

141 FERC ¶ 61,240  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

Dominion Transmission, Inc.

Docket No. CP12-72-000

ORDER ISSUING CERTIFICATE

(Issued December 20, 2012)

1. On February 17, 2012, Dominion Transmission, Inc. (DTI) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations<sup>2</sup> for a certificate of public convenience and necessity authorizing it to construct and operate compression, pipeline, and storage facilities located in Frederick County, Maryland; Monroe County, Ohio; Lewis County, West Virginia; and Tioga County, Pennsylvania (Allegheny Storage Project). DTI states that the proposed Allegheny Storage Project will enable it to provide an additional 115,000 dekatherms (Dth) per day (111,868 Mcf per day) of firm transportation services, provide an additional 7.5 billion cubic feet (Bcf) of firm storage capacity and 125,000 Dth per day (121,596) of additional storage withdrawal service. For the reasons discussed below, the Commission will grant DTI's requested authorization, with appropriate conditions.

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<sup>1</sup> 15 U.S.C. § 717f(c) (2006).

<sup>2</sup> 18 C.F.R. Part 157, Subpart A (2012).

## **I. Background and Proposal**

2. DTI,<sup>3</sup> a corporation organized under the laws of the State of Delaware and a natural gas company as defined by section 2(6) of the NGA, is engaged primarily in the business of storing and transporting natural gas in interstate commerce for customers principally located in the Northeast and Mid-Atlantic markets. DTI operates a large, integrated underground natural gas storage system with 947 Bcf of storage capacity, and approximately 11,000 miles of transmission and gathering pipeline in Ohio, West Virginia, Pennsylvania, New York, Maryland, and Virginia.

3. DTI requests authority to construct and operate compression, pipeline and storage facilities in Maryland, Ohio, West Virginia, and Pennsylvania. DTI states that the proposed facilities will allow it to provide an additional 115,000 Dth per day of firm transportation service on its PL-1 Line; provide an additional 7.5 Bcf of firm storage service; and increase its system-wide maximum storage withdrawal by 125,000 Dth per day.<sup>4</sup>

4. DTI proposes to construct the following facilities:

- (1) a new 16,000 horsepower (hp) compressor station, consisting of one natural gas fired turbine, in Frederick County, Maryland, near the town of Myersville (Myersville Compressor Station);<sup>5</sup>

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<sup>3</sup> DTI is a business unit of Dominion Resources, Inc., a fully-integrated natural gas and electric company.

<sup>4</sup> DTI will accomplish the additional 125,000 Dth/day of storage withdrawal by increasing the maximum daily withdrawal rate from its Fink Kennedy/Lost Creek Storage Complex by 110,000 MMcf per day and utilizing on a firm basis the storage withdrawal capabilities from its lease with Dominion East Ohio (DEO). As discussed below, on March 26, 2010, DTI and DEO filed a joint application in Docket No. CP10-107 requesting authorization for DTI to lease up to 5.0 MMDt of storage capacity from DEO. Phase I of the lease would provide 3.0 MMDt of capacity that DTI would use to provide interruptible storage service on an interim basis, while Phase II would provide an additional 2.0 MMDt of capacity beginning in April 1, 2014.

<sup>5</sup> The Myersville Compressor Station will include one Solar Mars 100 natural gas-fired turbine compressor package with a rated output of 16,000 hp, ancillary systems, and equipment including one three-million British thermal units per hour (MMBtu/hr) natural gas-fired heater and one 400-hp auxiliary generator. DTI states that it has considered the potential for recovery of waste heat at the Myersville Compressor Station as discussed in

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(2) 0.6 miles of 30-inch discharge and suction pipeline at the Myersville Compressor Station;

(3) a new 3,550 hp compressor station, consisting of one reciprocating compressor, in Monroe County, Ohio, near the town of Switzerland (Mullett Compressor Station); and

(4) 0.5 miles of 16-inch suction pipeline and 0.5 miles of 10-inch discharge pipeline at the Mullett Compressor Station.

5. DTI also proposes to upgrade the existing Tuscarora metering and regulating (M&R) station in Frederick County, Maryland and the existing Mullett 1 M&R station in Monroe County, Ohio and to install an additional 110 MMcf per day of glycol dehydration at the Wolf Run Compressor Station in Lewis County, West Virginia.

6. At its Sabinsville Storage Pool in Tioga County, Pennsylvania DTI proposes to: (1) replace 1.8 miles of 10- and 12-inch-diameter storage pipeline with 16-inch-diameter pipeline; (2) replace 1.3 miles of 8- and 12-inch-diameter storage pipeline with 20-inch-diameter pipeline; and (3) add piping and ancillary equipment at the Sabinsville Storage Station. DTI also proposes to convert 0.5 Bcf of cushion gas to working gas at its Sabinsville Storage Pool. The proposed conversion will reduce the cushion gas from 16.422 Bcf to 15.922 Bcf<sup>6</sup> and increase the working gas from 17.697 Bcf to 18.197 Bcf. The total capacity of the storage field will remain unchanged.

7. DTI also requests authority to increase the total and working gas capacity of the Fink Kennedy/Lost Creek Storage Complex by 2.0 Bcf. As a result, the total capacity of the storage complex will increase to 167.521 Bcf, comprising 89.539 Bcf working gas (a 2.0 Bcf increase), 75.0 Bcf cushion gas, and 2.982 Bcf native gas. Further, as a result of the additional dehydration at the Wolf Run Compressor Station, DTI proposes to increase the maximum certificated withdrawal rate from 1,110 MMcf per day to 1,220 MMcf per day.

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the Interstate Natural Gas Association of America White Paper entitled “*Waste Energy Opportunities for Interstate Natural Gas Pipelines*” (February 2008) and concluded that due to the intermittent nature of its expected operation (the station will be used as a peaking facility, operated primarily during periods of high demand) the gas compression turbine is not conducive to waste heat recovery application. DTI notes that it may further review waste heat recovery technology at the Myersville facility should the station operating characteristics change.

<sup>6</sup> The Sabinsville Storage Station also includes 1.499 Bcf of native gas.

8. As a result of the construction of the Mullet Compressor Station, DTI states that it will be able to offer 5.0 Bcf of storage capacity that it leases from Dominion East Ohio (DEO) on a firm basis.<sup>7</sup> Currently that storage capacity is only provided on an interruptible basis due to pressure constraints on DTI's interconnecting pipeline.

9. DTI states that the estimated cost for construction of the proposed facilities is \$112,315,305. DTI has proposed incremental storage and transportation recourse rates for service utilizing its expansion capacity on the Allegheny Storage Project.

10. DTI conducted an open season in June and July of 2007 for proposed storage and firm transportation services. As a result of the open season, DTI states that it executed precedent agreements with three customers for all of the capacity associated with the Allegheny Storage Project.<sup>8</sup>

## **II. Notice, Interventions, and Comments**

11. Notice of DTI's application was published in the *Federal Register* on March 2, 2012 (77 Fed. Reg. 12,824). The parties listed in Appendix A filed timely motions to intervene.<sup>9</sup>

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<sup>7</sup> See *The East Ohio Gas Co. and Dominion Transmission, Inc.*, 133 FERC ¶ 61,076 (2010) (approving DTI's lease of storage capacity from DEO). Pursuant to Phase I of the lease, DTI states that it currently only offers 3.0 Bcf of storage capacity on an interruptible basis. Phase II of the lease allows DTI to provide an additional 2.0 Bcf of capacity beginning April 1, 2014.

<sup>8</sup> In its application, DTI notes that on July 5, 2007, the Commission approved DTI's request for authorization to initiate the pre-filing process for its contemplated Storage Factory Project (Docket No. PF07-12-000). However, as discussed in more detail below, DTI states that it suspended that project on November 3, 2008, due to technical issues and complexities related to the new gas storage facilities contemplated to be associated with that project. DTI notified the Commission at that time that it planned to revise the project in a manner that would enable DTI to meet the needs of the prospective Storage Factory Project customers. The Allegheny Storage Project is the revised Storage Factory Project. DTI states that the precedent agreements from its 2007 open season have been amended as necessary to reflect the current proposal.

<sup>9</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. See 18 C.F.R. § 385.214 (2012).

12. Multiple parties protested DTI's application on a number of grounds including: (1) alleged misstatements in Exhibit K of DTI's application; (2) the lack of need for DTI's proposed project; (3) DTI's request for shortened procedures; and (4) numerous environmental concerns with respect to the proposed Myersville Compressor Station. The environmental comments were addressed in the Environmental Assessment (EA) prepared for the proposed project and are discussed further below. All other issues are addressed below.

13. Additionally, Peoples TWC, LLC (PTWC) and CNX Gas Company LLC (CNX) filed comments regarding DTI's proposal. PTWC filed comments regarding DTI's proposed rate design, while CNX filed comments requesting the Commission consolidate the Allegheny Storage Project with DTI's application for the proposed Sabinsville Storage Pool Boundary Project in Docket No. CP12-59-000. DTI filed an answer to both comments. The comments and answer are addressed below.

14. Baltimore Gas and Electric Company (BG&E) filed comments in support of the proposal, stating that the Allegheny Storage Project would help meet the retail natural gas requirements of its central Maryland service territory.

