6, FT, FTNN, FTSC & IT Rates – Severed Parties, 13.0.0.

²³ 18 C.F.R. § 284.10(c)(4)(ii) (2015).

²⁴ See *Transcontinental Gas Pipe Line Corp.*, 124 FERC ¶ 61,160, at PP 27-28 (2008).

²⁵ 18 C.F.R. § 154.309 (2015).

²⁶ See *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

Statement²⁷ and the Commission's negotiated rate policies.²⁸ Dominion must file the negotiated rate agreement or tariff records at least 30, but not more than 60 days, before the in-service date of the proposed facilities.²⁹

3. Fuel Retention and Other Transportation Rates

26. Dominion proposes to charge all other applicable charges and surcharges, such as the Transportation Cost Rate Adjustment and Electric Power Cost Adjustment charges, and the maximum system-wide fuel retention percentage under its Rate Schedule FT.

27. Based on a study designed to determine the impact of fuel consumption, Dominion determined that the operation of the New Market Project facilities would require approximately 1.65 percent in compressor fuel.³⁰ When compared to its current system-wide fuel retention of 1.95 percent, the New Market Project facilities will require roughly 18 percent less fuel. Based on the overall fuel benefits attributable to the New Market Project, we will approve Dominion's proposal to assess its generally applicable system-wide fuel retention percentage.

28. We will also approve Dominion's proposal to charge its generally applicable Transportation Cost Rate Adjustment and Electric Power Cost Adjustment surcharges.

C. Environmental Analysis

29. On September 18, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was mailed to interested parties including

²⁷ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

²⁸ *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

²⁹ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. 18 C.F.R. § 154.112(b) (2015).

³⁰ See August 21, 2014 Data Request Response to Question 1.

federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. On October 8, 2014, the Commission held a scoping meeting in Georgetown, New York. On November 4, 2014, the Commission issued a *Supplemental Notice of Additional Public Scoping Period and Meeting for the Proposed New Market Project and Request for Comments on Environmental Issues* (supplemental NOI). On November 20, 2014, the Commission held an additional scoping meeting in Morrisville, New York.

30. We received comments in response to the NOI and supplemental NOI from U.S. Senator Kristen Gillibrand, U.S. Representatives Chris Gibson and Richard Hanna, the U.S. Environmental Protection Agency (EPA), the Delaware Tribe, the New York State Department of Environmental Conservation (NYSDEC), numerous county or municipal governments and non-governmental organizations, and over 1,100 landowners and other individuals. U.S. Senator Gillibrand requested that the Commission extend its public comment period and hold an additional scoping meeting. U.S. Representatives Chris Gibson and Richard Hanna urged the Commission to give their constituents comments full and fair consideration. The commentors raised concerns about the project's purpose and need; a need to perform an EIS; alternatives to the proposed action; cumulative impacts; and the effect of the project on soils, water resources, fisheries and wildlife, visual resources, cultural resources, socioeconomics, property values, air quality and related human health effects, noise, and safety.

31. 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 addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, socioeconomics, air quality, noise, safety, cumulative impacts, and alternatives. In response to concerns expressed during scoping, the EA includes a Human Health Risk Assessment (HHRA) prepared by staff and technical experts contracted specifically for that purpose.³¹ All substantive comments received in response to the NOI were addressed in the EA.³²

³¹ An HHRA estimates the nature and probability of adverse health effects in humans who may be exposed to chemicals in contaminated environmental media. In this case, staff estimated the inhalation risks from airborne exposure to hazardous air pollutant emissions from operation of the proposed new and modified compressor stations.

³² The EA provides a summary of commentors and comments received during the scoping period. EA at 2-6.

32. The EA was issued for a 30-day comment period and placed into the public record on October 20, 2015. The Commission received comments on the EA from the EPA, nine county and municipal governments,³³ four non-governmental organizations,³⁴ approximately 13 individuals opposed to or expressing concerns about the project, and approximately 700 individuals expressing support for the project.

33. Pursuant to section 7(a)(2) of the Endangered Species Act, on December 11, 2015, Commission staff requested U.S. Fish and Wildlife Service (FWS) concurrence on staff's determinations that the New Market Project may affect, but is not likely to adversely affect, the Indiana bat or the northern long-eared bat, and have no effect on the threatened bog turtle, Chittenango ovate amber snail, Karner blue butterfly, or American Hart's-tongue fern. Based on the analysis in the EA, no direct impacts on the two bat species would occur and no suitable habitat for the threatened species exists at the project sites. FWS concurred with Commission staff's determination by letter filed on February 4, 2016. FWS's concurrence concludes the Endangered Species Act section 7 consultation process. Therefore, environmental condition number 14 recommended in the EA is no longer required and is not included as an environmental condition in Appendix B to this order.

1. Need for an EIS

34. The Towns of Canajoharie, Cherry Hill, DeRuyter, Lebanon, Minden, Otsego, and Rosebloom, as well as other commentors assert that an EIS should be prepared for the project. Commentors believe that an EIS would be more comprehensive and would correctly characterize all potential impacts. We disagree.

35. Under NEPA, agencies must prepare an EIS for major federal actions that may significantly impact the environment.³⁵ However, if an agency determines that a federal action is not likely to have significant adverse effects, it may rely on an EA for

³³ The county and municipal governments include: Madison County Department of Health; the Towns of Canajoharie, Cherry Valley, DeRuyter, Georgetown, Lebanon, Minden, Otsego, and Rosebloom.

³⁴ The non-governmental organizations include: Otsego 2000, Inc. (Otsego 2000); Allegheny Defense Project (Allegheny); Southwest Pennsylvania Environmental Health Project (Southwest Pennsylvania EHP); and Catskill Mountainkeeper.

³⁵ 42 U.S.C. § 4332(2)(C) (2012); 40 C.F.R. § 1502.4 (2015).

compliance with NEPA.³⁶ In addition, the Council on Environmental Quality's (CEQ) regulations implementing NEPA state that one of the purposes of an EA is to determine whether an EIS is required.³⁷

36. The Commission's regulations include a list of instances when an EA is typically prepared, including when, as is the case here, the applicant proposes to construct compressor units under section 7 of the NGA.³⁸ Commission staff, in these instances, first prepares an EA and "depending on the outcome of the [EA], the Commission may or may not prepare an [EIS]."³⁹ Staff prepared an EA for the New Market Project and its EA concludes that if Dominion constructs the facilities in accordance with its application, supplements, and environmental conditions that the project would not constitute a major federal action significantly affecting the quality of the human environment.⁴⁰ We agree with staff's recommendations as presented in the EA and are including them as conditions in Appendix B to this order, as applicable. We also find that the project will not result in significant impacts and that an EIS is not required.

37. Otsego 2000 believes that the resolutions adopted by local municipalities and the comments from individuals and organizations calling for the preparation of an EIS should require the Commission to prepare an EIS. Otsego 2000's position seems to be that opposition to a project itself is enough to require the preparation of an EIS. The preparation of an EIS can be required when projects are highly controversial.⁴¹ However,

³⁶ 40 C.F.R. § 1501.3-1501.4 (2015). An EA is meant to be a "concise public document . . . that serves to . . . [b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or finding of no significant impact." 40 C.F.R. § 1508.9(a) (2015). Pursuant to the Commission's regulations, if an EA is prepared first, "[d]epending on the outcome of the environmental assessment, an [EIS] may or may not be prepared." 18 C.F.R. § 380.6(b) (2015).

³⁷ 40 C.F.R. § 1501.4(c) (2015).

³⁸ 18 C.F.R. § 380.5(b)(1) (2015).

³⁹ *Id.* § 380.5(a).

⁴⁰ EA at 6.

⁴¹ The CEQ regulations provide that the "degree to which the effects on the quality of the human environment are likely to be highly controversial" is one of ten factors relating to the intensity of a project, which in turn is a consideration in determining whether a project significantly affects the quality of the human environment and would thus require the preparation of an EIS. 40 C.F.R. § 1508.27(b)(4) (2015).

“controversial” in this context is not simply opposition to a project, but rather a “dispute over the size, nature, or effect of the action, rather than the existence of opposition to it.”⁴² In this case the large number of comments from county and municipal governments, non-governmental organizations, nearby landowners, and other interested parties requesting the preparation of an EIS does not create the highly controversial situation envisioned by the CEQ regulations. Comments submitted after the completion of the EA do present additional issues, but those comments are addressed within this order and do not rise to the level of highly controversial. Therefore, an EIS is not required on the grounds of controversy.

2. Programmatic Environmental Impact Statement

38. CEQ’s regulations do not require broad or “programmatic” NEPA reviews. CEQ has stated that such a review may be appropriate where an agency is: (1) adopting official policy; (2) adopting a formal plan; (3) adopting an agency program; or (4) proceeding with multiple projects that are temporally and spatially connected.⁴³ The Supreme Court has held that a NEPA review covering an entire region (that is, a programmatic review) is required only “if there has been a report or recommendation on a proposal for major federal action” with respect to the region,⁴⁴ and the courts have concluded that there is no requirement for a programmatic EIS where the agency cannot identify the projects that may be sited within a region because individual permit applications will be filed at a later time.⁴⁵

⁴² *Cheniere Creole Trail Pipeline, L.P.*, 145 FERC ¶ 61,074, at P 23 (2013) (citing *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1557 (2d Cir. 1992)); accord *Hanly v. Kleindienst*, 471 F.2d 823, 830 (2d Cir. 1972).

⁴³ See CEQ, Memorandum on the Effective Use of Programmatic NEPA Reviews, at 13-14, (2014), https://www.whitehouse.gov/sites/default/files/docs/effective_use_of_programmatic_nepa_reviews_18dec2014.pdf. We refer to the memorandum as the 2014 Programmatic Guidance.

⁴⁴ *Kleppe v. Sierra Club*, 427 U.S. 390, 399 (1976) (holding that a broad-based environmental document is not required regarding decisions by federal agencies to allow future private activity within a region).

⁴⁵ See *Piedmont Envtl. Council v. FERC*, 558 F.3d 304, 316-17 (4th Cir. 2009).

39. We have explained that there is no Commission plan, policy, or program for the development of natural gas infrastructure.⁴⁶ Rather, the Commission acts on individual applications filed by entities proposing to construct interstate natural gas pipelines. Under NGA section 7, the Commission is obligated to authorize a project if it finds that the construction and operation of the proposed facilities “is or will be required by the present or future public convenience and necessity.”⁴⁷ What is required by NEPA, and what the Commission provides, is a thorough examination of the potential impacts of specific projects. In the circumstances of the Commission’s actions, a broad, regional analysis would “be little more than a study . . . concerning estimates of potential development and attendant environmental consequences,”⁴⁸ which would not present “a credible forward look and would therefore not be a useful tool for basic program planning.”⁴⁹ As to projects that are closely related in time or geography, the Commission may, however, choose to prepare a multi-project environmental document, where that is the most efficient way to review project proposals.⁵⁰

40. As they have in other proceedings, Allegheny contends that the Commission violated NEPA by failing to prepare a programmatic EIS for natural gas infrastructure projects in the Marcellus and Utica Shale formations.⁵¹ Allegheny claims that the Commission is engaged in regional development and planning with the gas industry as evidenced by the Commission’s initiation of proceedings related to the Coordination Between Natural Gas and Electricity Markets (Docket No. AD12-12-000).

⁴⁶ See, e.g., *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259, at PP 38-47 (2014); *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255 (2014).

⁴⁷ 15 U.S.C. § 717f(e) (2012).

⁴⁸ *Kleppe*, 427 U.S. at 402.

⁴⁹ *Piedmont Env'tl. Council*, 558 F.3d at 316.

