

158 FERC ¶ 61,029  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket No. CP15-492-001

ORDER DENYING REHEARING

(Issued January 17, 2017)

**I. Background**

1. On August 29, 2016, the Commission issued Dominion Transmission, Inc. (Dominion) a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA) to construct and operate the Leidy South Project.<sup>1</sup> The project includes new compression and other facility modifications, which will enable Dominion to provide an additional 155,000 dekatherms per day (Dth/day) of firm transportation service on its existing pipeline system.

2. On September 28, 2016, Allegheny Defense Project, Heartwood, Wild Virginia, the FreshWater Accountability Project, and the Ohio Valley Environmental Coalition (collectively Allegheny) jointly filed a timely request for rehearing of the August 29 Order. On rehearing, Allegheny contends that the Commission violated the National Environmental Policy Act (NEPA) by failing to: (1) take full account of the project's greenhouse gas emissions; (2) issue a Finding of No Significant Impact (FONSI); (3) treat Marcellus and Utica shale gas development as a project-induced indirect impact; (4) consider this natural gas development in the cumulative impacts analysis of the project's Environmental Assessment (EA); and (5) prepare a Programmatic Environmental Impact Statement (EIS) for regional pipeline construction projects.

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<sup>1</sup> *Dominion Transmission, Inc.*, 156 FERC ¶ 61,140 (2016) (August 29 Order).

## II. Discussion

### A. The Environmental Assessment Appropriately Analyzed All Project Greenhouse Gas Emissions

3. Allegheny argues that the Commission violated NEPA by failing to fully account for the project's greenhouse gas emissions. According to Allegheny, the Commission relied on outdated science when it analyzed project methane emission using the global warming potential (GWP) from the Intergovernmental Panel on Climate Change's (IPCC) Fourth Assessment Report (AR4). Allegheny argues that the Commission should have used more recent methane GWP values from the IPCC's Fifth Assessment Report (AR5). Allegheny also contends that the Commission failed to address its earlier request to quantify all upstream greenhouse gas emissions, which Allegheny claims is required by the Council on Environmental Quality's (CEQ) Final Greenhouse Gas Guidance.<sup>2</sup>

4. The EA appropriately disclosed greenhouse gas emissions from project construction and operations, and reasonably made use of the estimated GWP for methane of 25 for a 100-year time horizon set forth in AR4. As explained in the August 29 Order, the EPA supported the adoption of the AR4 GWP values over the AR5 values in a recent rulemaking for reporting GHG emissions.<sup>3</sup> The AR4 value is the current scientific methodology used for consistency and comparability with other emissions estimates in the United States and internationally, including greenhouse gas control programs under the Clean Air Act.<sup>4</sup> This context would be lost if the AR5 GWP values were used.

5. With respect to Allegheny's contention that the Commission should have quantified the emissions from upstream production and transportation, the Commission explained that such emissions are not indirect impacts of the Leidy South Project because they are neither caused by, nor reasonably foreseeable impacts of, the project.<sup>5</sup> The CEQ Greenhouse Gas Guidance explains that agencies should take into account upstream

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<sup>2</sup> Request for Rehearing at 16 (citing CEQ, *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emission and the Effects of Climate Change in National Environmental Policy Act Reviews* (2016) (Final Greenhouse Gas Guidance)).

<sup>3</sup> August 29 Order, 156 FERC ¶ 61,140 at P 98.

<sup>4</sup> See *id.* at P 98 & n.172; Leidy South Project Environmental Assessment (EA) at 58 (March 31, 2016).

<sup>5</sup> August 29 Order, 156 FERC ¶ 61,140 at PP 41-60.

emissions if they have a “reasonably close causal relationship.”<sup>6</sup> As we have explained in the August 29 Order and other natural gas infrastructure proceedings, impacts from future natural gas production are neither causally related to infrastructure projects nor reasonably foreseeable as contemplated by CEQ.<sup>7</sup> In any event, Commission staff presented the greenhouse gas emissions associated with the construction and operation of the Leidy South Project, the potential impacts of greenhouse gas emissions, and the mitigation proposed by Dominion to minimize greenhouse gas emissions associated with the project.<sup>8</sup> We do not believe that any further greenhouse gas analysis is needed to inform our decision making.

**B. The Commission Appropriately Found That The Project Will Not Have A Significant Impact On The Environment**

6. In the August 29 Order, the Commission found that “the project, if constructed and operated as described in the EA, is an environmentally acceptable action.”<sup>9</sup> Nonetheless, Allegheny claims that the Commission failed to issue a FONSI because the August 29 Order did not explicitly state that the project “will not have a significant effect on the human environment.”<sup>10</sup> We disagree.