### **III. Discussion**

15. Since the 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.<sup>10</sup>

#### **A. Application of the Certificate Policy Statement**

16. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.<sup>11</sup> 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 explained that in deciding whether to authorize the construction of major new natural gas 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

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<sup>10</sup> 15 U.S.C. §§ 717f(c) and 717f(e) (2006).

<sup>11</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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.

17. Under this policy, the threshold requirement for an applicant proposing new projects is that the applicant 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 construction. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

18. As discussed above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. DTI proposes to recover the costs of the Allegheny Storage Project facilities through a new incremental rate for service which is higher than DTI's existing system-wide rate. Use of an incremental rate, as discussed and approved below, ensures that existing customers that do not use the facilities will not subsidize the expansion. Thus, we find DTI's existing shippers will not subsidize the project.

19. We also find that the proposal will not degrade service to DTI's existing customers. The project will allow DTI to provide additional storage and transportation services, while continuing to meet its existing firm obligations. Additionally, there will be no adverse impact on existing pipelines in the region or their captive customers because the proposal is not intended to replace existing customers' service on other existing pipelines. Moreover, no existing pipelines or their customers have protested the proposal. Thus, we find the proposed project will not result in any adverse impact on DTI's existing customers, or on other existing pipelines or their captive customers.

20. Regarding DTI's efforts to minimize any adverse effects the proposed project may have on landowners and communities, the proposed project will disturb approximately 113.1 acres of land. DTI either already owns or has leasehold or easement rights to the lands associated with upgrading its existing M&R stations, storage facilities, and dehydration facilities. With respect to the two new compressor stations (Myersville and Mullett), DTI has acquired an option to purchase the land necessary for the construction of the compressor stations. Therefore, DTI will be able to acquire all the property rights

necessary for its project through negotiation from willing sellers. Further, while the Commission recognizes the general potential for property values to be negatively affected by the construction of nearby energy infrastructure, as discussed in the Environmental section below, we are imposing conditions which should mitigate the potential for negative impacts on property values. In addition, we find DTI's proposed location for the Myersville Compressor Station, on a parcel of land next to a wastewater treatment plant and gas station and adjacent to an interstate highway, should serve to minimize the impact.<sup>12</sup> Accordingly, for purposes of our consideration under the Certificate Policy Statement, we find that DTI has taken steps to minimize any adverse economic impacts on landowners and surrounding communities.<sup>13</sup> Further, on balance we do not find that the residual potential for construction and operation of the Myersville Compressor Station to negatively impact the economic interests of landowners and the neighboring community to be sufficient to foreclose a determination that the proposed project is required by the public convenience and necessity.

21. The proposed Allegheny Storage Project will increase the transportation and storage capacity available on DTI's system. All of the proposed capacity has been subscribed under long-term contracts, demonstrating the existence of a market for the project. Based on the benefits the project will provide and the minimal adverse effects the project will have on the economic interests of existing shippers, other pipelines and their captive customers, landowners and surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, that the public convenience and necessity requires approval of DTI's proposal, as conditioned in this order.

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<sup>12</sup> MCRC cites to findings in a University of Alberta, Canada, article that suggests that oil and sour gas facilities located within 4 km of rural residential properties significantly affect their sale price. *See The Impact of Oil and Natural Gas Facilities on Rural Residential Property Values: A Spatial Hedonic Analysis*, by Peter Boxass and Wing H. Chan, *Resource and Energy Economics*, vol. 27, at pp 248-269 (2004). Property values are highly site specific. In addition, a natural gas compressor is significantly less intrusive than oil and sour gas production facilities, which regularly produce flare-offs and which have other environmental impacts not associated with a compressor station. Therefore, the cited article is not probative here.

<sup>13</sup> Other environmental concerns raised by commenters regarding the impact of the project are addressed in the EA and in the Environmental section of the order.

## **B. Non-Environmental Protests and Comments**

### **1. Need for the Proposed Project**

22. Several commenters state that DTI's proposed project is not needed. In support, they assert that Washington Gas (one of the project's customers) recently opposed DTI's Cove Point expansion because it could not accept additional liquefied natural gas (LNG) on its system. Commenters also assert that (1) demand for natural gas is not expected to increase; (2) natural gas is at record low prices; (3) natural gas production is beginning to be shut in as a result of the low prices; and (4) there are record inventories in natural gas storage facilities. One commenter notes that the State of Maryland is pursuing policies that are designed to lessen the consumption of traditional energy sources, such as natural gas.

23. DTI has executed long-term agreements with three customers, including two local distribution companies, for the full capacity being offered. As discussed in our Certificate Policy Statement, service commitments for new capacity constitute "important evidence of demand for a project."<sup>14</sup> Consequently, when "an applicant has entered into contracts or precedent agreements for the proposed capacity," we take this as "significant evidence of demand for the project."<sup>15</sup> Accordingly, we find that DTI has provided adequate support of need for the proposed Allegheny Storage Project.<sup>16</sup>

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<sup>14</sup> Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,748. *See, e.g., Turtle Bayou Gas Storage Co., LLC*, 135 FERC ¶ 61,233 at P 33 (2011) which found that the applicant had not sufficiently demonstrated need for its particular project where the applicant did not conduct an open season or submit precedent of service agreements for the project's capacity and provided only vague and generalized evidence of need for natural gas at the regional and national level.

<sup>15</sup> *Id.*

<sup>16</sup> We also find that there is no indication that this project is in any way linked to the transportation of additional volumes of revaporized LNG; thus, Washington Gas's previously voiced concerns have no relevance here. Further, contrary to the reasoning of the commenters, one might expect low natural gas prices to spur, rather than to inhibit, demand. Finally, we note that commenters also suggest that the gas to be transported by the proposed project is ultimately going to be exported. There is no indication in the record that any of the customers that have subscribed to the capacity created by the proposed facilities contemplate using that capacity to export natural gas. In any event, no gas may be exported without prior NGA section 3 authorization from the Department of

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## 2. DTI's Request for Shortened Procedures

24. Several commenters object to DTI's statement in its February 2012 application requesting that

the Commission process this Application in accordance with the shortened procedures set forth in Rules 801 and 802<sup>17</sup> of the Commission's Rules of Practice and Procedure, and that the Commission omit the intermediate decision. If the Commission grants this request, DTI agrees to waive oral hearing.

Commenters request that the Commission deny DTI's request for shortened procedures because waiver of the procedures would deny them due process. Commenters seek an in-person hearing before the Commission.

25. Section 7 of the NGA provides for a hearing when an applicant seeks a certificate of public convenience and necessity, but does not require that all such hearings be formal, trial-type hearings. An evidentiary trial-type hearing is necessary only when there are material issues of fact in dispute that cannot be resolved on the basis of the written record.<sup>18</sup> The issues raised by all parties in this proceeding have been adequately argued, and a determination can be made on the basis of the existing record in this proceeding. All interested parties have been afforded a full and complete opportunity to present their views to the Commission through numerous written submissions. We find that there is no material issue of fact that we cannot resolve on the basis of the written record in the proceeding. Therefore, we will deny the request for a formal, trial-type hearing.

26. Several commenters also object to DTI's "abbreviated application" and ask that the Commission require DTI to file a "full application." We note that the Commission's regulations provide that a company may file an abbreviated application and omit certain exhibits when those exhibits are not necessary to fully disclose the nature of the proposal.<sup>19</sup> However, the applicant must file information to fully explain the proposed

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Energy (DOE). That DOE proceeding would be the appropriate forum to address the concerns of the commenters.

<sup>17</sup> 18 C.F.R. §§ 385.801 and 385.802 (2012).

<sup>18</sup> See, e.g., *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124 (D.C. Cir. 1982); *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969).

<sup>19</sup> 18 C.F.R. § 157.7 (2012).

project, its economic justification, and its effect on the applicant's operations and upon the public proposed to be served.<sup>20</sup> DTI's application for the Allegheny Storage Project fully explained the project, its justifications, and effects. DTI's application incorporates by reference Exhibits A, B, C, and D. Although DTI's application states that Exhibits L (Financing), M (Construction, Operation, and Management), and O (Depreciation) were "omitted," DTI provided sufficient information relevant to each exhibit to fully disclose the nature of the project, and therefore satisfy staff that the requirements set forth in the Commission's regulations were met.

### 3. Misstatements in DTI's Application

27. Several commenters note that Exhibits K and P of DTI's application state that the proposed compressor station in Maryland will be located in Middletown, Maryland instead of Myersville, Maryland. As a result of this error, the commenters request that we reject DTI's application. Although DTI did inadvertently mislabel the location of the Myersville Compressor Station in Exhibits K and P, we note that the maps and alignment sheet that DTI filed with the environmental resource reports in Exhibit F of its application accurately reflected the Myersville site. Additionally, the Myersville location was properly identified on the maps and information presented to the public by DTI at its open houses in the project area, and in several subsequent filings throughout this proceeding. The Myersville location was also accurately identified in the October 24, 2011 Notice of Intent to Prepare an Environmental Assessment, which was mailed to all interested parties. Accordingly, we find that the mislabeling of the compressor site in Exhibits K and P did not prevent affected landowners in Myersville from fully participating in this proceeding and in the pre-filing process in Docket No. PF11-9-000 associated with DTI's proposal. Under these circumstances, there is no need to reject DTI's application as requested by the commenters.<sup>21</sup>

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

<sup>21</sup> Several commenters also challenged DTI's use of the official Federal Energy Regulatory Commission seal on the draft Environmental Assessment DTI filed with its February 17, 2012 application. Commenters argued that this created confusion, as some believed that the Commission "had already acted on the EA," and that their due process rights were violated. Given that the document was labeled "draft," and that we received numerous comments throughout the EA process (including from those who claimed confusion), we find that DTI's inadvertent use of the Commission seal prior to the initiation of the EA process did not cause confusion sufficient to invalidate the EA issued in June 2012, or in any way prevent the public from exercising its due process rights.