⁵⁰ See, e.g., Environmental Assessment for the Monroe to Cornwell Project and Utica Access Project, Docket Nos. CP15-7-000 and CP15-87-000 (filed Aug. 19, 2015); Final Multi-Project Environmental Impact Statement for Hydropower Licenses: Susquehanna River Hydroelectric Projects, Project Nos. 1888-030, 2355-018, and 405-106 (filed Mar. 11, 2015).

⁵¹ Allegheny Motion to Intervene at 3; Allegheny January 12, 2015 Comments at 4; Allegheny November 19, 2016 Comments at 20.

41. Further, Allegheny claims that even if future pipeline projects may be theoretical, this does not mean that the Commission would not be able to “establish parameters for subsequent analysis.”⁵² Allegheny claims that a programmatic EIS may aid the Commission’s and the public’s understandings of broadly foreseeable consequences of NGA-jurisdictional projects and non-jurisdictional shale gas production.

42. Allegheny also argues that CEQ’s 2014 Programmatic Guidance recommends a programmatic EIS when “several energy development programs proposed in the same region of the country . . . [have] similar proposed methods of implementation and similar best practice and mitigation measures that can be analyzed in the same document.”⁵³ In support, Allegheny points to, among other things, a table listing a number of projects planned, proposed, or placed in service and an Energy Information Administration publication discussing new pipeline projects to move Marcellus and Utica Shale production. Allegheny asserts that an agency cannot escape the existence of a comprehensive program with cumulative environmental effects by “disingenuously describing it as only an amalgamation of unrelated smaller projects.”⁵⁴

Commission Determination

43. Documents cited by Allegheny do not show that the Commission is engaged in regional planning. Allegheny focuses on the Commission’s Coordination Between Natural Gas and Electricity Markets, but that it is an initiative proposed by the Commission to carry out its statutory responsibilities under the NGA or the Federal Power Act.

44. In addition, the mere fact that there currently are a number of planned, proposed, or approved infrastructure projects to increase infrastructure capacity to transport natural gas from the Marcellus and Utica Shale does not establish that the Commission is engaged in regional development or planning. Rather, this information confirms that pipeline projects to transport Marcellus and Utica Shale gas are initiated solely by a number of different companies in private industry. As we have noted previously, a programmatic EIS is not required to evaluate the regional development of a resource by

⁵² Allegheny November 19, 2015 Comments at 22 (citing 2014 Programmatic Guidance at 11).

⁵³ Allegheny January 12, 2015 Comments at 5 (citing 2014 Programmatic Guidance at 21).

⁵⁴ *Id.* at 8 (citing *Churchill Cnty. v. Norton*, 276 F.3d 1060, 1076 (9th Cir. 2001)).

private industry if the development is not part of, or responsive to, a federal plan or program in that region.⁵⁵

45. The Commission's siting decisions regarding pending and future natural gas pipeline facilities will be in response to proposals by private industry, and the Commission has no way to accurately predict the scale, timing, and location of projects, much less the type of facilities that will be proposed.⁵⁶ Any broad, regional environmental analysis would "be little more than a study . . . containing estimates of potential development and attendant environmental consequences,"⁵⁷ and could not present "a credible forward look" that would be "a useful tool for basic program planning."⁵⁸ In these circumstances, the Commission's longstanding practice to conduct an environmental review for each proposed project, or a number of proposed projects that are interdependent or otherwise interrelated or connected, "should facilitate, not impede, adequate environmental assessment."⁵⁹ Thus, here, the Commission's environmental review of Dominion's actual proposed pipeline project in a discrete EA is appropriate under NEPA.

46. In sum, CEQ states a programmatic EIS can "add value and efficiency to the decision-making process when they inform the scope of decisions," "facilitate decisions on agency actions that precede site- or project-specific decisions and actions," or "provide information and analyses that can be incorporated by reference in future NEPA reviews."⁶⁰ The Commission does not believe these benefits can be realized by a programmatic review of natural gas infrastructure projects because the projects subject to

⁵⁵ See, e.g., *Kleppe*, 427 U.S. at 401-02.

⁵⁶ We agree with Allegheny that lack of jurisdiction over an action does not necessarily preclude an agency from considering the potential impacts. However, as explained in the cumulative impact sections of this order, it reinforces our finding that because states, and not the Commission, have jurisdiction over natural gas production and associated development (including siting and permitting), the location, scale, timing, and potential impacts from such development are even more speculative.

⁵⁷ *Kleppe*, 427 U.S. at 402.

⁵⁸ *Piedmont Env'tl. Council*, 558 F.3d at 316.

⁵⁹ *Id.*

⁶⁰ 2014 Programmatic Guidance at 13.

our jurisdiction do not share sufficient elements in common to narrow future alternatives or expedite the current detailed assessment of each particular project.

3. Segmentation

47. CEQ regulations require the Commission to include “connected actions,” “cumulative actions,” and potentially “similar actions” in its NEPA analyses.⁶¹ “An agency impermissibly ‘segments’ NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”⁶²

48. “Connected actions” include actions that: (a) automatically trigger other actions, which may require an EIS; (b) cannot or will not proceed without previous or simultaneous actions; (c) are interdependent parts of a larger action and depend on the larger action for their justification.⁶³ Courts have applied a “substantial independent utility” test in evaluating whether connected actions are improperly segmented. The test asks “whether one project will serve a significant purpose even if a second related project is not built.”⁶⁴ For proposals that connect to or build upon an existing infrastructure network, this standard distinguishes between those proposals that are separately useful from those that are not. While the analogy between the two is not apt in many regards, similar to a highway network, “it is inherent in the very concept of” the interstate pipeline grid “that each segment will facilitate movement in many others; if such mutual benefits compelled aggregation, no project could be said to enjoy independent utility.”⁶⁵

⁶¹ 40 C.F.R. § 1508.25(a)(1)-(3) (2015).

⁶² *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014). Unlike for connected and cumulative actions, for similar actions an agency has some discretion about combining environmental review. *E.g.*, *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1305-06 (9th Cir. 2003).

⁶³ 40 C.F.R. § 1508.25(a)(1)(i)-(iii) (2015).

⁶⁴ *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987); *see also O’Reilly v. Army Corps of Eng’rs*, 477 F.3d 225, 237 (5th Cir. 2007) (defining independent utility as whether one project “can stand alone without requiring construction of the other [projects] either in terms of the facilities required or of profitability”).

⁶⁵ *Coal. on Sensible Transp., Inc.*, 826 F.2d at 69.

49. In *Delaware Riverkeeper Network v. FERC*, the D.C. Circuit ruled that individual pipeline proposals were interdependent parts of a larger action where four pipeline projects, when taken together, would result in “a single pipeline” that was “linear and physically interdependent” and where those projects were financially interdependent.⁶⁶ The court put a particular emphasis on the four projects’ timing, noting that, when the Commission reviewed the proposed project, the other projects were either under construction or pending before the Commission.⁶⁷ Subsequently, the same court has indicated that, in considering a pipeline application, the Commission is not required to consider in its NEPA analysis other potential projects for which the project proponent has not yet filed an application, or where construction of a project is not underway.⁶⁸ Further, the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.⁶⁹

50. Allegheny argues that the New Market Project and four of Dominion’s other projects – the Clarrington Project (Docket No. CP14-496-000), the Lebanon West II Project (Docket No. CP14-555-000), the Monroe to Cornwell Project (Docket No. CP15-7-000), and the Leidy South Project (Docket No. CP15-492-000) – are connected, cumulative, and similar actions. Allegheny states that the projects were all pending before the Commission with similar timelines for review and construction. Allegheny further argues that the projects share a similar geography, claiming that they all are designed to increase capacity for gas produced from the Marcellus and Utica regions.⁷⁰

51. Otsego 2000 and other commentors believe that the Commission improperly segmented its review of Dominion’s New Market Project and Clarrington Project and

⁶⁶ *Delaware Riverkeeper Network v. FERC*, 753 F.3d at 1308.

⁶⁷ *Id.*

⁶⁸ *Minisink Residents for Env'tl. Pres. & Safety v. FERC*, 762 F.3d 97, 113 n.11 (D.C. Cir. 2014).

⁶⁹ *Myersville Citizens for a Rural Community, Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir. 2015) (*Myersville*).

⁷⁰ Allegheny November 19, 2015 Comments at 24; Allegheny January 12, 2015 Comments at 2-4.

Iroquois Gas Transmission System, L.P.'s (Iroquois) South-to-North Project. Otsego 2000 believes these projects were required to be analyzed in one EIS.⁷¹

Commission Determination

52. Allegheny's claim that we improperly segmented the environmental review for the New Market Project from the other four Dominion projects is without merit. The fact that certain projects may transport gas from the Utica and Marcellus Shale formations does not make them connected, cumulative, or similar actions for NEPA purposes. As explained below, no economic, engineering, or environmental rationale exists for analyzing the New Market Project and the other Dominion projects in a single NEPA document. We will provide a general overview of each project and then explain how the New Market Project is not dependent upon these projects for it to function independently. Similarly, we dismiss the claim that the New Market Project and the yet-to-be proposed Iroquois South-to-North Project require analysis in the same environmental document as similar, connected, or cumulative actions.

Clarington Project

53. On June 2, 2014, Dominion filed an application to provide 250,000 Dth per day of firm transportation for CNX Gas Company, LLC (CNX) from a new interconnect with CNX in Lightburn, West Virginia, to new interconnections in Monroe County, Ohio, with Texas Eastern Transmission (the TET-Aram Hill Interconnect) and with Rockies Express Pipeline (the REX-German Ridge Interconnect). The Clarington Project consists of the addition of 11,130 hp of compression at existing facilities in Marshall County, West Virginia, and Monroe County, Ohio, metering stations at each of the Monroe County, Ohio interconnects, and approximately 1.2 miles of piping at the compressor stations and interconnects. The project is fully subscribed under an agreement from CNX. The contracted in-service date is November 1, 2016. The Commission approved the Clarington Project on August 19, 2015.⁷²

Lebanon West II Project

54. On September 30, 2014, Dominion filed an application to provide 130,000 Dth per day of firm transportation service from an existing interconnection in Butler County, Pennsylvania, to an interconnection in Warren County, Ohio. The Lebanon West II

⁷¹ Otsego 2000 November 19, 2015 Comments at 17.

⁷² *Dominion Transmission Inc.*, 152 FERC ¶ 61,138 (2015) (Clarington Certificate Order), *order on reh'g*, 153 FERC ¶ 61,284 (2015) (Clarington Rehearing Order).

Project consists of adding 10,915 hp of compression at an existing compressor station in Armstrong County, Pennsylvania, replacing approximately 10 miles of existing pipe with the same diameter pipe in Ohio and Pennsylvania, and the installation of various appurtenant facilities. The project is fully subscribed by R.E. Gas Development, LLC. The contracted in-service date is November 1, 2016. The Commission approved the Lebanon West II Project on November 19, 2015.⁷³

Monroe to Cornwell Project

55. On October 22, 2014, Dominion filed an application to provide an additional 205,000 Dth per day of firm transportation service from the Boltz Hill Interconnect in Monroe County, Ohio, to a new interconnection with Columbia Gas Transmission, LLC (Columbia) in Kanawha County, West Virginia. The Monroe to Cornwell Project consists of adding an additional 12,552 hp at an existing compressor station in Doddridge County, West Virginia, gas coolers in Wetzel County, West Virginia, and measurement facilities. The project is fully subscribed under an agreement with Columbia. The contracted in-service date is November 1, 2016. The Commission approved the Monroe to Cornwell Project on December 30, 2015.⁷⁴

Leidy South Project

56. On May 15, 2015, Dominion filed an application to provide an additional 155,000 Dth per day of firm transportation service from the existing Leidy Interconnect in Clinton County, Pennsylvania, to the existing Loudoun Interconnect in Loudoun County, Virginia, for Virginia Power Services Energy Corporation, Inc. and Mattawoman Energy, LLC. Dominion also proposes a new interconnect for the Panda Stonewall LLC generation facility also in Loudoun County, Virginia. The Leidy South Project includes the replacement or installation of additional compressors at four existing compressor stations for a total of 48,035 hp of compression, construction of a new meter station, and

⁷³ Lebanon West II Project, 153 FERC ¶ 61,203.