7. A FONSI is a document that briefly presents why an action will not have a significant effect on the human environment and either includes or summarizes the underlying EA.<sup>11</sup> The August 29 Order met these requirements. It summarized the project’s impacts to wildlife, vegetation, visual aesthetics, safety, air quality, alternatives, cumulative impacts, and climate change.<sup>12</sup> The Commission also adopted the EA’s finding that the project would have minimal impacts on the environment:

We have reviewed the information and analysis contained in the EA

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<sup>6</sup> Final Greenhouse Gas Guidance at 13.

<sup>7</sup> See August 29 Order, 156 FERC ¶ 61,140 at PP 41-60; *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 192 (2016).

<sup>8</sup> EA at 60, 69, 71-72, 85-88.

<sup>9</sup> August 29 Order, 156 FERC ¶ 61,140 at P 111.

<sup>10</sup> Request for Rehearing at 4 (citing 40 C.F.R. § 1508.13 (2016)).

<sup>11</sup> 40 C.F.R. § 1508.13; 18 C.F.R. § 380.2(g) (2016).

<sup>12</sup> August 29 Order, 156 FERC ¶ 61,140 at PP 28-112. See also EA at 88-89 (“The proposed project would have a minimal impact on the resources discussed.”).

regarding potential environmental effects of the Leidy South Project. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the EA and find that the project, if constructed and operated as described in the EA, is an environmentally acceptable action. We are accepting the environmental recommendations in the EA and are including them as conditions in Appendix B to this Order.<sup>13</sup>

8. The CEQ regulations do not mandate that any particular words be used to express the agency's environmental conclusion. Nonetheless, for the avoidance of doubt, we confirm here our prior determination that the project will not have a significant effect on the human environment. Because the August 29 Order indicates that the project would not constitute a major federal action significantly affecting the quality of the human environment, Allegheny's requests are denied.

**C. The Commission Appropriately Analyzed The Project's Cumulative Impacts**

9. Allegheny contends that the Commission failed to appropriately analyze the Leidy South Project's cumulative impacts by "refusing" to look beyond the time frame of the project.<sup>14</sup> Allegheny states that the Commission failed to consider existing and reasonably foreseeable shale development, but does not identify any specific impacts or projects that were excluded by this purportedly inappropriate limitation. In any event, we find that the Commission's environmental analysis appropriately defined the temporal scope of the cumulative impact analysis.

10. The CEQ's guidance provides that the time frame for the cumulative impact analysis should match the timespan of the project's direct and indirect impacts.<sup>15</sup> Here, the EA explained that the majority of impacts associated with the project would occur during construction.<sup>16</sup> Accordingly, the cumulative impact analysis considered other projects or actions that overlap in time and location with construction activities.<sup>17</sup> With

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<sup>13</sup> August 29 Order, 156 FERC ¶ 61,140 at P 111.

<sup>14</sup> Request for Rehearing at 21.

<sup>15</sup> CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 16 (January 1997) (1997 CEQ Guidance).

<sup>16</sup> EA at 82-83.

<sup>17</sup> See August 29 Order, 156 FERC ¶ 61,140 at PP 74-75; EA at 82-88.

respect to long-term impacts, such as operational emissions, the EA considered other projects or actions with potentially significant long-term stationary emission sources within a 30-mile radius of the project facilities, explaining that long-term air quality impacts are expected to be limited within that range.<sup>18</sup> While Allegheny suggests that the cumulative impact analysis should extend beyond the timespan of the project's direct and indirect impacts, NEPA imposes no such requirement.<sup>19</sup>

11. Allegheny also contends that the Commission improperly relied upon the minor and temporary nature of the Leidy South Project's impacts to narrow the geographic scope of its cumulative impact analysis.<sup>20</sup> We disagree. It is the magnitude of a proposed action's impacts that determines the scope of the agency's environmental analysis.<sup>21</sup>

#### **D. Other Issues**

12. The other issues raised in Allegheny's request for rehearing related to induced natural gas development, the cumulative impacts of natural gas development, and their request for a Programmatic EIS for all natural gas-related development in the Appalachian Basin were sufficiently addressed in the August 29 Order and do not warrant further comment.<sup>22</sup>

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<sup>18</sup> August 29 Order, 156 FERC ¶ 61,140 at P 75 & n. 147; EA at 82.

<sup>19</sup> See, e.g., 1997 CEQ Guidance at 8 ("it is not practical to analyze the cumulative effects of an action on the universe; the list of environment effects must focus on those that are truly meaningful"); *Natural Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975) (a cumulative impact analysis should 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").

<sup>20</sup> Request for Rehearing at 21.

<sup>21</sup> See, e.g., August 29 Order, 156 FERC ¶ 61,140 at P 72 ("CEQ advises that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action").

<sup>22</sup> August 29 Order, 156 FERC ¶ 61,140 at PP 41-55, 81-82.

The Commission orders:

Allegheny's request for rehearing is denied as discussed above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.