**4. Consolidation with DTI's Application in Docket No. CP12-59-000**

28. In its motion to intervene, CNX filed comments suggesting that the Allegheny Storage Project should be considered jointly with DTI's filing in Docket No. CP12-59-000 in which DTI is proposing to establish a protective boundary around its Sabinsville Storage Pool in Tioga County, Pennsylvania. CNX suggests that the additional storage capacity proposed in this proceeding at the Sabinsville Storage Pool may be the result of DTI's proposed boundary revision in Docket No. CP12-59-000. DTI responds that the two proposals are distinct projects with different purposes with no common issues of law or fact.

29. On November 30 2012, the Commission granted DTI a certificate authorizing the addition of a protective buffer zone around its Sabinsville Storage Pool in Docket No. CP12-59-000.<sup>22</sup> In any event, we note that the Commission consolidates matters only if a hearing is required to resolve common issues of law and fact, and consolidation will ultimately result in greater administrative efficiency.<sup>23</sup> We find the record in this proceeding was adequate for us to make a determination regarding the proposed project. We do not believe administrative efficiency would have been served by consolidating DTI's pending application in Docket No. CP12-59-000 with the petition in this docket. Although both projects involve the Sabinsville Storage Pool, DTI's request in Docket No. CP12-59-000 involves establishing a protective boundary around that storage field. In this proceeding DTI proposes to replace about 3 miles of pipeline with larger diameter pipe, convert 0.5 Bcf of cushion gas at the Sabinsville Storage Pool to working gas, and add piping and ancillary facilities at the Sabinsville Storage Station. The total capacity of the storage field will remain unchanged and the conversion of base gas does not involve expanding the physical boundary of the storage field nor does it necessitate such an expansion. Therefore, we find that the two applications do not share common issues of law and fact and should not have been consolidated.

**C. Rates**

**1. Incremental Rates**

30. As noted above, DTI proposes to establish incremental recourse storage and transportation rates for service utilizing its expansion capacity. The proposed

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<sup>22</sup> 141 FERC ¶ 61,183.

<sup>23</sup> See, e.g., *Midcontinent Express Pipeline, Inc.*, 124 FERC ¶ 61,089, at P 27 (2008).

incremental recourse monthly demand rate for firm storage service under Rate Schedule GSS is \$5.0474 per Dth, based on a first-year cost of \$15,142,203 associated with the construction of the proposed project facilities. The recourse monthly firm capacity rate is \$0.0841 per Dth. This yields a proposed incremental storage rate of \$2.0187 per Dth, calculated on a 100 percent load factor basis. The proposed incremental recourse monthly reservation rate for firm transportation service under Rate Schedule FT is \$9.0910 per Dth based on a first-year cost of service of \$12,545,552. DTI states the rate of return and other factors used in determining the rates were derived from DTI's most recent cost of service settlement.<sup>24</sup> DTI proposes to apply its system-wide fuel retention rate for both the storage and transportation services.

31. PTWC is a project shipper on the Allegheny Storage Project<sup>25</sup> and states that it fully supports DTI's proposal to construct the project but questions some rate and cost aspects of the proposal. PTWC states that its precedent agreement with DTI provides that PTWC will pay a negotiated rate for storage service that is equal to the lower of the proposed incremental firm storage rate for the project or the Rate Cap set forth in the precedent agreement. Although DTI's proposed storage rate is lower than the Rate Cap set forth in the precedent agreement, PTWC contends that the rate may nevertheless be too high since it includes the cost of certain transmission facilities in the storage rate and is not consistent with the language in the precedent agreement that the storage rate be designed consistent with generally accepted rate principles.

32. PTWC notes that it is under an obligation in the precedent agreement not to interfere with or obstruct DTI's receipt of the regulatory authorizations contemplated under the precedent agreement, and that it does not desire to do so. However, PTWC requests the Commission review the derivation of DTI's proposed incremental storage rate to determine whether the rate has been designed using generally accepted rate principles and whether it collects more than the annual incremental cost of service associated with the fixed costs of the Allegheny Storage Project's storage-related facilities.

33. PTWC states that Exhibit K of DTI's certificate application identifies the Mullet facilities as Transmission costs, while Exhibit P of the certificate application includes the Mullet facilities in the Gross Plant for Storage. PTWC further states that not only are the

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<sup>24</sup> *CNG Transmission Corp.*, 85 FERC ¶ 61,261 (1998).

<sup>25</sup> PTWC entered into a precedent agreement with DTI to purchase 600,000 Dth of storage capacity with a corresponding storage demand of 10,000 Dth per day. PTWC did not contract for transportation capacity.

Mullett facilities not “storage-related facilities,” but the bundling of the costs of those facilities into a storage rate runs against the long-standing service unbundling policy of Order 636 and its legacy.

34. PTWC also questions the cost of the Mullett facilities versus the estimated cost of a recent DTI compressor project. PTWC states DTI’s Exhibit K filed in Docket No. CP09-10-000 showed the estimated cost of a new gas-fired 5,325 horsepower compressor that was part of DTI’s Rural Valley project to be \$27,758,787, while the estimated costs of the Mullett facilities (a 3,550 horsepower compressor and approximately 0.5 miles of suction and discharge lines) is estimated to be \$26,538,362. Since the projected Mullett costs are only approximately \$1,200,000 less than the estimated costs for the much larger Rural Valley compressor, PTWC states that the Mullett costs may be overstated.

35. In addition, PTWC questions DTI’s use of the pretax return of 13.70 percent established in its last general rate case, the final order of which was issued on November 24, 1998. PTWC recognizes that the Commission has permitted pipelines to use the pretax return from its most recent rate case in developing project rates. However, PTWC states the use of a return as stale as DTI’s results in a mismatching of the cost of providing the service, since all of the costs used in deriving the cost of service are current except for the return, which is based on capital costs that are 13 years old.

36. PTWC states that when determining the appropriate rate to be used in the calculation of Allowance for Funds Used During Construction (AFUDC), the Commission requires the pipeline to use its long-term debt, preferred stock and common equity book balances as of the end of the prior year, with rates for long-term debt and preferred stock being the weighted average cost determined in accordance with Subpart D of Part 154 of the Commission’s regulations and the rate for common equity being that determined in the pipeline’s last rate case. However, PTWC states where such common equity rate is not available, which is the case with DTI, the common equity rate for the AFUDC calculation will be the average rate actually earned during the preceding three years. Since both the AFUDC rate and the pretax return are intended to provide the pipeline with the recovery of capital costs related to a project, PTWC states it is inconsistent to calculate them differently.

37. DTI responds that PTWC’s concerns are meritless and based on misrepresentations of Commission policies and a misunderstanding of basic facts. DTI further states that in raising these issues PTWC challenges the rate that it agreed to pay which violates the terms of the precedent agreement PTWC signed with DTI.

38. DTI adds that it explicitly explained in its certificate application that “For rate design, the costs for the new Mullett facilities are treated as storage costs. These facilities are required to ensure DTI’s ability to receive storage withdrawals from the

DEO (Dominion East Ohio) system, since DTI operates its transmission facilities in that area at higher pressure than does DEO.” DTI contends that the Mullett facilities are unquestionably needed in order for DTI to use the leased DEO storage capacity to provide the contracted firm service to PTWC and the other storage customers, thus indicating that the facilities are “storage-related.” Furthermore, DTI states that under the principle of cost causation, customers receiving the storage service must pay the costs associated with the facilities used to serve them. DTI states that contrary to PTWC’s claim, the requirement in Order No. 636 to unbundle transportation and storage services does not mean that costs of transmission facilities necessary to provide storage service may not be included in storage rates.

39. DTI states that PTWC’s suggestion that the projected cost of the new Mullett compressor station “may be overstated” is unsupported. In regards to PTWC’s claim that the costs of a similar compressor station in a certificate application submitted in 2008 were not significantly higher than the smaller facility proposed here, DTI states that costs vary by project, location, circumstances and, especially, time. DTI states the fact that it estimated lower costs per horsepower for another compressor station cannot support an allegation that DTI has overstated the estimated costs of compression needed here. DTI further states that PTWC’s claim that DTI should not be using a pre-tax rate of return of 13.70 percent in its rate calculations is unsupported. DTI states that this pre-tax return has consistently and uniformly been approved in DTI’s certificate proceedings for incremental projects<sup>26</sup> and that the use of the last approved return level is fully consistent with long-standing and well-established Commission policy.<sup>27</sup>

### **Commission Determination**

40. We have reviewed DTI’s proposed cost of service, allocation, and rate design used to develop its initial incremental recourse rates and find that they are consistent with Commission policy. The Commission finds that DTI has adequately supported the inclusion of the costs for the Mullett facilities as storage-related costs. As DTI states in its Answer and its June 18, 2012 Data Response, the Mullett Compressor Station was designed and is required to support the receipt of storage from DEO into the DTI system, since DTI operates its facilities in that area at a higher pressure than DEO. The lease of 5.0 Bcf of storage capacity from DEO is an integral part of the Allegheny Storage Project

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<sup>26</sup> *Dominion Transmission, Inc.*, 136 FERC ¶ 61,126 (2011); *Dominion Transmission, Inc.*, 120 FERC ¶ 61,235 (2007).