⁷⁴ Monroe to Cornwell Project, 153 FERC ¶ 61,382. This order also approved Columbia Gas Transmission, LLC's associated project, the Utica Access Project. The Utica Access Project included a 5-mile-long, 24-inch-diameter lateral pipeline extending from Dominion's Cornwell compressor station in Kanawha County, West Virginia.

other appurtenant facilities.⁷⁵ The project is fully subscribed under agreements with Virginia Power Service Energy Corporation, Inc., Mattawoman Energy, LLC, and Panda Stonewell, LLC. The proposed in-service date is October 1, 2017. This application is currently pending before the Commission.

Iroquois' South-to-North Project

57. Iroquois operates an existing north-to-south pipeline that extends from the international border between the United States and Canada south to its termini in Commack and Bronx, New York. While Iroquois has held an open season for a contemplated South-to-North Project, nothing regarding such a project has been filed with the Commission.

58. The Commission previously addressed and denied Allegheny's assertion that the aforementioned Dominion projects were connected actions and that the Commission improperly segmented its environmental review of these projects.⁷⁶ In the Clarington Certificate Order, we found that the Lebanon West II, Monroe to Cornwell, and New Market Projects did not share a common geography with the Clarington Project.⁷⁷ In the Clarington Rehearing Order, we further addressed Allegheny's concern that the timing of the projects, including the Leidy South Project, was similar, noting that "the timing of the construction and contemplated in-service dates of the Dominion projects is relatively close, i.e., over a two-year period, [but] timing by itself is not determinative."⁷⁸ Further the order found, the fact that "each project adds compression to increase capacity does

⁷⁵ Specifically, the Leidy South Project will result in the replacement of compression at the existing Finnefrock Compressor Station in Clinton County, Pennsylvania, and the installation of additional horsepower at existing compressor stations in Franklin County, Pennsylvania, Frederick County, Maryland, and Loudon County, Virginia,

⁷⁶ Clarington Certificate Order, 152 FERC ¶ 61,138 at PP 37-38; Clarington Rehearing Order, 153 FERC ¶ 61,284 at PP 55-57; Monroe to Cornwell Project, 153 FERC ¶ 61,382 at P 59.

⁷⁷ Clarington Certificate Order, 152 FERC ¶ 61,138 at P 37. Allegheny did not allege that Dominion's Leidy South Project was impermissibly segmented from the review of these other.

⁷⁸ Clarington Rehearing Order, 153 FERC ¶ 61,284 at P 55. In the Clarington rehearing proceeding, Allegheny alleged for the first time that Dominion's Leidy South Project was a connected, cumulative, and similar action to Dominion's other projects.

not mean these projects are so closely related to each other that NEPA requires concurrent analysis.”⁷⁹ We concluded that “each project involves discrete modifications specifically sized to meet different shippers’ contracted transportation needs from different receipt points to different delivery points.”⁸⁰ Our order detailed the facilities that will be modified under each project and found that they have no shared facilities or similar paths from supply source to their respective markets.⁸¹

59. In Monroe to Cornwell Project, we again addressed Allegheny’s argument that Dominion’s Clarington, Lebanon West II, and New Market Projects were connected. There, we explained that the projects “are distinct and separate projects and are not interdependent or otherwise connected to Dominion’s Monroe to Cornwell Project, either physically or in purpose.”⁸² Further, after reviewing Dominion’s flow models, the order concluded that the Monroe to Cornwell Project does not depend in any way on the capacity created by those other projects.⁸³

60. Our earlier orders address many of Allegheny’s concerns regarding the alleged segmentation of the NEPA analysis for Dominion’s projects. As mentioned in those orders, the Clarington, Lebanon West II, Monroe to Cornwell, and Leidy South Projects do not overlap spatially with the New Market Project. The Clarington Project will modify existing facilities in West Virginia and Ohio and transport gas from a receipt point in Lightburn, West Virginia, to two interconnections in Monroe County, Ohio. The Lebanon West II Project will modify facilities in Ohio and Pennsylvania and transport gas from Butler County, Pennsylvania, to Warren, County Ohio. The Monroe to Cornwell Project requires modifications to facilities in West Virginia and will transport gas from Monroe County, Ohio, to Kanawha County, West Virginia.⁸⁴ The Leidy South Project requires modification to facilities in Clinton, Centre, and Franklin Counties, Pennsylvania, Frederick County, Maryland, and Fauquier and Loudon Counties, Virginia.

⁷⁹ *Id.* P 56.

⁸⁰ *Id.*

⁸¹ *Id.* PP 57-58.

⁸² Monroe to Cornwell Project, 153 FERC ¶ 61,382 at P 58.

⁸³ *Id.* P 59.

⁸⁴ The Clarington and Monroe to Cornwell Project’s environmental analysis were not segmented from one another because the flow of gas was in a northerly direction for the Clarington Project and a southerly direction for the Monroe to Cornwell Project. *Id.*

The Leidy South Project's receipt point is at the Leidy Interconnect in Clinton County, Pennsylvania, and the delivery points are in Loudon County, Virginia.

61. The New Market Project primary receipt point is also at the Leidy Interconnect, but the delivery points for its customers are in New York. Further, the facilities that the New Market Project will modify are located entirely in New York, while the Leidy South Project will modify facilities in Maryland, Pennsylvania, and Virginia. We find that since the delivery points and the modification of facilities required by each project are disparate, the projects should not be considered connected actions under NEPA.

62. We also disagree with Allegheny that the four projects and the New Market Project are similar actions that require analysis in a single environmental document. As we've illustrated here, and in previous orders, the Dominion projects serve different customers with functional independence. The projects also do not require modification of facilities within close proximity to one another.⁸⁵ Despite the fact that the in-service dates for the projects are within a two-year period, the proximity between the projects is distant enough that preparing a single environmental document is neither required nor the best way to assess Dominion's present project.

63. Even if, for the sake of argument, the Commission were to find that the New Market 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, "an 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 statement."⁸⁶ We do not find that such a multi-project analysis would be the best way to assess the impacts or alternatives to the New Market Project.

64. Finally, we find Allegheny's argument that the projects should be analyzed as cumulative actions unpersuasive. Cumulative impacts must be discussed in the same environmental document only if the underlying actions, when viewed with other proposed actions, "have cumulatively significant impacts."⁸⁷ As discussed below,

⁸⁵ See *Monroe to Cornwell Project*, 153 FERC ¶ 61,382 at P 61.

⁸⁶ 40 C.F.R. § 1508.25(a)(3) (2015) (emphasis added). See also *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgt.*, 387 F.3d 989, 1000 (9th Cir. 2004) (emphasizing that agencies are only required to assess similar actions programmatically when such review is necessarily the best way to do so).

⁸⁷ 40 C.F.R. § 1508.25(a)(2) (2015).

Commission staff established regions of influence related to the New Market Project's impacts on various resources and determined that impacts from the other Dominion projects would not be within the New Market Project's region of influence. The projects do not have cumulatively significant impact; thus, the projects are not cumulative actions.

65. The Iroquois South-to-North Project is not a proposed project at this point in time, as Iroquois has yet to file a certificate application with the Commission. Should Iroquois file such an application in the future, the project would be subject to the Commission's regulations, including our NEPA review. Thus, the potential South-to-North Project does not require analysis with the New Market Project as a connected, cumulative, or similar action.⁸⁸

4. Indirect Impacts of Natural Gas Production

66. CEQ's regulations direct federal agencies to examine the direct, indirect, and cumulative impacts of proposed actions.⁸⁹ Indirect impacts are defined as those "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems."⁹⁰ Accordingly, to determine whether an impact should be studied as an indirect impact, the Commission must determine whether it: (1) is caused by the proposed action; and (2) is reasonably foreseeable.

67. With respect to causation, "NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause"⁹¹ in order "to make an agency responsible for a particular effect under NEPA."⁹² As the Supreme Court explained, "a

⁸⁸ Courts have indicated that the Commission is not required to commence NEPA reviews of projects not actually proposed. *See Del. Riverkeeper Network*, 753 F.3d at 1,313.

⁸⁹ 40 C.F.R. § 1508.25(c) (2015).

⁹⁰ *Id.* § 1508.8(b).

⁹¹ *U.S. Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752 at 767 (2004) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

⁹² *Id.*

‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”⁹³ Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation,” will not fall within NEPA if the causal chain is too attenuated.⁹⁴ Further, the Court has stated that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”⁹⁵

68. An effect 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.”⁹⁶ NEPA requires “reasonable forecasting,” but an agency is not required “to engage in speculative analysis” or “to do the impractical, if not enough information is available to permit meaningful consideration.”⁹⁷

69. Allegheny argues that the Commission did not adequately consider the projects’ indirect impacts, in particular induced upstream production of natural gas from the Marcellus and Utica Shales.⁹⁸ Otsego 2000 similarly argues that “the transport of additional gas in Dominion’s pipeline requires additional extraction at the source, regardless of how far away it is.”⁹⁹ Otsego 2000 further claims the Commission needs to analyze all upstream and downstream impacts associated with Dominion’s projects.¹⁰⁰

70. The Commission does not have jurisdiction over natural gas production. The potential impacts of natural gas production, with the exception of greenhouse gases and climate change, are localized. Each locale includes unique conditions and environmental

⁹³ *Id.*

⁹⁴ *Metro. Edison Co.*, 460 U.S. at 774.

⁹⁵ *Pub. Citizen*, 541 U.S. at 770.

⁹⁶ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). *See also City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

⁹⁷ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

⁹⁸ Allegheny November 19, 2015 Comments at 5-7.

⁹⁹ Otsego 2000 November 19, 2015 Comments at 18.

¹⁰⁰ *Id.*

resources. Production activities are thus regulated at a state and local level. In addition, deep underground injection and disposal of wastewaters and liquids are subject to regulation by the EPA under the Safe Drinking Water Act. The EPA also regulates air emissions under the Clean Air Act. On public lands, federal agencies are responsible for the enforcement of regulations that apply to natural gas wells.

71. As we have previously concluded in natural gas infrastructure proceedings, the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline (or other natural gas infrastructure) project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ regulations.¹⁰¹ A causal relationship sufficient to warrant Commission analysis of the non-pipeline activity as an indirect impact would only exist if a proposed pipeline would transport new production from a specified production area and that production would not occur in the absence of the proposed pipeline (i.e., there will be no other way to move the gas).¹⁰² To date, the Commission has not been presented with a proposed pipeline project that the record shows will cause the predictable development of gas reserves. In fact, the opposite causal relationship is more likely, i.e., once production begins in an area, shippers or end users will support the development of a pipeline to move the produced gas. It would make little economic sense to undertake construction of a pipeline in the hope that production might later be determined to be economically feasible and that the producers will choose the previously constructed pipeline as best suited for moving their gas to market.

72. Even accepting, *arguendo*, that a specific pipeline project will cause natural gas production, we have found that the potential environmental impacts resulting from such production are not reasonably foreseeable. As we have explained, the Commission generally does not have sufficient information to determine the origin of the gas that will

¹⁰¹ 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 dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2012) (unpublished opinion).

