

128 FERC ¶ 61,001
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Dominion Transmission, Inc.

Docket No. CP09-10-000

ORDER ISSUING CERTIFICATE

(Issued July 1, 2009)

1. On October 15, 2008, Dominion Transmission, Inc. (DTI) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ for a certificate of public convenience and necessity authorizing it to construct and operate facilities in Armstrong, Elk, McKean, and Westmoreland Counties, Pennsylvania (the Rural Valley Project).
2. The Commission will authorize DTI's proposals, with appropriate conditions, as discussed below.

I. Background and Proposals

3. DTI is an interstate gas transmission unit of Dominion Resources, Inc., a natural gas and electric company, and is primarily engaged in the business of storing and transporting natural gas in interstate commerce for customers in New York, Ohio, Pennsylvania, West Virginia, Virginia, Maryland, and the District of Columbia. DTI operates a large, integrated underground natural gas storage system and maintains approximately 10,000 miles of pipe.

A. Facilities

4. The proposed Rural Valley Project is designed to create an outlet for additional gas supplies in western Pennsylvania. Specifically, DTI proposes to construct: (1) a 5,325 horsepower (hp) compressor station, composed of two high-speed reciprocating natural gas-fired compressor units, located approximately three miles west of Rural Valley, in Armstrong County, Pennsylvania (Rural Valley Compressor Station); (2) three pipelines in Armstrong County – Line TL-586, an unnamed 10-inch line, and Line TL-587; (3) four measuring and regulating (M&R) stations – the Rural Valley, Oakford, National Forest, and Big Springs M&R Stations in Armstrong, Westmoreland, Elk, and

¹ 15 U.S.C. § 717f(c) (2006).

McKean Counties, Pennsylvania, respectively; and (4) ancillary equipment, including a pig launcher and receiver adjacent to the Rural Valley Compressor Station in Armstrong County.

5. In regard to the proposed pipelines, DTI asserts that Line TL-586 will be 10 inches in diameter, approximately 1.08 miles in length, and connect Dominion Peoples' Line TP-7625² with DTI's LN-19 and the Rural Valley Compressor Station. DTI also states that the unnamed 10-inch diameter line will be approximately 0.02 miles in length and connect DTI's Line LN-19 with the Rural Valley M&R Station. Finally, DTI asserts that the 8-inch diameter Line TL-587 discharge pipeline will be approximately 0.30 miles in length and connect the Rural Valley M&R Station to DTI's existing Line LN-50X3, located southeast of the station. DTI states that the proposed facilities will provide a Maximum Daily Transportation Quantity (MDTQ) of 57,500 dekatherms (Dth) per day of firm transportation service.

6. DTI states that it conducted three open seasons from October 23, 2007 through November 21, 2007; April 25, 2008 through May 5, 2008; and May 27, 2008 through June 2, 2008 for the proposed capacity in the Rural Valley Project. DTI asserts that it executed five precedent agreements fully subscribing the firm capacity of the project with Equitable Energy, LLC, Seneca Resources, Dominion Field Services, Dominion Peoples and Snyder Brothers, Inc. DTI states that the precedent agreements provide for a primary term of ten years or a term in which a customer's negotiated rate will result in a dollar amount that is equivalent to the revenue that DTI would collect, if it applied the initial project reservation rate over a period of ten years, to that customer's full contract MDTQ.

7. DTI asserts that the Rural Valley Project is designed to provide increased firm transportation in western Pennsylvania, creating more access for production in the region to natural gas markets in the northeast and Mid-Atlantic regions. Specifically, the proposals will enable DTI to provide firm transportation to customers from multiple locations along its existing Lines LN-19 and LN-20 to an existing interconnection with Texas Eastern Transmission, LP at the Oakford Compressor Station in Westmoreland County, Pennsylvania.

B. Rates

8. DTI states that it will provide firm transportation service under Rate Schedule FT and interruptible transportation when the firm capacity is not used under its existing system IT rate.

² The Peoples Natural Gas Company d/b/a Dominion Peoples is a local distribution company.

9. DTI estimates that the cost of the Rural Valley Project will be \$40,643,783. DTI proposes an initial incremental transportation reservation rate of \$9.7211 per Dth to recover the costs of the project facilities.³ DTI states that the incremental rate for services created by the project will prevent existing customers from subsidizing the transportation service. The proposed incremental transportation reservation rate is based on an annual cost of service of \$6,707,535 for the third full year of service divided by the incremental firm reservation billing determinants. The cost of service consists of (1) operation and maintenance (O&M) expenses of \$464,898; (2) depreciation expenses of \$1,016,095 based on the Commission-approved 2.5 percent depreciation rate; (3) other taxes of \$658,429; and (4) pre-tax returns on total rate base of \$4,568,113.⁴ The Rural Valley Project customers are required to pay all other applicable rates, charges, and surcharges, including the maximum usage charge and the maximum system fuel retention percentage.