<sup>27</sup> *Texas Eastern Transmission, LP*, 137 FERC ¶ 61,140 (2011); *Texas Eastern Transmission, LP*, 99 FERC ¶ 61,383 (2002).

and DTI has adequately shown that the proposed Mullett compression facilities are required to provide the new storage service. In addition, the Mullett facilities will not be used to provide firm transportation service; thus, inclusion of those costs in the incremental transportation rate would be inappropriate. Given the role of these facilities in DTI's storage expansion, we believe it appropriate for DTI to include the costs of the Mullett facilities in its incremental storage rate.

41. The Commission finds DTI's use of its previously approved pretax return rate of 13.70 percent to be appropriate for designing its incremental rates. The Commission's policy with respect to developing incremental rates is to use the rate of return components approved in the pipeline's last NGA section 4 general rate proceeding.<sup>28</sup> In fact, as DTI states, the Commission has approved the use of DTI's previously approved pretax return of 13.70 percent in recent orders approving certificate applications made by DTI.<sup>29</sup> Therefore, DTI's use of its most recent Commission approved pretax return rate is appropriate in accordance with Commission policy.

42. PTWC argues that since both the AFUDC rate and the pretax return are intended to provide the pipeline with the recovery of capital costs related to a project, it is inconsistent to calculate them differently. However, we note that the two rates are intended to recover different project costs over much different time periods. AFUDC represents the net cost for the period of construction of borrowed funds used for construction purposes as well as a reasonable rate of return on other funds.<sup>30</sup> The return on equity used to calculate AFUDC is intended to recover costs incurred in the relatively short period prior to the time the facilities are placed in service; therefore, calculating the rate based on an average of the last three years is appropriate. Conversely the rate of return used in developing the project's recourse rates reflects the cost of capital over the entire life of a project. Therefore, use of the return underlying the pipeline's existing rate would be more appropriate.

43. We reject PTWC's claims that DTI's cost estimates for the project may be overstated based on the costs of a similar project DTI proposed in the past. PTWC compares the costs for the Mullett facilities to the costs of a DTI application to construct a compressor in 2008. PTWC's comparison provides no analysis of current labor costs or

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<sup>28</sup> See, e.g., *Texas Eastern Transmission, L.P.*, 129 FERC ¶ 61,151 (2009).

<sup>29</sup> See *Dominion Transmission, Inc.*, 136 FERC ¶ 61,126 (2011); *Dominion Transmission, Inc.*, 120 FERC ¶ 61,235 (2007).

<sup>30</sup> *Southern Natural Gas Co.*, 130 FERC ¶ 61,193 at P 31; *Florida Gas Transmission Co.*, 130 FERC ¶ 61,194 at P 20 (2010).

the current costs of compression equipment but simply compares the costs of two projects that added compression. This type of rudimentary comparison does not provide sufficient justification for calling into question DTI's project cost estimates.

44. The Certificate Policy Statement presumes an incremental rate for firm service is appropriate when the incremental rate would be in excess of the maximum system rate.<sup>31</sup> DTI's proposed \$5.0474 per Dth recourse reservation storage rate is higher than its existing Rate Schedule GSS reservation rate of \$1.7984 per Dth and its proposed \$9.0910 per Dth recourse reservation transportation rate is higher than its existing Rate Schedule FT reservation rate of \$3.8820 per Dth. Therefore, DTI's use of an incremental rate for both services is appropriate.

45. To ensure that costs are properly allocated between DTI's existing shippers and the incremental services proposed in this proceeding, we will require DTI to keep separate books and accounting of costs attributable to the proposed incremental services. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations. This information must be provided 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 proceeding and the information must be provided consistent with Order No. 710. Such measures protect existing customers from cost overruns and from subsidization that might result from under-collection of the project's incremental cost of service, as well as help the Commission and parties to the rate proceedings determine the costs of the project.<sup>32</sup>

## 2. Negotiated Rates

46. DTI states that it has agreed on negotiated rates with the three shippers that have subscribed all the capacity of the Allegheny Storage Project. DTI must file all negotiated rate agreements, or a tariff record describing the negotiated rate agreements associated with this project, in accordance with our treatment of negotiated rates<sup>33</sup> and our statement of policy on alternative rates.<sup>34</sup>

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<sup>31</sup> 88 FERC ¶ 61,227 at 61,745.

<sup>32</sup> 18 C.F.R. § 154.309 (2012).

<sup>33</sup> See, e.g., *Texas Eastern Transmission, LP*, 133 FERC ¶ 61,220 (2010).

<sup>34</sup> *Alternative to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*,

**D. Environmental Analysis**

47. Commission staff began its review of the Allegheny Storage Project following approval for DTI to use the pre-filing process on July 28, 2011, in Docket No. PF11-9-000. As part of the pre-filing review, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Allegheny Storage Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI) on October 24, 2011. The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners, which included landowners within one-half mile of DTI's proposed sites for the compressor stations as well as landowners within one-half mile of alternative sites for the proposed Myersville Compressor Station.

48. In September 2011, staff participated in two open-house meetings sponsored by DTI in Myersville, Maryland and Powhatan Point, Ohio to explain the Commission's environmental review process to interested stakeholders. In addition, staff held public scoping meetings near the proposed Myersville and Mullett Compressor Stations sites on November 7 and 8, 2011, respectively. The scoping meetings provided the public with an opportunity to comment on the proposed action and identify issues that should be addressed in the EA. Approximately 400 people attended the Myersville meeting, while 10 people attended the Mullett meeting.

49. We received written and verbal scoping comments from more than 650 individuals, the Myersville Citizens for a Rural Community (MCRC),<sup>35</sup> four federal agencies with permitting/approval authority, U.S. Representative Roscoe Bartlett, U.S. Senator Benjamin Cardin, Maryland State Senator David Brinkley, Maryland State Delegates Kathy Alfazi and Kelly Schultz, and the Frederick Board of County Commissioners. The scoping comments were almost exclusively associated with the proposed Myersville Compressor Station.

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74 FERC ¶ 61,076, at 61,231, *order granting clarification*, 74 FERC ¶ 61,194, *reh'g denied*, 75 FERC ¶ 61,024 (1996).

<sup>35</sup> Franz Gerner, the President of MCRC, filed comments on behalf of the organization; at a later point in this proceeding, MCRC hired legal counsel, who also filed comments on behalf of MCRC. In order to avoid confusion, we will refer to "Mr. Gerner" when referencing his comments on behalf of MCRC, and we will refer to "MCRC" when referencing comments filed by legal counsel.

50. Residents of Myersville stated that the proposed compressor station is incompatible with its rural community and would result in irreversible damage to the quality of life in Myersville. Commenters also raised concerns regarding potential cumulative impacts associated with the Myersville Compressor Station and requested that alternatives to the proposed project be considered. Several landowners near the Mullett Compressor Station expressed concern with construction traffic and potential road damage/repairs, compressor station noise, and fugitive dust.

51. With respect to the Myersville Compressor Station, DTI proposed to: limit tree clearing around the compressor station site to preserve natural visual screening from surrounding areas; utilize combustion engine technologies that limit air emissions and ensure compliance with the National Ambient Air Quality Standards (NAAQS) and state air quality requirements; and ensure that noise levels from operation of the station would not be audible at the nearest noise-sensitive areas (NSA).

52. To satisfy the requirements of the National Environmental Policy Act (NEPA),<sup>36</sup> staff prepared an EA for DTI's proposal. 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. All substantive comments received during the scoping period were addressed in the EA.

53. During the pre-filing process, eight compressor station sites were identified and discussed as alternatives to the proposed Myersville site. Of these, the EA analyzed in detail two sites (the Middletown and Jefferson sites). Because the engineering requirements limit the hydraulic range to a 12-mile area along DTI's PL-1 pipeline system, three of the alternative sites were eliminated from further study. Three other sites were also eliminated due to constructability and/or residential impact issues. The EA also considered a looping system alternative and an electric compression alternative.

54. The Middletown and Jefferson sites were previously considered as compressor station locations in conjunction with DTI's contemplated Storage Factory Project.<sup>37</sup> During the pre-filing process for that project, both sites were subject to significant local opposition, with primarily the same objections being raised as during the scoping period for the Myersville site. Due to technical issues with the natural gas storage aspect of the proposal, DTI withdrew its Storage Factory Project from pre-filing, indicating that it would return with a revised project at a later date. The Allegheny Storage Project is the

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<sup>36</sup> 42 U.S.C. § 4321 *et seq.*

<sup>37</sup> *See supra*, note 8.

revised project, and DTI states that it proposed the Myersville Compressor Station site in an effort to address the issues raised during pre-filing of the initial proposal. However, both the Middletown and Jefferson sites were analyzed as viable alternatives to the proposed Allegheny Storage Project in the EA. Following a thorough review of the alternative sites, the EA concluded that neither the Middletown nor the Jefferson sites offered environmental advantages when compared to the proposed Myersville site, and that, in fact, the Myersville site would have environmental advantages.