¹⁰² See *cf. Sylvester v. U.S. Army Corps of Eng'rs*, 884 F.2d 394, 400 (9th Cir. 1989) (upholding the environmental review of a golf course that excluded the impacts of an adjoining resort complex project). See also *Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 580 (9th Cir. 1998) (concluding that increased air traffic resulting from airport plan was not an indirect, "growth-inducing" impact); *City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1162 (9th Cir. 1997) (acknowledging that existing development led to planned freeway, rather than the reverse, notwithstanding the project's potential to induce additional development).

be transported on a pipeline. It is the states, rather than the Commission, that have jurisdiction over the production of natural gas and thus would be most likely to have the information necessary to reasonably foresee future production. We are aware of no forecasts by such entities, making it impossible for the Commission to meaningfully predict production-related impacts, many of which are highly localized. Thus, even if the Commission knows the general source area of gas likely to be transported on a given pipeline, a meaningful analysis of production impacts would require more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods, which can vary per producer and depending on the applicable regulations in the various states. Accordingly, the impacts of natural gas production are not reasonably foreseeable because they are “so nebulous” that we “cannot forecast [their] likely effects” in the context of an environmental analysis of the impacts related to a proposed interstate natural gas pipeline.¹⁰³

73. Nonetheless, we note that, although not required by NEPA, a number of federal agencies have examined the potential environmental issues associated with unconventional natural gas production in order to provide the public with a more complete understanding of the potential impacts. The U.S. Department of Energy has concluded that such production, when conforming to regulatory requirements, implementing best management practices, and administering pollution prevention concepts, may have temporary, minor impacts to water resources.¹⁰⁴ The EPA has reached a similar conclusion.¹⁰⁵ With respect to air quality, the U.S. Department of

¹⁰³ *Habitat Educ. Ctr. v. U.S. Forest Serv.*, 609 F.3d 897, 902 (7th Cir. 2010) (finding that impacts that cannot be described with enough specificity to make their consideration meaningful need not be included in the environmental analysis).

¹⁰⁴ U.S. Department of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From The United States* (Aug. 2014) (DOE Addendum), <http://energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>.

¹⁰⁵ See U.S. EPA, *Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*, at ES-6 (June 2015) (external review draft), http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=523539 (finding the number of identified instances of impacts on drinking water resources to be small compared to the number of hydraulically fractured wells). See also *Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands*, 80 Fed. Reg. 16,128, 16,130 (Mar. 26, 2015) (Bureau of Land Management promulgated regulations for hydraulic fracturing on federal and Indian lands to “provide significant benefits to all Americans by avoiding potential damages to water quality, the environment, and public health”).

Energy found that natural gas development leads to both short- and long-term increases in local and regional air emissions.¹⁰⁶ It also found that such emissions may contribute to climate change. But to the extent that natural gas production replaces the use of other carbon-based energy sources, the U.S. Department of Energy found that there may be a net positive impact in terms of climate change.¹⁰⁷

74. Allegheny argues that the proposed projects and regional shale gas extraction are “two links of a single chain” as allegedly shown by multiple industry and government sources, as well as common sense.¹⁰⁸

75. Allegheny challenges the Commission’s claim that the causal connection between gas drilling and the projects is insufficient because natural gas development will continue and is indeed continuing with or without the project is similar to the argument rejected by the 8th Circuit in *Mid States Coalition for Progress v. Surface Transportation Board*.¹⁰⁹ Overall, Allegheny claims that Commission staff conducted its environmental analysis using “tunnel vision” similar to the U.S. Army Corps of Engineers’ (Corps) environmental analysis rejected by a district court in *Colorado River Indian Tribes v. Marsh (Colorado River)*.¹¹⁰

76. Allegheny contends that the Commission is attempting to shirk its responsibilities under NEPA to engage in reasonable forecasting, similar to the agency’s analysis rejected in *Northern Plains Resource Council. v. Surface Transportation Board*.¹¹¹

¹⁰⁶ DOE Addendum at 32.

¹⁰⁷ *Id.* at 44.

¹⁰⁸ Allegheny November 19, 2015 Comments at 3 (quoting *Sylvester*, 884 F.2d at 400). Allegheny cites a presentation from Jeffrey Cabot of Cabot Oil and Gas Corp. that he delivered at a November 12, 2015 Energy Conference stating that Cabot Oil and Gas Corp. planned to reduce “drilling and completion activity in 2015 and 2016” because of “lower anticipated natural gas price realizations throughout Appalachia as we await the in-service of new takeaway capacity.” These sources appear in Allegheny’s attachment 1.

¹⁰⁹ *Id.* at 5 (citing *Mid States*, 345 F.3d 520, 549 (8th Cir. 2003)).

¹¹⁰ *Id.* at 5-6 (citing 605 F. Supp. 1425 (C.D. Cal. 1985)).

¹¹¹ *Id.* at 7 (citing 668 F.3d 1067, 1078-79 (9th Cir. 2011)).

Commission Determination

77. The record in this proceeding, including the statements cited by Allegheny, do not demonstrate the requisite reasonably close causal relationship between the impacts of future natural gas production and the New Market Project that would necessitate further analysis. The fact that natural gas production and transportation facilities are all components of the general supply chain required to bring domestic natural gas to market is not in dispute. The Commission's action of approving the New Market Project will not cause or induce the effect of additional or further shale gas production. Rather, as we have explained in other proceedings, a number of factors, such as domestic natural gas prices and production costs drive new drilling.¹¹² If the projects were not constructed, it is reasonable to assume that any new production spurred by such factors would reach intended markets through alternate pipelines or other modes of transportation.¹¹³ Again, any such production would take place pursuant to the regulatory authority of state and local governments.

78. We acknowledge that NEPA may obligate an agency to evaluate the environmental impacts of non-jurisdictional activities. However, the fact that states, not the Commission, have jurisdiction over natural gas production and associated development (including siting and permitting) supports the conclusion that information about the scale, timing, and location of such development and potential environmental impacts are even more speculative, as further explained below.

79. We find *Mid States* to be distinguishable from the circumstances here. *Mid States* involved the Surface Transportation Board's failure to analyze the downstream effects of a proposal to build and upgrade rail systems to reach coal mines in Wyoming's Powder River Basin.¹¹⁴ The court found – and the project proponent did not dispute – that the

¹¹² *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 39 (2015). See also *Sierra Club v. Clinton*, 746 F. Supp. 2d 1025, 1045 (D. Minn. 2010) (holding that the U.S. Department of State, in its environmental analysis for an oil pipeline permit, properly decided not to assess the transboundary impacts associated with oil production because, among other things, oil production is driven by oil prices, concerns surrounding the global supply of oil, market potential, and cost of production); *Florida Wildlife Fed'n v. Goldschmidt*, 506 F. Supp. 350, 375 (S.D. Fla. 1981) (ruling that an agency properly considered indirect impacts when market demand, not a highway, would induce development).

¹¹³ *Id.* P 39.

¹¹⁴ *Mid States*, 345 F.3d at 550.

proposed project would increase the use of coal for power generation. The court held that where such downstream effects are reasonably foreseeable, they must be analyzed, even if the extent of those effects is uncertain.¹¹⁵ Here, Allegheny asserts that construction of the New Market Project would increase production, rather than end use, as was the case in *Mid States*. Unlike *Mid States*, there is an insufficient causal link between our authorization of the projects and any additional production. As we have explained, natural gas development will likely continue with or without the New Market Project. Thus, it is not merely the extent of production-related impacts that we find speculative, as was the case in *Mid States*, but also whether the projects at issue will have any such impacts.

80. Moreover, even if a causal relationship between our action here and additional production were presumed, the scope of the impacts from any induced production is not reasonably foreseeable. The fact that there may be some incentives for producers to locate wells close to pipeline infrastructure does not alter the fact that the location, scale, and timing of any additional wells are matters of speculation, particularly with respect to their relationship to the projects. As we have previously explained, a broad analysis, based on generalized assumptions rather than reasonably specific information of this type, will not yield information that would provide meaningful assistance to the Commission in its decision making, e.g., evaluating potential alternatives to the specific proposal before it.¹¹⁶

81. The Commission is not shirking its responsibilities under NEPA, as the court held against the Surface Transportation Board in *Northern Plains*. *Northern Plains* addresses the issue of whether the Surface Transportation Board should have considered the cumulative impacts of coal bed methane well development as part of its NEPA analysis of a proposed 89-mile-long rail line intended to serve specific new coal mines in three Montana counties. *Northern Plains* is distinguishable because, as part of an earlier programmatic EIS, the U.S. Bureau of Land Management had already analyzed reasonably foreseeable coal bed methane well development, which provided the Surface Transportation Board with information about the timing, scope, and location of future coal bed methane well development. Here, the Commission has no similar specific information about the timing, location, and scope of future shale (or conventional) well development that might be associated with the New Market Project. *Northern Plains* establishes that while agencies must engage in reasonable forecasting in considering cumulative impacts, NEPA does not require an agency to “engage in speculative analysis” or “to do the impractical, if not enough information is available to permit

¹¹⁵ *Id.*

¹¹⁶ *Rockies Express*, 150 FERC ¶ 61,161 at P 40.

meaningful consideration.”¹¹⁷ Further, *Northern Plains* concerned the foreseeability of impacts from coal bed methane extracted from specific new coal mine in three Montana counties, which the proposed rail line intended to service. Here, Allegheny asks us to consider the impacts from all potential gas production activities in a multistate region which may or may not produce gas to be transported using the capacity created by the New Market Project.

82. Similarly, we find *Colorado River* distinguishable. In *Colorado River*, a district court held that the Corps violated NEPA by not preparing a final EIS for a permit authorizing a developer to place riprap along a riverbank. The court stated that without the permit, the developer could not have received local government approval for its proposed residential and commercial development project along the riverbank.¹¹⁸ The Corps originally prepared a draft EIS because proposed development along the banks would cause significant environmental impacts.¹¹⁹ Before completing its final EIS, however, the Corps retracted its draft EIS because it determined that the appropriate scope of its environmental analysis should be limited to the activities within its jurisdiction, i.e., the river and the bank.¹²⁰

83. The court disagreed, finding that the Corps violated NEPA because it narrowed the scope of its analysis to primary or direct impacts of its authorization, ignoring the indirect and cumulative effects analysis required by NEPA. Here, by contrast, Commission staff analyzed the indirect and cumulative effects of the New Market Project. Commission staff did not analyze the effects of induced natural gas production because, unlike in *Colorado River*, there is no sufficient causal link between our authorization and any additional production. Natural gas development will likely continue with or without the New Market Project.

5. Cumulative Impacts

84. CEQ defines “cumulative impact” as “the impact on the environment which results from the incremental impact of the action [being studied] when added to other past, present, and reasonably foreseeable future actions”¹²¹ The requirement that an

¹¹⁷ *Northern Plains*, 668 F.3d at 1079.

¹¹⁸ *Colorado River*, 605 F. Supp. 1425, 1428.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ 40 C.F.R. § 1508.7 (2015).

impact must be “reasonably foreseeable” to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

85. The “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.”¹²² CEQ has explained 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.”¹²³ Further, a cumulative impact analysis need only 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.”¹²⁴ An agency’s analysis should be proportional to the magnitude of the environmental impacts of a proposed action; actions that will have no significant direct and indirect impacts usually require only a limited cumulative impacts analysis.¹²⁵

86. Consistent with CEQ’s 1997 Cumulative Effects Guidance, in order to determine the scope of a cumulative impacts analysis for each project, Commission staff establishes a “region of influence” in which various resources may be affected by both a proposed project and other past, present, and reasonably foreseeable future actions.¹²⁶ While the scope of our cumulative impacts analysis will vary from case to case, depending on the facts presented, we have concluded that, where the Commission lacks meaningful information regarding potential future natural gas production in a region of influence, production-related impacts are not sufficiently reasonably foreseeable so as to be included in a cumulative impacts analysis.¹²⁷

¹²² *Kleppe*, 427 U.S. at 413.

¹²³ CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 8 (January 1997) (1997 Cumulative Effects Guidance).

¹²⁴ *Id.*

¹²⁵ See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005).

¹²⁶ See, e.g., *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

¹²⁷ *Id.* P 120.