10. DTI agreed to a negotiated rate framework for the Rural Valley Project-related transportation services. Specifically, the customer's negotiated rate is derived from the dollar amount expected to be recovered from the customer over the term of the agreement that is equivalent to the revenue that DTI would collect if it applied the initial Rural Valley Project reservation rate, over a period of ten years, to that customer's full contract MDTQ. DTI acknowledges that it must file for separate Commission authorization of the negotiated rate, prior to commencing service to each affected customer.

II. Notice and Interventions

11. Notice of DTI's application was published in the *Federal Register* on November 3, 2008 (73 Fed. Reg. 65,300). The parties listed in Appendix A filed timely, unopposed motions to intervene.⁵ None of the intervenors oppose DTI's application.

12. Public Service Company of North Carolina (PSNC) filed an untimely motion to intervene. PSNC has demonstrated an interest in this proceeding and has shown good

³ DTI's existing system reservation rate for firm transportation service under Rate Schedule FT is \$4.6620 per Dth.

⁴ DTI's Commission-approved pre-tax rate of return is 13.70 percent. *CNG Transmission Corp.*, 85 FERC ¶ 61,261 (1998).

⁵ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2008).

cause for intervening out of time. PSNC's untimely motion will not delay, disrupt, or otherwise prejudice any other party to the proceeding.⁶

III. Discussion

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

A. Application of the Certificate Policy Statement

14. The Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for certificating major new construction.⁸ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

15. 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 existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse

⁶ 18 C.F.R. § 385.214(d) (2008).

⁷ 15 U.S.C. § 717f (2006).

⁸ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

16. As noted above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Here, DTI's proposal to charge an incremental rate for service on the Rural Valley Project satisfies the threshold requirement of the Certificate Policy Statement, since all of the costs of the project will be borne by the customers. Thus, there will be no subsidization by DTI's existing customers.

17. There will be no adverse operational impact on DTI's existing customers as a result of the proposed construction. To the contrary, the proposed facilities may provide a benefit to existing customers because the facilities will provide access to new sources of supplies. The proposed project will have no adverse effect on the captive customers of existing pipelines, since the facilities will create new capacity on DTI's system to serve new market requirements. Also, no existing pipeline protested DTI's application.

18. Finally, the Commission finds that any impacts on landowners and communities near the new facilities will be minimal because DTI plans to use existing rights-of-way by paralleling existing pipelines for a portion of the Rural Valley Project. DTI states that it will purchase the property for the Rural Valley Compressor Station and Rural Valley M&R Station and lease the sites for the National Forest and Big Springs M&R Stations. The Oakford M&R Station will be constructed within the existing Oakford Compressor Station boundaries.

19. DTI's proposed facilities will enable it to meet expanded market demand and facilitate the transportation of natural gas in western Pennsylvania. Based on the benefits DTI's proposal will provide to the market and the lack of adverse effects on existing customers, other pipelines, landowners, or communities, the Commission finds, consistent with the Certificate Policy Statement and section 7 of the NGA, that the public convenience and necessity requires approval of the Rural Valley Project, as conditioned below.

B. Rate Analysis

20. DTI proposes incremental rate treatment for its firm transportation service. The incremental rate recovers the costs of the proposed facilities and exceeds the existing system rate for firm transportation service under Rate Schedule FT. The Commission has reviewed DTI's proposed incremental rate and finds that it is fully cost supported and is appropriate, as the rate is higher than the system rate for firm transportation on DTI's system. To ensure that there is a proper assignment of costs, that the respective shippers

pay for the service they receive, and that the project can proceed without subsidies from the pipeline's existing customers, the Commission will require DTI to keep separate books and accounting for the costs attributable to the proposed incremental service.

C. Environmental Analysis

21. On November 17, 2008, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The Commission's staff prepared a mailing list for the NOI, identifying individuals and organizations having a potential interest in the Rural Valley Project.

22. The NOI requested written comments from the public on specific concerns or issues about the Rural Valley Project that should be considered during preparation of the Environmental Assessment (EA). In response to the NOI, the Commission received comment letters from the Pennsylvania Department of Conservation and Natural Resources (Pennsylvania DCNR), the Pennsylvania Game Commission (PGC), and the United States Department of Health and Human Services (DHHS).

23. The Pennsylvania DCNR requested that it be allowed to formally participate as a cooperating agency. It reviewed a draft version of the EA and concurred with the EA's findings and recommendations. The PGC concluded that the proposed Rural Valley Project would not cause any adverse impacts to any special concern species of birds, animals, their habitats, or to any State Game Lands. The comments of the Pennsylvania DCNR and PGC did not raise any substantive issues but are addressed in the appropriate resource sections of the EA.