55. For example, as discussed in the EA at 94-96, the Middletown and Jefferson sites are zoned for agricultural or residential uses while the Myersville site is zoned commercial within the Highway Employment Overlay zone and sits opposite industrially zoned land and adjacent to I-70. The Myersville site is also located next to a waste water treatment plant and gas station, although the EA notes that the surrounding areas are mainly agricultural and rural residential in nature.

56. In addition, the Middletown alternative would require DTI to utilize 13.7 acres of a 134-acre parcel of land for station operation while the Myersville site would require only 7.7 acres. The EA explains that neither the Middletown nor Jefferson sites have natural visual screening and would, without mitigation, be quite visible to the public and surrounding residences. In contrast, the Myersville Compressor Station would not be visible from most public-view vantage points and would result in minimal visual impact because the existing forested nature of the site would provide screening, especially during the spring, summer and fall seasons. Finally, the EA notes that the Jefferson and Middletown sites have more residences within a 0.5-mile radius than the Myersville site.

57. The EA, which addressed all substantive comments, was issued and placed into the public record on June 15, 2012, with a 30-day comment period, which was subsequently extended by two weeks, ending July 31, 2012. Comments on the EA were filed by the Town of Myersville Mayor & Council (Town of Myersville), the MCRC, 12 individuals, and the Maryland Department of Natural Resources (MDNR) regarding the Myersville Compressor Station. The vast majority of the EA comments revisited matters previously raised during the scoping process that were fully addressed in the EA. The Commission also received comments from the U.S. Fish and Wildlife Service (FWS) and Judy Darrah regarding the Mullet Compressor Station in Ohio. The U.S. Geological Survey (USGS) provided project-wide comments. DTI also filed comments on the EA and provided status updates on permits. Comments on the EA are addressed below.

### **Alternatives**

58. Several commenters state that the EA did not fully consider alternative locations and that the Myersville Compressor Station should be built at an industrial site. William Adamo states that the Commission should have worked with the Frederick County Board of Commissioners to identify an appropriate industrial site.

59. We find that the EA's alternatives analysis was sufficient under both NEPA and our regulations. During the project design phase of the compressor station, DTI used hydraulic modeling to determine the location where a compressor station could be sited in order to meet all contractual flow and pressure commitments at its delivery points. The modeling determined, among other things, that the location for the new compressor station needed to be within a 12-mile corridor along DTI's existing PL-1 pipeline.<sup>38</sup> Staff verified DTI's modeling results and concluded that the 12-mile hydraulic corridor was accurate. To that end, the EA considered nine alternative sites to the Myersville site, including the no-action alternative. Three alternatives were eliminated from comprehensive analysis because they were outside the limits of the 12-mile hydraulic study corridor and therefore would not meet the project's objectives from an operational and design standpoint.<sup>39</sup> One site was also eliminated from further study because it was outside of the hydraulic corridor and would have required a total of approximately 8.4 miles of suction and discharge pipelines.<sup>40</sup> Two additional sites were eliminated from a more detailed analysis because, as explained in the EA at 93, they would have greater impacts on forested land due to clearing requirements, and have poor site constructability due to challenging topography and minimal level areas. Finally, the EA also addressed the no action alternative, as well as the Middletown and Jefferson sites which, for reasons discussed above, were not environmentally advantageous.<sup>41</sup>

60. We also find that the record demonstrates that DTI made a good faith effort to work with stakeholders in order to identify a feasible site that meets its project objectives and imposes the least intrusion to the surrounding community. This is evidenced in DTI's efforts to relocate its previously proposed compressor station to an area that, as discussed in the EA, is more appropriately zoned than the alternative sites in Middletown and Jefferson.<sup>42</sup> Although the Myersville site is not industrial, it is located adjacent to an existing wastewater treatment plant, which is an industrial facility.

61. The MCRC states that the alternatives analysis in the EA is incomplete because it did not consider the use of an electrically-run compressor station, a smaller compressor engine, or locations outside of the 12-mile corridor established by DTI. In fact, the EA

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<sup>38</sup> EA at 92.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 90, 94-96.

<sup>42</sup> *Id.* at 94-96.

did consider the use of electric compression for the Myersville Compressor Station.<sup>43</sup> Based on reliability, cost, and increased land requirements, this option was eliminated from further study because it was not a reasonable alternative. The EA also states that Commission staff independently analyzed DTI's 12-mile corridor and associated assumptions (pressure requirements, velocity ranges, etc.) and determined they were appropriate for meeting DTI's stated objective.

62. Mr. Gerner asserts that a 30-mile pipeline loop, as analyzed in the EA, would require DTI to acquire little or no additional right-of-way easements. We disagree. As explained in the EA, this alternative would require DTI to install a 30-inch-diameter, 30-mile-long pipeline. While there would be some overlap, this alternative would in fact require a 25-foot-wide expansion of DTI's existing right-of-way along the entire 30-mile-long loop and result in about 109 acres of new permanent right-of-way easements.

63. Rick and Janet Millward state that the compressor station originally sited in Middletown as part of the Storage Factory Project was relocated due to public outcry, as opposed to an environmental or technical reason. Therefore, they believe the public opposition in Myersville (which they state has been greater than that of Middletown) should also warrant relocation.

64. While public opposition to the Middletown and Jefferson sites may have been a factor in DTI's decision to withdraw its Storage Factory Project proposal, the EA explains at length why the Myersville site is preferable to the Middletown and Jefferson sites.<sup>44</sup> We concur with the EA's finding, and conclude that the Myersville site is the more appropriate site for the Maryland compressor station.

### **Need for Myersville Compressor Station**

65. MCRC argues that the EA erred in concluding that there is a need for the Myersville Compressor Station. MCRC asserts that the station will only be utilized four months out of a year, and that the ability to ensure delivery of gas to two distribution companies (Washington Gas and Baltimore Gas and Electric) for only four months of the year is not justification to support the need to build the station, particularly in light of what MCRC argues is harm to property values, air quality, wildlife, and community safety.

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<sup>43</sup> *Id.* at 97.

<sup>44</sup> We note that DTI did not file a formal application with the Commission for the Storage Factory Project proposal.

66. As explained above, that all of the capacity of the proposed project is subscribed under precedent agreements is strong evidence of market demand.<sup>45</sup> Moreover, it is Commission policy to not look behind precedent or service agreements to make judgments about the needs of individual shippers.<sup>46</sup> Indeed, since the advent of unbundling and open-access transportation, it is often impossible to discern who the ultimate consumers of gas transported under any particular agreement will be. Here, we find that ensuring the ability of two local distribution companies to meet the needs of their overall 1.5 million customers during periods of peak demand (i.e., the winter heating season) is sufficient justification to authorize the construction and operation of the Allegheny Storage Project. Therefore, we reject MCRC's challenge that the Myersville Compressor Station is not needed.

### **Town of Myersville's Rejection of DTI's Application**

67. As discussed in the EA, the Myersville Compressor Station site is adjacent to I-70 and currently zoned General Commercial with a Highway Employment Overlay. On April 5, 2012, DTI submitted an application to the Town of Myersville to build the compressor station. On August 1, 2012, the Town Council denied DTI's request, deeming the application inconsistent with the Myersville Comprehensive Plan and applicable town codes.<sup>47</sup> Accordingly, several individuals assert that the Commission should deny the project.

68. We decline to do so. While the Commission encourages cooperation between interstate pipeline companies and local authorities, this does not mean that state and local agencies, through application of state and local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by the Commission. While applicants may be required to comply with appropriate state and local regulations where no conflict exists, state and local regulation is preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by this Commission.<sup>48</sup>

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<sup>45</sup> See also *Transcontinental Gas Pipe Line Company, LLC*, 141 FERC ¶ 61,091.

<sup>46</sup> See *Certificate Policy Statement*, 88 FERC at 61,744 (citing *Transcontinental Gas Pipe Line Corp.*, 82 FERC ¶ 61,084, at 61,316 (1998)).

<sup>47</sup> See also Town of Myersville's August 27, 2012 comments regarding its rejection of DTI's application.

<sup>48</sup> 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

(continued...)

69. In a similar vein, on October 1, 2012, MCRC filed a motion to dismiss DTI's application, arguing that the Town of Myersville's rejection of DTI's application means that the Myersville Compressor Station cannot comply with the requirements of the federal Clean Air Act. MCRC asserts that without town zoning approval, DTI is barred from even applying for, let alone obtaining, the Clean Air Act permits required by the Maryland Department of the Environment (MDE), which administers the Clean Air Act through its federally-approved state implementation plan (SIP).<sup>49</sup> MCRC asserts that Maryland's SIP incorporates the Code of Maryland Regulation (COMAR) which, in turn, is subject to the Maryland Environmental Code § 2-204 which, MCRC adds, requires an applicant seeking to construct a new emissions source to demonstrate that its proposal has been "approved by the local jurisdiction for land and zoning requirements."<sup>50</sup> MCRC argues that because DTI cannot obtain the permits required by the Clean Air Act to operate the project, the Commission should dismiss DTI's application or eliminate the Myersville Compressor Station from the project proposal.