87. Allegheny argues that the cumulative impact analysis in the EA did not adequately consider the environmental harms associated with natural gas development activities in the Marcellus and Utica Shale formations. Allegheny asserts that the EA's region of influence is overly restrictive for considering the cumulative impacts of ongoing and future Marcellus and Utica Shale gas extraction activities.¹²⁸ Allegheny identifies other EAs prepared for Commission projects that it claims contain overly restrictive cumulative effects analyses.¹²⁹

88. Allegheny asserts that the Commission misreads the 1997 Cumulative Effects Guidance to "develop [the EA's] restrictive region of influence."¹³⁰ Allegheny notes that the 1997 Cumulative Effects Guidance contrasts between a project-specific analysis, for which it often suffices to analyze effects within the immediate area of the proposed action, and an analysis of the proposed action's contribution to cumulative effects, for which "the geographic boundaries of the analysis almost always should be expanded."¹³¹ Allegheny cites *Natural Resources Defense Council v. Callaway* to bolster its claim that the Commission cannot treat each project in isolation where evidence exists that other projects with similar environmental consequences exists.¹³² Allegheny also cites research that identifies the impacts that shale gas drilling will have throughout the Marcellus and Utica Shale formations, obligating the Commission under NEPA to take a hard look at these impacts on a broader scale.¹³³

Commission Determination

89. In considering cumulative impacts, CEQ advises that an agency first identify the potentially significant cumulative effects issues associated with a proposed action.¹³⁴ The agency should then establish the geographic scope for analysis. Next, the agency should establish the time frame for analysis, equal to the timespan of a proposed project's

¹²⁸ Allegheny November 19, 2015 Comments at 8.

¹²⁹ *Id.* at 8-10.

¹³⁰ *Id.* at 10.

¹³¹ *Id.* at 10 (citing 1997 Cumulative Effects Guidance at 12).

¹³² 524 F.2d 79 (2d Cir. 1975) (*Callaway*).

¹³³ Allegheny November 19, 2015 Comments at 12-19.

¹³⁴ 1997 Cumulative Effects Guidance at 11.

direct and indirect impacts. Finally, the agency should identify other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.¹³⁵ As noted above, CEQ advises that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action.¹³⁶

90. The cumulative effects analysis in the EA took precisely the approach CEQ guidance advises.¹³⁷ Commission staff's cumulative impact analysis establishes various regions of influence depending on the resource area that might be cumulatively impacted, because the nature, magnitude, and duration of these impacts vary. For example, the New Market EA establishes a region of influence for most resource areas of 0.5 mile, but for air quality and noise impacts associated with the construction of the project the EA uses a 0.25 mile region of influence. For noise impacts and air impacts associated with the operation of the project the EA uses a 1-mile region of influence and a 31-mile region of influence, respectively. The EA identifies projects that might cumulatively impact resource areas, but found that many of these fell outside the geographic scope defined with the exception of cumulative air quality impacts.¹³⁸ The geographic scope of the cumulative impact analysis was appropriately reflective of the magnitude of the proposed project's direct and indirect environmental impacts.¹³⁹

91. For these reasons, we find that the EA properly excluded from its cumulative impacts analysis the impacts from all shale gas development in the Marcellus and Utica Shale formation. Given the large geographic scope of this formation, the magnitude of the analysis requested by Allegheny bears no relationship to the limited scope of Dominion's instant proposals. Moreover, even if the Commission were to vastly expand

¹³⁵ *Id.*

¹³⁶ CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2 (June 24, 2005).

¹³⁷ We note that the 1997 Cumulative Effects Guidance at 15 states that the "applicable geographic scope needs to be defined case-by-case."

¹³⁸ EA at 104-08.

¹³⁹ *Kleppe*, 427 U.S. at 413 (The "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.").

the geographic scope of the cumulative impacts analysis, impacts from such development are not reasonably foreseeable.¹⁴⁰

92. In our view, Allegheny's arguments with respect to the geographic scope of the analysis are based on its erroneous claim that the final EIS must conduct a regional programmatic NEPA review of natural gas development and production in the Marcellus and Utica Shale formations, an area that covers potentially thousands of square miles. We decline to do so. As the Commission has explained, there is no Commission program or policy to promote additional natural gas development and production in shale formations.

93. Allegheny's reliance on *Callaway* is misplaced. In *Callaway*, the court considered whether the U.S. Navy's analysis in the EIS adequately addressed the cumulative impacts associated with the dumping of polluted dredging spoils. The Navy proposed to dump the spoils from its dredging project in the Long Island Sound in an existing designated disposal site. In *Callaway*, the record included information that numerous other dumping projects were proposed or pending and would result in dumping in nearly the exact same site. The court found that the Navy's EIS failed to adequately address these other projects in the cumulative effects section of the EIS.¹⁴¹ The court noted that the dredging spoils would all be disposed of in nearly the same site as the Navy's, and all of the spoils were similarly polluted. However, unlike *Callaway*, where the dredging spoils would all be deposited in the same site, the impacts associated with the development and production of natural gas in the Marcellus and Utica Shale formations are well outside the area of the New Market Project area. As the court said, an agency "[does not] need to consider other projects so far removed in time or distance from its own that the interrelations, if any between them is unknown or speculative."¹⁴² Accordingly, we find *Callaway* unavailing.

¹⁴⁰ Allegheny cites the 2014 study published by M.C. Brittingham and other authors, however this study offers only general conclusions about the potential qualitative impacts on terrestrial and aquatic ecosystems from shale development. It provides no specific details regarding those impacts, much less specific details regarding the Dominion New Market Project. Allegheny November 19, 2015 Comments at 12-14.

¹⁴¹ *Callaway*, 524 F.2d at 89.

¹⁴² *Id.* at 90.

6. HHRA and Air Quality

94. Some commentors express concern that the EA's HHRA did not appropriately characterize potential air contaminants associated with the project. The HHRA discusses combustion emissions from reciprocating internal combustion engines and combustion turbines and provides the source for emission factors used to model the air quality impacts of the project.¹⁴³ The HHRA also discusses natural gas emissions, including vented emissions and natural gas quality.¹⁴⁴ Because vented gas represents gas that has not been combusted, the HHRA uses data for natural gas constituents to analyze vented emissions.¹⁴⁵ The data used in the analysis were derived from Dominion's sampling of pipeline gas. The HHRA evaluates both combusted and uncombusted gas emissions as a result of fugitive and vented emissions and finds levels to be below a level of health concern per EPA guidance.¹⁴⁶ We find that the analysis in the EA correctly identified potential exposures to the hazardous air pollutants¹⁴⁷ that will be emitted by operation of the compressor stations and properly concluded that these emissions will be below levels that present potential health concerns.

95. The EPA questions why the number of potential air contaminants differed so greatly between the new compressor stations (Horseheads and Sheds Compressor Stations) and the existing compressor station being modified (Brookman Corners Compressor Station), even though the natural gas sources for these facilities would be the same. As discussed in the EA, reciprocating internal combustion engines, such as those at the existing Brookman Corners Compressor Station, generally produce a greater number of individual hazardous air pollutants than combustion turbines of the sort being installed at the new stations.¹⁴⁸ The analysis in the EA uses data from Dominion's sampling of its natural gas for calculating contaminants from fugitive and vented

¹⁴³ EA app. B at section 2.1.

¹⁴⁴ EA app. B at sections 2.2-2.3.

¹⁴⁵ EA app. B at table 2.

¹⁴⁶ EA app. B section 3.1.2; tables 6-11.

¹⁴⁷ Unless otherwise stated, the HHRA refers to hazardous air pollutants as defined by the EPA plus other typically recognized air toxics.

¹⁴⁸ EA app. B at section 2.1.

emissions¹⁴⁹ and data from EPA's AP-42 emission factors for calculating contaminants from combustion sources.¹⁵⁰

96. The EPA asks for a justification for the contaminants modeled in the blowdown analysis. Staff conducted the blowdown analysis on uncombusted pipeline quality natural gas. Therefore, staff's analysis was confined to the constituents provided in table 2 of the HHRA for the modeling of the blowdown emissions.¹⁵¹ We agree that staff's analysis was appropriate.

97. The EPA suggests that future land use in the vicinity of the project be considered in the HHRA. As discussed in the HHRA, staff assumes exposure to the modeled maximum annual concentration of each individual hazardous air pollutant that occurred at or beyond the property lines of the project sites.¹⁵² Although actual residences were not modeled, the assumptions and results of this HHRA were extremely conservative. The HHRA estimated exposure for "the reasonable maximum exposure resident," a scenario designed to present a worse-case of the maximum concentration of each individual hazardous air pollutant chronically inhaled by a resident outside the property line, regardless of the actual maximum concentration location. Therefore, should new residences, businesses, or recreational areas be constructed nearby, the results would be identical.

98. Several commentors express concerns regarding the air modeling data, approaches, and conclusions. Commentors question the applicability of NYSDEC modeling requirements, whether NYSDEC reviewed and approved the air quality modeling performed, and the applicability of the regional air data (including wind speed data) used in the analysis. We also received comments related to design, permitting, and associated air pollution control for the project's compressor units at the Sheds, Horseheads, and Brookman Corners Compressor Stations.

99. As discussed in the EA, the project is subject to NYSDEC facility air permitting.¹⁵³ NYSDEC has the authority to review and approve all design, permitting,

¹⁴⁹ EA app. B at 5.

¹⁵⁰ EA app. B at 6; EPA Emissions Factors & AP 42, Compilation of Air Pollutant Emission Factors, <https://www3.epa.gov/ttnchie1/ap42/>.

¹⁵¹ EA app. B at tables 13-15.

¹⁵² EA app. B at section 3.2.

¹⁵³ EA at 19.

and pollution control aspects of the compressor units at these stations, independent of the Commission's review.¹⁵⁴ The analysis in the EA went further than NYSDEC's permit review requires, as NYSDEC did not require any air quality impact modeling.¹⁵⁵ Regardless, Dominion must obtain all federally delegated state permits before the project can be constructed and operated.

100. The county and municipal governments suggest that certain potential air quality control measures were not considered for the project, including the use of oxidation catalysts, use of vapor recovery technology, use of "no-emission" dehydrators, incorporation of blowdown prevention measures, and use of electric motor driven compressors in lieu of natural gas-fired compressors. The EA conservatively identifies the potential impacts on air quality, and these were determined to be within safe levels and below EPA-established benchmarks.¹⁵⁶

101. As part of the project, Dominion will install oxidation catalysts on the new reciprocating internal combustion engines and combustion turbines.¹⁵⁷ Several commentors fault the HHRA for failing to require the installation of oxidation catalysts on the existing Taurus 60 combustion turbines at the Brookman Corners Compressor Station. NYSDEC previously permitted and approved the existing Taurus 60 combustion turbines, and neither these turbines nor the pollution control equipment associated with these turbines are part of the project. However, the EA identifies the air quality impacts from the whole facility, which took into account the Taurus 60 units by air modeling using the latest version of the EPA's AERMOD¹⁵⁸ refined dispersion modeling program

¹⁵⁴ 6 NYCRR Part 201 (2016).

¹⁵⁵ NYSDEC's air quality permitting program does not require refined air dispersion modeling for sources (including the new and modified compressor stations approved by this order) having potential emissions falling under applicable New Source Review applicability thresholds as defined in 6 NYCRR Part 231. Although NYSDEC has the authority to require dispersion modeling as it deems necessary to satisfy its permitting requirements, it did not choose to do so in this case.

¹⁵⁶ EA app. B at tables 6-11.

¹⁵⁷ EA at 92.

¹⁵⁸ AERMOD is a steady-state plume model that incorporates air dispersion based on planetary boundary layer turbulence structure and scaling concepts, including treatment of both surface and elevated sources and both simple and complex terrain. AERMOD or another preferred dispersion model is required to be used by state permitting agencies for various EPA-mandated programs.

for the combined full load operation of these existing units and the proposed new units. Thus, we concur that additional mitigation measures are not required to reduce air quality impacts.