24. The DHHS requested that any potential impacts on human populations located near the pipelines be addressed. The EA addresses the topics raised by DHHS.

25. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),⁹ the Commission's staff prepared the EA for DTI's proposal. The EA addresses the need for the project and the project's purpose; geology and soils; water resources; vegetation and wildlife; land use, recreation, and visual resources; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives to the proposed project.

26. Based on the discussion in the EA, the Commission concludes that approval of DTI's proposal will not constitute a major federal action significantly affecting the quality of the human environment, if the Rural Valley Project is constructed in

⁹ 42.U.S.C. § 4331 *et seq.* (2006).

accordance with DTI's application and supplements filed October 15, 2008, January 5 and 29, February 12, March 3, and April 3, and 14, 2009.

27. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission.¹⁰

28. 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, submitted in support of the authorization sought herein and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to DTI authorizing it to construct and operate the Rural Valley Project, as described more fully in the order and in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on DTI's compliance with paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations.

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

(D) DTI shall comply with the environmental conditions listed in Appendix B to this order.

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

¹⁰ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(F) DTI must file actual tariff sheets to implement its proposal at least 60 days and no less than 30 days prior to commencing service.

(G) Prior to commencing service to each negotiated rate customer, DTI must file for separate Commission authorization of the negotiated rate.

(H) DTI shall execute firm service agreements reflecting levels and terms of service equivalent to those represented in its precedent agreements prior to commencing construction of the Rural Valley Project.

(I) PSNC's untimely motion to intervene is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Atmos Energy Corporation

Consolidated Edison Company of New York and Philadelphia Gas Works (jointly)

Elizabethtown Gas Company and Virginia Natural Gas (jointly)

New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (jointly)

PECO Energy Company

Piedmont Natural Gas Company, Inc.; East Ohio Gas Company d/b/a Dominion East

Ohio, Peoples Natural Gas Company d/b/a Dominion Peoples, and Hope Gas, Inc. d/b/a

Dominion Hope (jointly)

PSEG Energy Resources and Trade, LLC

UGI Distribution Companies

Appendix B

Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. DTI shall follow the construction procedures and mitigation measures described in its application and as identified in the environmental assessment (EA), unless modified by this Order. DTI 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 activities associated with the Project. This authority shall allow:
 - a. the modification of conditions of this 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**, DTI shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, DTI shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of

environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

5. DTI 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, and 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 Upland Erosion Control, Revegetation, and Maintenance Plan, 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 this certificate and before construction begins**, DTI shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP. DTI must file revisions to the plan as schedules change. The plan shall identify:
 - a. how DTI 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 this Order;
 - b. how DTI 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

- c. each site is clear to onsite construction and inspection personnel; the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - e. the training and instructions DTI 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 DTI's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) DTI 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 mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. DTI shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this 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 this 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 this 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 initial Implementation Plan, DTI 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 DTI'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 environmental inspector 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 DTI from other federal, state, or local permitting agencies concerning instances of noncompliance, and DTI's response.
9. **Within 30 days of placing the certificated facilities in service**, DTI shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions DTI 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.
10. DTI shall make all reasonable efforts to assure its predicted noise level from the Rural Valley Compressor Station is not exceeded at nearby noise sensitive areas (NSAs) and file noise surveys showing this with the Secretary no later than 60 days after placing the Rural Valley Compressor Station in service. However, if the noise attributable to the operation of the Rural Valley Compressor Station at full load exceeds an Ldn of 55 dBA at any nearby NSAs, DTI should file a report on what changes are needed and should install additional noise controls to meet the level within one year of the in-service date. DTI should confirm compliance

with this requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.

11. DTI shall offer to perform pre- and-post construction monitoring for any well identified within 150 feet of the proposed construction work area. **Within 30 days of commencement of service**, DTI shall file a report with the Secretary identifying all potable water supply systems damaged by construction and how they were repaired.
12. DTI shall not begin implementation of any treatment plans/measures (including archaeological data recovery), construction of facilities, or use of staging, storage, or temporary work areas and new or to-be-improved access roads associated with the Oakford, National Forest, or Big Springs M&R stations until:
 - a. **DTI files with the Secretary all cultural resources survey and evaluation reports, and any necessary treatment plans, and the SHPO comments on the reports and plans; and**
 - b. **The Director of OEP reviews and approves all cultural resources survey reports and plans and notifies DTI in writing that treatment plans/mitigation measures may be implemented or construction may proceed.**
 - c. **All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering “CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.”**
13. DTI shall provide a Visual Screening Plan for the Rural Valley Compressor Station for review and obtain written approval by the Director of OEP prior to construction of the compressor station.