70. On October 12, 2012, DTI filed an answer to MCRC's motion, challenging what it deems MCRC's theory that the need for a local permit from the Town Council is, in essence, part of the Clean Air Act. DTI argues that Maryland's SIP does not incorporate § 2-204 (requiring approval by the local jurisdiction for land and zoning requirements), because neither COMAR nor "any other regulation listed in the Maryland SIP requires or addresses local zoning and land use requirements."<sup>51</sup>

71. While both MCRC and DTI set forth detailed arguments in support of their respective positions, we decline to address them. In essence, MCRC is asking the Commission to interpret, and adjudicate in MCRC's favor, local, state and federal laws that are outside of the Commission's jurisdiction. As DTI correctly notes, air emission issues associated with the Myersville Compressor Station were addressed in the EA, which concluded that air impacts would be within environmentally acceptable limits.<sup>52</sup> However, the Maryland state and local agencies retain full authority to grant or deny air

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*Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

<sup>49</sup> MCRC October 1, 2012 Motion at 5.

<sup>50</sup> *Id.* (citing MD. CODE ANN.ENVIR. § 2-204(b)(9)).

<sup>51</sup> DTI October 12, 2012 Answer at 5. On November 15, 2012, MCRC filed an answer to DTI's answer.

<sup>52</sup> *See* EA at 65-71.

quality permits; if the State of Maryland rejects DTI's air quality permit application, or refuses to process it, then it is up to DTI to determine how it wishes to proceed.<sup>53</sup>

72. Ann Nau states that the EA did not disclose impacts associated with a land bay which DTI proposed as part of its application with the Town of Myersville. We are unaware of any proposed land bay at the Myersville site, as no information regarding such a proposal was filed with the Commission as part of the project proposal. Accordingly, any discussion with respect to DTI's application with the Town of Myersville is not warranted here. We note, however, that any changes to DTI's original proposal must be approved by this Commission prior to its implementation.

### **EA vs. EIS**

73. The MCRC asserts that certain factors relating to the "intensity" of the impacts resulting from the Myersville Compressor Station indicate that it will have significant impacts on the environment, thus an Environmental Impact Statement (EIS) is required. It cites to the Council on Environmental Quality (CEQ) regulations implementing NEPA, which state that determinations of whether a project will have significant impacts on the environment depend on consideration of both "context" and "intensity" of the impacts.<sup>54</sup> With respect to "intensity," the CEQ regulations set forth ten factors agencies should consider, including three cited by MCRC: the unique characteristics of the geographic area, including proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas (factor 3); the degree to which the effects on the quality of the human environment are likely to be highly controversial (factor 4); and whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment (factor 10).<sup>55</sup>

74. MCRC argues that: unique resources will be affected, including several historic resources, parkland, and the undeveloped agricultural lands that are part of the Maryland Rural Legacy Program (MRLP);<sup>56</sup> the Myersville site is highly controversial; and the

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<sup>53</sup> As stated earlier, Environmental Condition Number 8 requires DTI to file documentation that it has received all applicable authorizations required under federal law before authorization to commence construction will be granted.

<sup>54</sup> 40 C.F.R. § 1508.27 (2011).

<sup>55</sup> *Id.* §§ 1508.27(b)(3)-(4) and (b)(10) (2011).

<sup>56</sup> The MRLP was created in 1997 to protect large, contiguous tracts of Maryland's cultural and natural resource lands through grants. *See* EA at 48.

project would threaten a violation of the MRLP and the Myersville Zoning and Master Plan requirement.

75. We find that the Myersville Compressor Station does not meet any of these three factors. With respect to factor 3, we note that the EA thoroughly addressed any potential effects of the project on unique geographic areas and significant scenic, cultural, and historic resources beyond the compressor station site, and concluded there would be no significant impacts.<sup>57</sup> Moreover, staff consulted with the MRLP in February 2012 regarding the Myersville Compressor Station site.<sup>58</sup> Although the compressor station is within the boundaries of the program for land eligible for inclusion in the program, it is not located on land held by the MRLP. As such, the site is not subject to MRLP requirements.

76. We also disagree that the potential environmental impacts of the proposed project are “highly controversial” as contemplated by the CEQ regulations. For an action to qualify as highly controversial, there must be a “dispute over the size, nature or effect of the action, rather than the existence of opposition to it.”<sup>59</sup> Accordingly, a “controversy” does not exist merely because individuals or groups vigorously oppose, or have raised questions about, an action. Here, we find that no substantial disputes exist as to the effects of the project. Although MCRC disagrees with the EA’s findings regarding certain noise levels, the probability of compressor explosions, and air quality impacts, it does not provide any persuasive supporting evidence. We find that the EA thoroughly analyzed each of these issues, and appropriately concluded there would be no significant impacts.

77. We also disagree with MCRC’s claim that the project will result in violations of the MRLP, and that “DTI will use the certificate to override zoning laws that would otherwise prohibit construction of compressor station [sic] at the site that DTI has selected.”<sup>60</sup>

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<sup>57</sup> For example, as discussed in Section B.6.0, the Maryland State Historic Preservation Officer noted that no historic resources within the project’s area of potential effects were found; moreover, the resources survey report considered the compressor station parcel and areas in the viewshed of the project; battlefields, historic farms, and historic structures are all acknowledged in the EA.

<sup>58</sup> EA at 48.

<sup>59</sup> *Fund for Animals v. Williams*, 246 F.Supp.2d 27, 45 (D.D.C. 2003).

<sup>60</sup> MCRC July 30, 2012 Comments at 19.

78. As discussed above, the Myersville Compressor Station is not located on land held by the MRLP. Accordingly, the site is not subject to MRLP requirements, thus no violation could occur. With respect to the Town of Myersville's denial of DTI's zoning application, we note that it is unknown at this time whether DTI and the Town of Myersville may attempt to reach a satisfactory resolution of the matter. We also note that, as MCRC concedes, "the Natural Gas Act does provide a comprehensive scheme of development that permits [the Commission] to pre-empt state and local law..."<sup>61</sup> In our view, NGA preemption of a particular state or local law is not tantamount to a "violation" of that state or local law, as contemplated by the CEQ regulations.

### **Segmentation**

79. MCRC argues that DTI unlawfully segmented the Allegheny Storage Project and Sabinsville Storage Pool Boundary Project (CP12-59-000) "to evade the environmental review and mask the true cost of the project."<sup>62</sup> MCRC states that the two projects "are related under the CEQ regulations since they will only move forward simultaneously."<sup>63</sup> MCRC states that the applications were filed contemporaneously (on February 10 and 17), and, "as DTI admits, the boundaries around the Sabinsville Storage Pool are necessary to ensure that DTI can protect the boundaries of the storage pool to meet its contractual storage obligations to customers."<sup>64</sup>

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<sup>61</sup> *Id.* at 18-19.

<sup>62</sup> MCRC July 30, 2012 Comments at 8.

<sup>63</sup> MCRC asserts that since the EA is "inadequate," DTI's application for the Allegheny Storage Project "must be denied." Even if we agreed, *arguendo*, that the EA is inadequate, the appropriate remedy would not be to deny DTI's application; rather, it would be to revise the NEPA analysis accordingly.

<sup>64</sup> MCRC July 30, 2012 Comments at 10. MCRC cites to what it deems the "similar" arguments raised by CNX in support of consolidating the two dockets, asserting that there are "common issues of law and fact" under NEPA. We note that the standard for consolidating dockets is, as discussed above, only if a hearing is required to resolve common issues of law and fact, and consolidation will ultimately result in greater administrative efficiency. This is a completely different standard from that in determining whether inappropriate segmentation issue under NEPA has occurred, as discussed herein.

80. While MCRC is correct in asserting that agencies may not artificially segment projects in order to avoid consideration of an entire actions' effects on the environment,<sup>65</sup> MCRC is incorrect in asserting that segmentation occurred here. The CEQ regulations provide that actions are "connected," thus requiring consideration in the same environmental analysis, if they: 1) automatically trigger other actions which may require an environmental impact statement; (2) cannot or will not proceed unless other actions are taken previously or simultaneously; or (3) are interdependent parts of a larger action and depend on the larger action for their justification.<sup>66</sup>

81. MCRC fails to demonstrate that any of these three factors apply. Indeed, its sole support for its segmentation argument is that the applications for both projects were filed within one week of each other, and that customers for both projects are "presumably the same..."<sup>67</sup>

82. The Sabinville Storage Project and the Allegheny Storage Project are stand-alone, distinct projects that serve two different purposes. The purpose of the recently-authorized Sabinville Storage Project is to establish a protective boundary or buffer zone around the existing active storage reservoir boundary in order to protect the security and integrity of the storage reservoir, thus maintaining the reliability of existing customers' storage service. The purpose of the Allegheny Storage Project is to increase existing levels of storage and transportation capacity in order to meet demands for additional amounts of service.

83. While the two projects may involve the same storage pool, they are not "connected" actions under the CEQ regulations. Neither project depends on the other: the impetus for the Sabinville Storage Project is the increased level of development and production in the vicinity of the storage reservoir. The Sabinville Storage Project could go forward with or without the Allegheny Storage Project, and vice versa. Moreover, the Sabinville Storage Project does not involve the construction of any facilities or any ground disturbance; hence, we found that the project would have minimal environmental impact.