102. Several commentors note that wind speed data were obtained from distant monitoring stations in relation to the compressor stations. As discussed in the EA, wind speed data were taken from the closest surface weather stations.¹⁵⁹ Elmira Airport is approximately 8 miles southwest of the proposed Horseheads Compressor Station; Syracuse Airport is approximately 26 miles from the proposed Sheds Compressor Station; and Rome Airport is approximately 40 miles from the existing Brookman Corners Compressor Station. Each weather station is in the same climatological region as the corresponding compressor station. NYSDEC provided five years of wind speed data from these stations for the analysis. As identified in the EA, NYSDEC considers these data to be representative of the wind speed conditions that will occur at the project compressor stations.¹⁶⁰

103. Numerous commentors state that the EA failed to prescribe the use of vapor recovery systems. The project does not include equipment to transfer or store natural gas liquids or condensates, or other types of operations on which vapor recovery systems are typically installed. While technology exists to capture vapor during blowdown venting (a type of vapor recovery), the modeling in the EA demonstrates that emission levels will be below safe levels during such events.¹⁶¹ Capturing the blowdown methane emissions, or general methane leak emissions from valves, flanges, and etc. may be possible, but is not required since the EA finds that the project will not result in significant impacts. Therefore, we agree that the use of vapor recovery systems is not warranted.

104. Some commentors fault the EA for failing to prescribe the use of “no-emission” dehydrators. The EA does not include discussion of no-emission dehydrators because the project will not process or dehydrate natural gas.

105. We also received comments that fault the EA for considering blowdown and venting emissions only from an acute perspective, rather than considering chronic effects. As described in the EA, full station blowdowns will likely occur no more frequently than once every five years.¹⁶² For this reason, the HHRA presents and evaluates air emissions

¹⁵⁹ EA at 82-86.

¹⁶⁰ EA at 83.

¹⁶¹ EA at 88.

¹⁶² EA at 88; app. B at section 2.2.

associated with a blowdown event as an acute event.¹⁶³ However, the HHRA averages out routine venting and includes these emissions as part of the chronic risk assessment.¹⁶⁴

106. One commentor asks why the numerous comments by the public were not taken into consideration in the EA, even though they provided “proof” that the project would be harmful. Another commentor expresses concern that the health impacts attributable to the project, and identified within the EA, were not adequately assessed. The EA’s detailed HHRA directly responds to comments filed by several individuals as well as the health impact study commissioned by the Madison County Department of Health. The HHRA concludes, and we agree, that the modeled emissions from normal operations and blowdown events from the proposed Horseheads and Sheds Compressor Stations, as well as the modified Brookman Corners Compressor Station, will be below a level of health concern.

107. Southwest Pennsylvania Environmental Health Project (EHP) asks what the five-year average acute risk-assessment values presented in the HHRA represent and asks for a definition of “highest predicted one hour concentration.” This is the highest concentration based on five years’ worth of hourly meteorological data. The data are intended to capture the full range of stability conditions, including unusually stable conditions in the atmosphere.¹⁶⁵ After modeling emissions from the maximum capacity operations of each proposed new and modified compressor station, staff evaluated the acute risks from the hour of highest surface-level concentrations. As discussed in the HHRA, the spatial extent and density of receptor points (i.e., the locations for which air concentrations were estimated) were sufficient to capture the highest predicted concentrations in the study region, which generally occurred near each site’s property lines and decreased in magnitude farther downwind.¹⁶⁶ More specifically, concentrations at the Horseheads Compressor Station will decrease by approximately 60 percent at a distance of 200 feet beyond the proposed property line,¹⁶⁷ concentrations at the Sheds Compressor Station will decrease by approximately 50 percent at a distance of 200 feet

¹⁶³ EA app. B at section 5.0.

¹⁶⁴ EA app. B at section 2.2.

¹⁶⁵ Stable atmospheric conditions are defined as conditions under which the air resists vertical movement. Under stable conditions, such as a clear and calm night, pollutants may become trapped at ground level rather than mixing vertically. Evan Davies, *Plant Engineer’s Reference Book*, 28/8–28/10 (Dennis Snow ed., 2003).

¹⁶⁶ EA app. B at section 3.1.1.

¹⁶⁷ EA app. B at section 5.1.

beyond the proposed property line,¹⁶⁸ and concentrations at the Brookman Corners Compressor Station will decrease by approximately 20 percent at a distance of 200 feet beyond the proposed property line.¹⁶⁹

108. One commentor summarizes studies of airborne toxics from gas production areas and asks why the EA relies on models that “contradict” known field conditions. While Commission staff’s analysis acknowledges that hazardous air pollutant concentrations may have been documented in communities in close proximity to natural gas production areas, studies documenting these concentrations, and emissions from natural gas production areas in general, are not comparable to gas handled by transmission pipeline compressor stations because of both the nature of the operations and the quality of the gas.¹⁷⁰

109. In its comment letter, the EPA recommends specific changes to the reference concentration values in tables 3, 4, and 10 of the HHRA.¹⁷¹ Staff has verified that the calculations in the EA used the correct reference concentration values, and the values were the same ones recommended in EPA’s comment letter. However, we recognize that due to a clerical error, the values in the tables are not correct; therefore, staff accepts the values listed in EPA’s comments. Neither the calculated risk values nor the conclusions presented in the HHRA change as a result of the clerical errors that EPA noted.

110. The EPA requests that the Commission explain how the 19 contaminant concentrations provided in parts per million (ppm) rather than micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) in HHRA table 5 were converted to $\mu\text{g}/\text{m}^3$. For these contaminants, concentrations were converted as follows: $\mu\text{g}/\text{m}^3 = \text{ppm} \times (\text{molecular weight}) \times (1/24.45) \times 1000$.

¹⁶⁸ EA app. B at section 5.2.

¹⁶⁹ EA app. B at section 5.3.

¹⁷⁰ EA app. B at 6 (citing Evan Branosky et al., *Defining the Shale Gas Life Cycle: A Framework for Identifying and Mitigating Environmental Impacts* (World Resources Institute, 2012); Christopher W. Moore, *Air Impacts of Increased Natural Gas Acquisition, Processing, and Use: A Critical Review*, 48 ENVTL. SCI. TECH. 8349–8359 (2014)).

¹⁷¹ EPA’s offers specific revisions to three tables in the HHRA, noting that certain values in each table needed to be revised to represent the correct value. EPA November 23, 2015 Comments at 3.

111. The Town of Minden questions whether gas quality data information, including vendor spreadsheets, was considered and included in the EA. These data were received and incorporated into the EA and are reflected in the values provided in table 2 of the HHRA.¹⁷²

7. Alternatives

112. Commentors contend that the Commission performed an inadequate alternatives analysis during staff's NEPA review of the project. Commentors allege that the EA incorrectly dismisses alternative locations for the Sheds Compressor Station and that it failed to analyze alternative compressor technologies.

113. NEPA requires the Commission to identify and analyze reasonable alternatives during its review of Dominion's project.¹⁷³ NEPA does not define what constitutes "reasonable alternatives," however, CEQ provides that "a reasonable range of alternatives depends on the nature of the proposal and the facts in each case."¹⁷⁴ The Commission does not need to consider alternatives that are not consistent with the purpose and need of the proposed project.¹⁷⁵

114. The purpose of Dominion's project is to provide an additional 112,000 Dth per day of transportation service on its existing system as contracted by the project shippers.¹⁷⁶ The EA reasonably considers the no-action alternative, site alternatives, and system alternatives including electric motor-drive compressor stations.¹⁷⁷ The EA discusses two alternative sites for the Sheds Compressor Station and concludes that the alternatives would not offer a significant environmental advantage.¹⁷⁸

¹⁷² EA app. B at table 2.

¹⁷³ See *Minisink*, 762 F.3d at 102.

¹⁷⁴ *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (1981).

¹⁷⁵ See, e.g., *Pacific Coast Fed'n of Fishermen's Ass's v. Blank*, 693 F.3d 1084, 1100 (9th Cir. 2012).

¹⁷⁶ EA at 1-2.

¹⁷⁷ EA at 109-14.

¹⁷⁸ EA at 111-14.

115. Commentors fault the EA for failing to prescribe the use of electric motors in lieu of combustion turbines for the natural gas compressors. Commentors also question the EA's conclusion that electric motor-driven compressors would result in greater emissions at the point of generation of the electricity.

116. The EA considers electric motor-driven engines as a potential alternative to natural gas-fueled engines for the project.¹⁷⁹ The use of electric motors would require infrastructure improvements to bring the necessary electric services to the affected compressor stations.¹⁸⁰ In addition, the use of electric motors in lieu of combustion turbines would transfer the associated pollutant emissions from the location of the compressor station to the location of the affected power plants. The EPA Emissions and Generation Resource Integrated Database (eGRID)¹⁸¹ provides data on the environmental characteristics for most of the electric power generated in the United States. The eGRID database contains information on the average emission rates in pounds per megawatt hour (lb/MW-hr) for nitrogen oxides (NO_x), sulfur oxides (SO_x), carbon dioxide (CO₂), and carbon dioxide equivalent emissions (CO_{2e}) for regions and sub-regions in the United States.

117. Dominion proposes to add one natural gas-fired combustion turbine and two reciprocating engines rated at a total of 11,133 hp at the Brookman Corners Compressor Station and one natural gas-fired combustion turbine rated at 10,880 hp at each of the Horseheads and Sheds Compressor Stations.¹⁸² In 2013, electricity transmission and distribution losses in New York State were about 6 percent of the electricity that was transmitted.¹⁸³ Since one megawatt (MW) is equivalent to 1,341 hp,

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ EPA, *Emissions and Generation Resource Integrated Database (eGrid)*, <http://www.epa.gov/energy/egrid>.

¹⁸² EA at table 8. We note that table 8 of the EA erroneously states that the total new compression proposed at the Brookman Corners Compressor Station is 12,133 hp. The correct total is 11,133 hp.

¹⁸³ Energy Information Administration, *New York Electricity Profile Table 10: Supply and disposition of electricity, 1990-2013 (megawatthours)*, <http://www.eia.gov/electricity/state/newyork/>. Staff calculated electricity generation transmission and distribution losses to be approximately 6 percent on average for reporting years 1990 through 2013 by dividing table 10 Row 25 by Row 16.

and electric motors are not 100 percent efficient, about 9.2 MW would need to be generated to power electric motors with equivalent output for one hour at the Brookman Corners Compressor Station and about 9 MW each for the Horseheads and Sheds Compressor Stations.¹⁸⁴ Thus, staff estimates that the emissions generated as a result of powering equivalent electric motors using 2012 upstate New York eGRID data for 8,760 hours (the number of hours in a year) are as follows:

Brookman Corners	Horseheads	Sheds
11.1 tons NO _x	10.9 tons NO _x	10.9 tons NO _x
26.2 tons SO _x	25.7 tons SO _x	25.7 tons SO _x
50,800 tons CO _{2e}	49,700 tons CO _{2e}	49,700 tons CO _{2e}

118. These figures include baseload and non-baseload generating units.¹⁸⁵ Baseload plants (such as nuclear plants) operate continuously and independently of hypothetical compressor station electric motors. Electric power in the upstate New York area has significant percentages of non-emitting hydroelectric and nuclear-generated power, which effectively reduces the overall amount of NO_x and CO_{2e} emitted for every MW of electricity made available on the electric grid in this area. The SO_x emissions estimated in the table above are largely due to the portion of electricity generated by coal-fired power plants.

119. The EA states that operating the proposed Solar Centaur 50L CT and Caterpillar G3608 units at the Brookman Corners Compressor Station and the proposed Solar Taurus 70CT units at the Horseheads and Sheds Compressor Stations would generate the following emissions on an annual (8,760 hours) basis:¹⁸⁶

¹⁸⁴ Electric motor efficiency accounts for losses of approximately four percent. Mark Schipper & Kelly Perl, *Minimum efficiency standards for electric motors will soon increase*, Energy Information Administration, <http://www.eia.gov/todayinenergy/detail.cfm?id=18151>.

¹⁸⁵ Energy Information Administration, *New York Electricity Profile Table 10: Supply and disposition of electricity, 1990-2013 (megawatthours)*, <http://www.eia.gov/electricity/state/newyork/>.

¹⁸⁶ EA at table 13. Table 13 of the EA erroneously states that a Solar Taurus 60CT unit would be installed at the Sheds Compressor Station. As indicated in the application and in table 8 of the EA, Dominion would install a Solar Taurus 70CT unit.

Brookman Corners	Horseheads	Sheds
38.5 tons NO _x	24.4 tons NO _x	24.4 tons NO _x
0.6 tons SO _x	0.7 tons SO _x	0.7 tons SO _x
61,006 tons CO _{2e}	53,949 tons CO _{2e}	54,351 tons CO _{2e}

120. The above analysis quantifies and compares the estimated emissions that would result from powering electric motor-driven compressor units versus the emissions that would be generated from the operation of equivalent gas-fired units. According to these estimates, electric-driven compressors would result in lower emissions of NO_x and CO_{2e}, but higher emissions of SO_x. We find that the emission differences between these two alternatives are not great enough to change the conclusions within the EA, nor would the use of electric motor-driven units offer a significant environmental advantage.

8. Radon

121. Southwest Pennsylvania EHP asserts that the EA does not adequately address the presence of radon daughters, otherwise known as progeny in the natural gas or the radon progeny health effects.¹⁸⁷ Southwest Pennsylvania EHP states that radon progeny would bind to particulates released at the compressor stations and, for this reason, cannot be detected using standard gamma counters. Therefore, Southwest Pennsylvania EHP alleges that the Commission cannot conclude that the risk of exposure to radon is not significant.

122. We disagree. As an initial matter, we note that without a significant presence of the parent radionuclide (i.e., radon), there cannot be a significant presence of progeny.¹⁸⁸ However, to further address this concern we note that the EA summarizes the review of literature and multiple studies on radon, including the Pennsylvania Department of Environmental Protection's recent *Technologically Enhanced Naturally Occurring Radioactive Materials Study Report*.¹⁸⁹ The study recognizes the limitations in using gamma spectroscopy, where some progeny cannot be detected. However, other progeny, which can be detected, are used to infer the presence of undetectable

¹⁸⁷ The radioactive decay of radon results in radioactive substances known as radon "daughters" or "progeny." The atom finally decays into a stable lead atom.

¹⁸⁸ EA app. B at 31-32. The Southwest Pennsylvania EHP does not dispute the EA's conclusion regarding radon.

¹⁸⁹ Pennsylvania Department of Environmental Protection, *Technologically Enhanced Naturally Occurring Radioactive Materials Study Report*, issued January 2015.

progeny. The study also notes that the uranium-238 decay chain includes 18 progeny, including radon, and that all of the progeny are solids at ambient conditions, except for radon, which is a gas at ambient conditions. Therefore, radon is the only progeny that can be transported when commingled with any natural gas releases. Other progeny may form as solid particles on the pipe. The EA addresses the potential for release of these decay products through cleaning or maintenance of the pipeline. The EA states that any liquids or solids removed during pipeline cleaning, which could include radon progeny, will be collected and treated as hazardous material to be disposed of at a licensed facility in accordance with federal, state, or local regulations.¹⁹⁰ Thus, we find that the risk of radon exposure and its progeny resulting from the project will not be significant.

9. Greenhouse Gases

123. Commentors also express opposition to the project on the basis that its operation would produce greenhouse gas emissions and result in irreversible impacts on our climate. We acknowledge that construction and operation of the project will result in both short- and long-term greenhouse gas emissions over the project's lifetime. However, as the EA concludes, neither the no-action alternative nor any system alternative was found to have a significant environmental advantage over the project while also meeting Dominion's stated purpose and need for the project.¹⁹¹ We confirm this finding.

124. The EA analyzes the greenhouse gas emissions that would result from the construction and operation of the project. The EA finds that "emissions from the Project's construction and operation as well as ongoing agricultural operations would collectively increase the atmospheric concentration of greenhouse gases, in combination with past and future emissions from all other sources, and continue incremental to climate change."¹⁹² The EA's cumulative impact analysis states that no standard methodology exists to determine how incremental contributions of greenhouse gases from an individual project result in physical effects on the global environment.¹⁹³ Moreover, we cannot at this time determine significance for greenhouse gas emissions as they contribute to global climate change, or elements of the change such as global CO₂

¹⁹⁰ EA app. B at 33.

¹⁹¹ EA at 109-11.

¹⁹² EA at 108.

¹⁹³ *Id.*

concentrations, sea level rise, or regional temperature changes that have occurred due to climate change and are projected to occur.

10. Noise

125. The EPA suggests that there may be errors in the EA that could affect conclusions regarding noise impacts and the potential need for noise mitigation at the Brookman Corners Compressor Station and the West Schenectady Meter Station. Commission staff reviewed its calculations and found one minor error for the Brookman Corners Compressor Station. The existing noise level for the Brookman Corners Compressor station is hereby corrected from 47.7 decibels on the A-weighted scale (dBA) to 47.5 dBA. Correction of this minor error does not affect the conclusions in the EA regarding noise mitigation.

126. The Town of Minden recommends that the Commission staff perform a noise survey within 30 days of the startup of the modified Brookman Corners Compressor Station, and that the Commission require a day-night sound level (L_{dn}) of 55 dBA at the property line. The Town of Minden also asserts that ambient noise readings are necessary to determine compliance with the Commission's L_{dn} noise criterion of 55 dBA.

127. On March 14, 2016, Otsego 2000 filed comments which suggest that the noise analysis prepared for the Brookman Corners Compressor Station was flawed.¹⁹⁴ Otsego 2000 asserts that ambient noise levels were not recorded in accordance with accepted American Natural Standards Institute (ANSI) standards for noise evaluation. Otsego 2000 further asserts that because the existing Brookman Corners Compressor Station was operational when ambient noise levels were recorded, conclusions in the EA regarding anticipated noise levels at noise-sensitive areas near the Brookman Corners Compressor Station are invalid. We disagree with these assertions. The noise analysis provided in the project application utilized proper engineering practice and followed ANSI standards applicable to a study of this type. As discussed in the EA, the Commission requires that noise levels generated by a proposed compressor station or, if existing, noise from the existing station and expansion combined, may not exceed a L_{dn} of 55 dBA at any pre-

¹⁹⁴ Otsego 2000's comments do not include a cover letter. As best as we can tell, these comments are from Otsego 2000's noise consultant who asked questions and received responses from Dominion's sound survey and noise analysis consultant. We cannot ascertain how these questions and answers were obtained from Dominion's noise consultant. Nevertheless, we will address Otsego 2000's concerns.

existing noise-sensitive areas.¹⁹⁵ The analysis conducted demonstrates that the proposed expansion project would meet this requirement.

128. We incorporated staff's recommended condition from the EA that requires Dominion to perform noise surveys within 60 days of startup for its new and modified stations, and that the determination of compliance with the L_{dn} of 55 dBA noise criterion is to be made by taking noise measurements at a point near the identified nearest noise-sensitive areas.¹⁹⁶ Commission staff will review all such surveys for adequacy, including measurement locations and methodology. This will ensure that there is no significant project-related impact on the noise environment.

11. Lighting

129. One commentor, Otsego 2000, recommends that the lighting design proposed for the new Sheds and Horseheads Compressor Stations also be applied to the existing Brookman Corners Compressor Station. We encourage Dominion to investigate opportunities such as the one recommended by Otsego 2000 to minimize the lighting impacts for the modified Brookman Corners Compressor Station, including lighting that minimizes impacts on nighttime skies.¹⁹⁷

12. Water Resources and Soils

130. One commentor requests more detail on the duration of sedimentation and turbidity in waterbodies affected by the project. As stated in the EA, only one waterbody, an approximately 4-foot-wide intermittent stream at the Horseheads Compressor Station site, will be affected.¹⁹⁸ Temporary sedimentation will occur only during and immediately after active excavation of this waterbody.¹⁹⁹ Staff estimates that active excavation associated with the crossing of this stream will take approximately one day to complete. Assuming the stream is flowing at the time of excavation, turbidity and

¹⁹⁵ EA at 91-95.

¹⁹⁶ Environmental Condition 16 in Appendix B of this order.

¹⁹⁷ The Brookman Corners Compressor Station is an existing station and requiring the modification of existing lighting would go beyond the scope of the project proposal.

¹⁹⁸ EA at 29.

¹⁹⁹ EA at 35-36.

sedimentation will occur in this stream during this active excavation period and is expected to cease within approximately 12 hours after excavation is complete.

131. Some commentors express concerns regarding impacts on “prime farmland” and “prime farmland of state importance.” As indicated in the EA, Dominion will segregate and restore topsoil where these soil classifications are present.²⁰⁰ This will ensure that soil resources (including those designated as prime farmland) will be preserved to the extent practicable. As stated in the EA, construction and operation at the Brookman Corners, Horseheads, and Sheds Compressor Stations will result in the permanent conversion of less than five acres of agricultural land to commercial/industrial land at each site and even less prime farm land. The EA found these losses will not have a significant impact.²⁰¹ We agree.

13. Pipeline Safety

132. Local municipalities and nearby residents comment that the potential for leakage, rupture, and catastrophic failure on Dominion’s 50- year-old pipeline would increase due to the additional volume of gas transported as a result of the New Market Project. Otsego 2000 requests an inspection to ensure that the pipeline’s integrity has not degraded over time. The local municipalities and Otsego 2000 also comment that emergency responders will not be prepared to handle accidents, including the potential for gas leaks, fires, or explosions.

133. Pipeline safety standards are mandated by regulations adopted by the Department of Transportation (DOT), Pipeline and Hazardous Material Safety Administration, in 49 C.F.R. Part 192. DOT has the exclusive authority to promulgate federal safety standards used in the transportation of natural gas.²⁰² These regulations are protective of public safety. As detailed in the EA, Dominion has designed and will construct, operate, and maintain the project in accordance with the pipeline safety regulations in 49 C.F.R. Part 192.²⁰³ DOT also prescribes the minimum standards for operating and maintaining pipeline facilities, including the requirement to establish emergency plans, maintain

²⁰⁰ EA at 24.

²⁰¹ EA at 23; 45.

²⁰² See Memorandum of Understanding Between the Department of Transportation and FERC Regarding Natural Gas Transportation Facilities (Jan. 15, 1993), <http://www.ferc.gov/legal/mou/mou-9.pdf>.

²⁰³ EA at 16-17, 32, 96-102.

liaison with appropriate fire, police and public officials, and establish a continuing education program.²⁰⁴ Dominion must comply with these standards.

14. Socioeconomics and Environmental Justice

134. Southwest Pennsylvania EHP argues that the EA incorrectly dismissed environmental justice concerns by finding that the project would not be sited within an area with a meaningfully greater percentage of minorities than the general population or locations where minorities comprise more than 50 percent of the affected area's population. Southwest Pennsylvania EHP highlights the following definition of environmental justice: "*Environmental justice* is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of *environmental* laws, regulations, and policies."²⁰⁵ No further comments were provided to give greater context for Southwest Pennsylvania EHP's environmental justice concerns.

135. We have previously explained that Executive Order 12898, which requires certain federal agencies to identify and address disproportionately high and adverse human or environmental health effects on low-income and minority populations, does not apply to the Commission.²⁰⁶ The executive order lists the agencies that must comply in section 1-102 and the Commission is not one of the agencies listed nor is the order binding on the Commission.²⁰⁷ Nonetheless, staff conducted a screening level analysis and the EA concludes that further review was not required for Dominion's project because the project areas were not located in areas identified by the EPA or NYSDEC as areas for potential environmental justice concerns.²⁰⁸ Thus, we find the EA adequately addresses such concerns.