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<sup>65</sup> See, e.g., *Hammond v. Norton*, 370 F.Supp. 2d 226 (D.D.C. 2005).

<sup>66</sup> 40 C.F.R. §§ 1508.25(a)(1)(i)-(iii).

<sup>67</sup> MCRC July 30 Comments at 10-11.

### Cultural/Historic Resources

84. Under Section 106 of the National Historic Preservation Act (NHPA),<sup>68</sup> and its implementing regulations,<sup>69</sup> federal agencies must take into account the effect of any proposed undertaking on properties listed, or eligible for listing in the National Register of Historic Places (NRHP) (defined as historic properties), and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

85. Mr. Gerner asserts that the Section 106 review for this project was flawed because the Commission: did not seek ACHP comments on the project; neglected to seek input from parties other than the SHPO, such as the Frederick County Historic Preservation Commission, MDNR, Middletown Valley Historical Society, Central Maryland Heritage League, and South Mountain Historical Society; failed to consider any effect from the compressor station beyond the property itself; and failed to consider significant historic sites (battlefields and farmsteads) in proximity to the compressor station. In addition, Mr. Gerner expressed concerns about effects to historic resources caused by emissions/acid rain, noise (blowdowns), smog, and explosions.

86. Under the Section 106 regulations, notification to the ACHP must occur if *adverse* effects are identified for a project.<sup>70</sup> As reflected in the EA, the Commission staff, in consultation with the Maryland SHPO, found that construction of the Myersville Compressor Station would have no effect on historic properties. Accordingly, no notification of the ACHP was required. However, as is our practice, the ACHP was sent copies of our NOI and project updates, and no response was received. In addition, in reaction to public inquires, the ACHP sent the Commission a letter requesting information about the status of the Section 106 process for the Myersville Compressor Station, to which our staff responded. These letters are part of the public record. No further inquiries have been received from the ACHP.

87. We also find that staff sought input from parties other than the SHPO, as summarized in section A.6.0 of the EA, including the MDNR, Central Maryland Heritage League, Frederick County Planning Commission, Town of Myersville Planning and

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<sup>68</sup> 16 U.S.C. § 470f (2006).

<sup>69</sup> 36 C.F.R. Part 800 (2011).

<sup>70</sup> 36 CFR 800.6(a)(1) (2011).

Zoning Administrator, and National Park Service, among others. These parties have been on the Commission staff's mailing list since the pre-filing stage of the project and received our NOI, project updates, and the EA. No responses or correspondence concerning historic properties were received from these parties with the exception of MDNR comments on the EA regarding, among other things, potential visual and noise impacts on battlefields. We believe the studies undertaken, and the consultations and public outreach/participation conducted for the project, fully identified the resources and potential impacts to those resources.

88. Mr. Gerner's remaining concerns were fully considered in the EA: emissions (including acid rain) are addressed in section B.8.1, noise is addressed in section B.8.2, and safety is addressed in section B.9.0. Other aspects of these issues are also addressed elsewhere in this Order.

89. On November 6, 2012, Mr. Gerner filed additional comments based on cultural resources survey information that was released to him on October 24, 2012, pursuant to his Freedom of Information Act (FOIA) request. He argues that there are "significant flaws" in the report including: (1) the report identifies only one historic resource listed in the NRHP within a two-mile radius of the project, when, based on his review, there are three; (2) the report "completely ignores the South Mountain Battlefield (Turner's and Fox's Gaps Historic Districts, NR)...which includes the valve site," and (3) a paragraph in the report notes the Battle of Monocacy as the "most significant event in the area" rather than the Battle of Antietam.

90. With respect to the discrepancy in the number of "listed" resources, we note that Mr. Gerner refers to the background historical research (consisting of a review of historical files) identifying existing resources within a two-mile radius of the project. While the report identifies only one historic resource as "listed," it identifies the other two historic resources (as well as an additional 33 resources) as "not evaluated." Although being "listed" is an official designation and formal acknowledgement of a resource's significance, an "unevaluated" resource retains the potential for being eligible for, or listed in, the NRHP, and is thus treated the same as a listed resource for purposes of our NEPA analysis. Accordingly, all of the resources identified through the file search, whether "listed" or "unevaluated," were considered in the report and the EA.

91. We also disagree that the report ignores the South Mountain Battlefield: it is included (as "Turner's Gap (South Mountain Battlefield)") on page 24 of the report. Based on staff's review of the maps contained in the NRHP Registration Form for the Turner's and Fox's Gaps Historic District and the project aerial map, the valve site is approximately 900 feet outside the boundary of the district.

92. Finally, we note that the subjective significance of particular Civil War battles does not materially affect our analysis or conclusions in this proceeding.<sup>71</sup>

93. On November 14, 2012, Mr. Gerner filed additional comments on the EA, reiterating his belief that the compressor station will be more expensive than the 30-mile loop alternative, and have more environmental impacts. Mr. Gerner states that the proposed compressor station will cost \$109 million, which he bases on \$61 million in construction costs, and \$48 million in operational costs over the expected runtime of 40 years (based on DTI's expected use of 422 MMcf per year, at a cost of \$2.89 per MMBtu<sup>72</sup>).<sup>73</sup> Mr. Gerner asserts that the 30-mile loop would cost approximately \$93 million, based on the September 3, 2012 Oil & Gas Journal estimate of \$3.1 million cost-per-mile to build a pipeline (which, when multiplied by 30 miles, equals \$93 million).

94. Mr. Gerner also states that the EA misrepresents the amount of land disturbance with respect to the construction of the 30-mile loop alternative by failing to consider that loop construction would be alongside an already existing pipeline, on land that was already disturbed during construction of that pipeline. He adds that the compressor

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<sup>71</sup> Mr. Gerner also reiterates his arguments that the cultural resources survey report ignored the issues of emissions, acid rain, and particulate matter, and that the Commission failed to contact the Advisory Council on Historic Preservation, "the public and the Frederick County Historic Preservation Commission" regarding the project. We disagree, for the reasons discussed above.

<sup>72</sup> Mr. Gerner cites to Chairman Wellinghoff's dissent in *Millenium Pipeline Company, LLC*, 140 FERC ¶ 61,045 (July 17, 2012), in which the Chairman notes that the price of fuel required to operate the Minisink compressor station would be \$2.89 per MMBtu, based on the daily cost of fuel at the Henry Hub, as reported in the July 16, 2012 edition of Platt's Gas Daily.

<sup>73</sup> Mr. Gerner states that the operational costs may be even higher, noting that, although DTI states that it expects that the compressor station will be used 151 days per year, "its application calls for 6,000 hours per year, which equals 250 days, not 151 days." As the EA at 62 notes, federal air quality permits typically require an applicant to obtain permitting based on a facility's potential-to-emit (PTE). DTI applied for an air permit with a PTE based on a limit of 6,000 hours of operation annually, which represents the maximum allowable capacity of this stationary source to emit criteria pollutants, although actual operational emissions may be less.

station would have an expected 88 tons of emissions, “which will definitely have effects on the ground and nearby historic sites.”

95. We do not agree with Mr. Gerner’s claims, finding that they are based on assumptions and estimates that have no bearing in this proceeding. The Oil & Gas Journal estimate of \$3.1 million cost-per pipeline mile that he cites is the *average* estimated costs of pipeline built in 2011. The costs-per-mile of pipeline construction vary wildly for each individual pipeline, depending on several factors including the type, length and location of the pipeline. For example, according to the same Oil and Gas Journal estimate cited by Mr. Gerner, three 42-inch looping pipelines of varying length built in Pennsylvania cost between \$11.4 and \$12.6 million dollars per mile, while a 12-inch, 79-mile lateral pipeline in North Dakota averaged \$1.3 million per mile. Moreover, Mr. Gerner’s suggested operational costs for the compressor station are based on MMBtu costs that will no doubt fluctuate considerably over a 40 year period. Under the Certificate Policy Statement, DTI and its capacity shippers will bear all costs of the proposed Allegheny Storage Project, which we find, as discussed herein, will have no significant adverse impacts on the environment.

96. We also disagree that the EA overstates the amount of land disturbance (418 acres) for the 30-mile loop alternative by failing to take into account that the loop would be built alongside land that was already disturbed during the construction of the existing pipeline. While it is true that construction of a 30-mile pipeline loop would include some overlap with the existing right-of-way, it does not negate the fact that 418 acres (and 109 acres for operation) would still be required. We also disagree that air emissions from the Myersville Compressor Station would “definitely” affect nearby historic sites. Mr. Gerner does not indicate what those impacts would be and, as stated earlier, the EA addresses air quality and its potential to adversely affect cultural resources (historic sites) and concludes that there would be no significant impact on these environmental resources (*See also* the Cultural/Historic Resources section of this Order).<sup>74</sup>

### **Visual Impacts**

97. MDNR raised concerns over the EA’s treatment of, among other things, potential visual impacts on the Broussard Miller property, and noise impacts on Civil War

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<sup>74</sup> *See* EA at 54; 62-70. On December 17, 2012, Mr. Gerner filed additional comments with respect to emissions impacts from the compressor station on historic properties. His comments reiterate the same issues he previously raised, and that we reject herein.

battlefields. Sections B.5.3, B.6.0, B.8.1, B.8.2 of the EA addresses effects (e.g., visual, emissions, noise) beyond the compressor station property. Visual simulations from a number of vantage points were included in Appendix C of the EA. Section B.6.0 of the EA discusses the cultural resources survey report which included not only the compressor station parcel, but areas in the viewshed of the project. The properties MDNR noted (such as battlefields, historic farms, and historic structures) are all acknowledged in the EA.