²⁰⁴ See 49 C.F.R. § 192.615 (2015) (requiring emergency plans).

²⁰⁵ Southwest Pennsylvania EHP Comments at 3 (emphasis in original). This definition appears to be verbatim from the EPA's website. EPA, *What is Environmental Justice?*, <http://www3.epa.gov/environmentaljustice/>.

²⁰⁶ Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order No. 12898, 59 Fed. Reg. 7,629 (1994). See *Florida Southeast Connection, LLC*, 154 FERC ¶ 61,080, at P 260 (2016).

²⁰⁷ *Id.* Section 6-604 further explains that independent agencies are requested to comply with the executive order.

²⁰⁸ EA at 6.

136. Numerous commentors express concern that the Amish and Mennonite families living near the Brookman Corners Compressor Station were not able to participate in the proceeding, and impacts upon the communities were not considered. Commentors note that the Amish and Mennonite families live a traditional agrarian way of life and would be impacted by the emissions from the nearby compressor station. The Commission accepts comments both electronically via eComment and eFiling, as well as via paper copy submissions. In this proceeding, we established a scoping period in advance of the EA, which included two public scoping meetings where commentors could provide oral comments, and provided a designated comment period following issuance of the EA.²⁰⁹ In addition, all directly affected landowners were initially contacted by Dominion as required by Commission regulation after Dominion filed its application.²¹⁰ On April 22, 23, and 24, 2014, Dominion invited local landowners to the open houses to explain its project and solicit input on its plans about the Sheds, Brookman Corners, and Horseheads Compressor Stations. In addition, all directly affected landowners received the NOI, supplemental NOI, and a copy of the EA. Two motions to intervene were filed by individuals identifying as Amish who comment on Dominion's proposal, demonstrating that they were able to participate in this proceeding. Thus, we find that adequate opportunities for participation were provided herein.

137. Some commentors contend that property values could decrease in areas next to or near the compressor stations. Dominion's project includes two new compressor stations and modifications at existing compressor stations. Installation of these facilities will require temporary workspaces for construction and permanent modifications to property that Dominion currently owns or will own and will occur within each station's property. Modifications to the Brookman Corners, Borger, and Utica Compressor Stations would occur within existing facilities owned by Dominion. Dominion's Horseheads and Sheds Compressor Stations would, however, introduce new industrial facilities into the agricultural/rural residential areas. As stated in the EA, Dominion proposes to reduce these impacts on the surrounding properties by siting the aboveground facilities to ensure that there is natural visual screening, incorporating lighting solutions to reduce nighttime light pollution, planting a combination of coniferous and deciduous trees to buffer the Sheds Compressor Station, and installing the facilities within buildings with neutral colors to blend into the existing surrounding. As described in the EA, the impact the project could have on property values depends upon many variables, including the size of

²⁰⁹ See Elam King, Late Motion to Intervene, filed December 17, 2014; Melvin and Fanny Miller Late Motion to Intervene, filed December 22, 2014.

²¹⁰ 18 C.F.R. § 157.6(d) (2015).

the parcel, the parcel's current value and land use, and the value of nearby properties.²¹¹ We acknowledge the potential that the new compressor stations could impact resale values, and that the presence of a compressor station could influence a potential purchaser of property near the new compressor stations. Dominion's proposed mitigation, however, will substantially reduce the visual impacts of the aboveground facilities thereby minimizing these potential property value impacts.

138. Commentors raised concerns about the potential for negative impacts on their homeowners' insurance, including an increase in premiums or a total loss of insurance coverage. Insurance premiums and the ability to obtain homeowners' insurance are not likely to be affected by compression projects.

15. Other Issues

139. One commentor states that the EA, for the first time, presents the possibility that Dominion might abandon its facilities, which precludes parties from an opportunity to comment on the possible impacts of future abandonment. The commentor notes that Dominion's application never mentioned the possibility of abandonment of facilities. As the EA states,²¹² prior to abandonment of any facilities, Dominion would be required to seek approval from the Commission pursuant to the NGA. Commission staff included a brief discussion of abandonment in the description of the proposed action of the EA to frame the entire lifecycle of Dominion's facilities. However, our present action does not authorize the abandonment of facilities. In the future, if Dominion files an application proposing to abandon the facilities authorized herein, interested parties and commentors will be able to comment on Dominion's proposals.

140. Otsego 2000 comments that the Slate Creek Farm and other historically significant landmarks would be impacted as a result of the construction and operation of the Brookman Corners Compressor Station.²¹³ The EA found that the construction and operation of the project would have no effect on historic properties, noting that the New York State Historic Preservation Office concurred with this finding.²¹⁴ We agree with staff's assessment that no historic properties will be adversely affected.

²¹¹ EA at 64.

²¹² EA at 20.

²¹³ Otsego 2000 November 19, 2015 Comments at 19.

²¹⁴ EA at 60.

141. Commentors, including the Town of Minden, state that local land use laws and the New York State Environmental Quality Review Act could be used to impose conditions on Dominion. We note that any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage 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.²¹⁵

142. We have reviewed the information and analysis contained in the record, including the EA, concerning the New Market Project's potential environmental impacts. Based on our consideration of this information and the discussion above, we conclude 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, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

143. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Dominion authorizing it to construct and operate the New Market 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 proposed facilities and making them available for service within two years of the date of this order, pursuant to section 157.20(b) of the Commissions' regulations;

²¹⁵ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

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

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

(4) execution of firm service agreements equal to the level of service and in accordance with the terms of service represented in its precedent agreements prior to commencing construction.

(C) Dominion shall notify the Commission's environmental staff by telephone, e-mail, 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 (Secretary) within 24 hours.

(D) Dominion's incremental base reservation charge rate under Rate Schedule FT is approved, subject to the conditions described above.

(E) Dominion is required to calculate an incremental usage rate for the New Market Project to recover variable costs, as described above.

(F) Dominion's request for use of its system-wide Transportation Cost Rate Adjustment, Electric Power Cost Adjustment, and maximum system-wide fuel retention percentage is approved.

(G) Dominion shall file actual tariff records with the incremental base reservation rate and the incremental base usage rate not less than 30 days, or more than 60 days, prior to the date the project facilities go into service.

(H) Dominion shall keep separate books and accounting of costs attributable to the proposed incremental services, as described above.

(I) Dominion must file with the Commission not less than 30 days, or more than 60 days, before the in-service date of the proposed facilities, the negotiated rate agreement with the shippers or a tariff record containing the essential terms of such an agreement, as discussed above.

(J) The untimely motions to intervene are granted.

(K) Mr. Huston's request for a formal hearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Interventions

Parties Filing Timely Motions to Intervene:

- Atlanta Gas Light Company, Virginia Natural Gas, Inc., and Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas (filing jointly)
- Carol M. Babcock
- Erskine W. Babcock, Jr.
- The Brooklyn Union Gas Company d/b/a National Grid NY; Boston Gas Company, and Colonial Gas Company collectively d/b/a National Grid; KeySpan Gas East Corporation d/b/a National Grid, The Narragansett Electric Company d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid (collectively National Grid Gas Delivery Companies) (filing jointly)
- Laura Brown
- Juanita Bush
- Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc. (collectively NiSource Distribution Companies) (filing jointly)
- Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works (filing jointly)
- Carmen Druke
- Exelon Corporation
- Elizabeth M. Haskins
- James Haskins
- Shane Hayes
- Deborah B. Midlar
- NJR Energy Services Company
- National Fuel Gas Distribution Corporation
- New Jersey Natural Gas Company
- New York Public Service Commission
- New York State Department of Environmental Conservation
- New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (filing jointly)
- Onondaga Audubon Society
- PSEG Energy Resources & Trade LLC
- Piedmont Natural Gas Company, Inc.
- Linda H. Salter
- T. Michael Salter
- Ruthanne Stone
- Jamie E. Tousant
- Levi Tousant, Jr.

Parties Filing Untimely Motions to Intervene:

- Allegheny Defense Project
- John and Pauline Brownell
- John and Michelle Boylan
- Craig Buckbee
- Concerned Citizens of Otego
- FreshWater Accountability Project
- Heartwood
- Robin and Shirley Hudyncia
- Stephen and Linda Hudyncia
- William Huston
- Elam G. King
- Tammy and Henry Knoop
- Paul Mendelsohn and Ilse Funk
- Melvin and Fanny Miller
- Maria and Michael Minerva
- Mohawk Valley Keeper
- Katherine O'Donnell
- Ohio Valley Environmental Coalition
- Otsego 2000, Inc.
- Judith Pierpont and Stuart A. Davis
- Virginia and Richard Pugliese
- Glenn Sanders
- Phil Scalia
- Keith and Shirley Schue
- David C. Stockwell
- John and Maryann Valentine
- Suzanne Winkler
- David F. Zook
- Henry E. Zook

Appendix B

Environmental 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 this Order. Dominion must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the 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 inspector (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 project site drawings. **As soon as they are available, and before the start of construction**, Dominion shall file with the Secretary any revised detailed facility maps/plot plans at a scale not smaller than 1:6,000 for the 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 maps/plans.

Dominion's exercise of eminent domain authority granted under the 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 the 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 the Commission's *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. **Within 60 days of the acceptance of the authorization 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, 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. Dominion shall employ at least one EI. The EI(s) shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, Dominion shall file updated status reports with the Secretary **on a biweekly 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.
9. **Prior to receiving written authorization from the Director of OEP to commence construction and operation 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 each new and modified compressor station 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 conditions in the Order 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 file with the Secretary, for review and written approval by the Director of OEP, project-specific Site Development Plans for the Utica and Borger Compressor Stations and the West Schenectady Meter Station. These Site Development Plans shall include construction sediment and erosion control drawings showing limits of disturbance, perimeter controls (i.e., silt fence, straw bales, etc.), other erosion and sedimentation Best Management Practices, Storm Water Pollution Prevention Plans, and planned construction staging areas and access roads.
13. **Prior to construction**, Dominion shall file with the Secretary, for review and written approval by the Director of OEP, an Exotic and Invasive Species Control Plan that provides specific procedures developed in coordination with the appropriate state and local agencies to prevent the introduction or spread of invasive species, noxious weeds, and soil pests resulting from construction and restoration activities.
14. **Prior to construction**, Dominion shall file with the Secretary documentation that it submitted copies of the results of archival research about the Sullivan-Clinton campaign of 1779 and the metal detector survey of the Horseheads Compressor Station location to Dr. Michael Jacobson of the Public Archaeology Program of Binghamton University, Jay Toth of the Seneca Nation, and the New York State Historic Preservation Officer, and file their comments on the reports.
15. Prior to construction, Dominion shall clarify if the new emergency generator or microturbines at the Borger and Utica Compressor Stations would be installed. If emergency generators would be installed at the compressor stations, Dominion shall provide criteria pollutant, hazardous air pollutants, and greenhouse gas emission estimates in pounds per hour and tons per year for each generator and documentation for each generator and documentation of any applicable permitting requirements.
16. Dominion shall file a noise survey with the Secretary **no later than 60 days** after placing each of the Sheds and Horseheads Compressor Stations, modified Borger, Brookman Corners and Utica Compressor Stations, and modified West

Schenectady Meter Station in service. If a full load condition noise survey is not possible, Dominion shall provide an interim survey at the maximum possible load and provide the full load survey **within six months**. Dominion shall make all reasonable efforts to ensure its predicted noise levels from each station are not exceeded at nearby noise-sensitive areas. However, if the noise attributable to the operation of all of the equipment at each station under interim or full load conditions exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise-sensitive areas, Dominion shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within one 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.