98. In addition, the cultural resources survey report included a search of Maryland Historical Trust data files for historic resources within a 2-mile radius of the Myersville site. As a result, 36 resources were identified including those noted by MDNR as being neglected (e.g., Turner's Gap/South Mountain Battlefield, Routzahn-Miller Farmstead, Daniel Sheffer Farmstead) as well as those identified by other commenters during the environmental review process. As stated in the EA, "[v]isual impacts on historic resources are not expected due to distance, intervening topography and vegetation."<sup>75</sup> The EA concluded that the station would not cause significant visual impacts because "the viewshed already contains numerous modern intrusions such as I-70, gas stations, a water treatment plant, a heavy equipment and tractor business, overhead electrical transmission lines, and other commercial structures."<sup>76</sup>

99. Several commenters expressed concern over other visual impacts of the Myersville Compressor Station. Margie Binzer states that the visual screening analysis provided by DTI is inadequate, as the visual simulations were taken at different locations from summer to winter views and further states that there would not be adequate screening at the Myersville site.

100. Based on staff's site review and DTI's visual simulations,<sup>77</sup> DTI would maintain an existing natural tree buffer on its property that would sufficiently screen the station without any additional measures. However, should DTI determine additional natural screening is required in order to match its visual models, it will supplement with tree plantings. Staff will conduct compliance inspections to determine, among other things, whether DTI has matched the visual simulations in its filing following project construction. DTI has committed, and is required, to match its visual simulations, pursuant to Environmental Condition 1. Accordingly, we agree with the EA's conclusion

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<sup>75</sup> EA at 54.

<sup>76</sup> *Id.*

<sup>77</sup> *See* EA at Appendix C.

that the Myersville Compressor Station will not result in significant impacts on visual resources.

### **Property Values**

101. Numerous commenters assert that the EA's discussion of property values is incomplete, and take issue with the EA's conclusion that there would be no significant impact on property values.

102. The EA explains that it is possible that a compressor station could influence some potential home-buyers to not purchase a property nearby. The EA also addresses potential impacts that would contribute to devaluation of property (visual, noise, air quality) but concluded that that the Myersville Compressor Station would not result in significant impacts on these resources.

103. As discussed in the EA, due to the lack of studies evaluating property values and aboveground natural gas facilities, the effects on property values at a specific location are difficult to quantify. The EA also notes that each potential purchaser has varying criteria and considerations for purchasing a property.<sup>78</sup>

104. As noted above, the Commission recognizes the general potential for property values to be negatively affected by the construction of nearby energy infrastructure. On balance, however, we do not find the potential for property values impacts sufficient to alter our determination that the Myersville Compressor Station is required by the public convenience and necessity. Further, we believe that DTI's proposed visual screening and noise mitigation measures, as well as Environmental Condition 12 of this Order will mitigate the potential for decreases in property values.

### **Economic Issues**

105. Several commenters state that the Commission did not consider foregone economic opportunity, loss of tax revenue, and lack of job creation resulting from the presence of the Myersville Compressor Station. Further, the Town of Myersville Mayor & Council states that the Town of Myersville Master Plan designates the compressor station site to be used as a commercial property to generate employment.

106. Currently, the land in question is not being used for any discernable commercial (or agricultural) function and there are no existing or foreseeable plans for the site to be used for commercial purposes. According to the Myersville Planning Commission,

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<sup>78</sup> EA at 57.

previous plans for commercial property were cancelled due to the economic downturn. Because there are no current plans to utilize the site for commercial purposes, assumption of tax revenue loss and lost opportunity for job creation is highly speculative. Further, while the Myersville Compressor Station would not operate in a commercial capacity, DTI will be required to pay *ad valorem* taxes on the property,<sup>79</sup> which will benefit Myersville and Frederick County as a whole.

107. MCRC asserts that the EA did not address the comparative costs and benefits of the proposed project versus alternative sites such as Jefferson or Middletown, of using a smaller compressor or an electric compressor, or leasing capacity on other lines to meet delivery obligations.<sup>80</sup>

108. Table 21 in the EA compared a number of environmental parameters of the proposed Myersville Compressor Station with the Middletown and Jefferson sites, while section 4.3 compared electric compression with the Myersville Compressor Station. Nine alternative sites were also considered, as was a looping alternative. As discussed above and in the EA, none of these alternatives were preferable to the Myersville alternative. For example, the looping alternative would involve significantly greater land requirements and correspondingly greater environmental impacts; the Middletown and Jefferson sites, in addition to having more potential environmental impacts, did not appear to have needed land for sale, and therefore, unlike the Myersville site, could necessitate the exercise of the right of eminent domain; and the electric compression alternative would require construction of a new powerline and associated infrastructure, which would result in additional permanent and temporary disturbance of acres and additional impact on a landowner, and would present reliability challenges.<sup>81</sup>

109. Accordingly, we find that the EA's comparison of the relative merits of the Myersville Compressor Station and the other alternatives is consistent with the CEQ regulations, and more than adequate for ensuring the Commission made an informed decision.

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<sup>79</sup> *Id.*

<sup>80</sup> The CEQ regulations at 40 C.F.R. § 1502.23 (2012) provide that *if* a cost-benefit analysis is prepared, "it shall be incorporated by reference or appended to the [environmental] statement as an aid in evaluating the environmental consequences." (emphasis added).

<sup>81</sup> EA at 90-98.

### Air Quality Impacts

110. Several commenters expressed concern with the Myersville Compressor Station's impacts on air quality and noted that the Maryland Department of the Environment (MDE) rejected DTI's application because DTI had yet to receive zoning approval. As previously noted, the Town of Myersville recently denied DTI's application for zoning approval. It is unclear as to how the MDE will proceed. Moreover, as noted earlier, Environmental Condition 8 requires DTI to obtain all federal permits prior to construction.

111. Margie Binzer states that DTI did not provide air modeling data. We disagree. The EA provides the results of DTI's AERSCREEN modeling analysis, which indicates that the Myersville Compressor Station would be below the National Ambient Air Quality Standards (NAAQS) for all criteria pollutants.<sup>82</sup>

112. Mr. Lacovelli questions how the Myersville Compressor Station could be below the NAAQS for particulate matter with an aerodynamic diameter of 2.5 microns (PM<sub>2.5</sub>) while the area in which it is located is in nonattainment for this same pollutant.

113. As noted in the EA, although the Myersville Compressor Station would be located in a nonattainment area for PM<sub>2.5</sub>, the station would not exceed the major source threshold emission rate for this pollutant under Maryland's State Implementation Plan for individual point source emissions.<sup>83</sup> We note that Maryland's SIP estimates and accounts for future emissions to allow for growth (i.e., population, industry, and infrastructure) to ensure that the state will remain in compliance with the NAAQS.

114. In its denial of DTI's application for an amendment to the Site Master Plan filed August 28, 2012, the Town of Myersville states that blowdowns of the Myersville Compressor Station would release 15,000 cubic feet of gas and subject residents to volatile organic compounds (VOC) in the atmosphere. In addition, Ann Nau indicated that air quality impacts associated with station blowdowns should be disclosed and cited a report from the Environmental Integrity Project which refers to sulfur dioxide and VOC emission releases that result from "non-routine events."

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<sup>82</sup> EA at 59-64. EPA established NAAQS to protect human health and public welfare. States implement and enforce the NAAQS through their SIPs, which EPA approves.

<sup>83</sup> *Id.* at 64.

115. As the EA explains, the primary component of natural gas is methane. When released during a blowdown event, natural gas would rapidly disperse into the atmosphere, as it is lighter than air.<sup>84</sup> VOCs and sulfur dioxide are released during the combustion of natural gas-fired engines; however, unburned natural gas does not contain VOCs. Therefore, compressor station blowdowns (routine or otherwise) will not result in the release of sulfur dioxide or VOCs.

116. Gerhard and Dorothy Heinsohn assert that the elderly population will be more adversely impacted than others near the Myersville Compressor Station due to air quality impacts on health. As discussed in the EA, the NAAQS were established to protect human health and the environment and the Myersville Compressor Station will be below the NAAQS for all criteria pollutants.<sup>85</sup> Further, DTI is required to comply with all federal and state air quality regulations, as discussed in section B.8.1 of the EA.

### **Noise Impacts**

117. Several commenters expressed concern over noise from typical operation of the Myersville Compressor Station as well as blowdown activities. The Mayor & Council state that blowdown and operational noise from the station would be a nuisance. The Millwards expressed concern with blowdown noise impacts on children at nearby schools.

118. As discussed in section B.8.2 of the EA, operational noise from the compressor station would not be perceptible at the nearby noise-sensitive areas (NSA).<sup>86</sup> In addition Environmental Condition 12 requires DTI to ensure that the noise from the Myersville Compressor station does not exceed a day-night level of 55 decibels on the A-weighted scale (dBA) at the nearest NSAs. The EPA has indicated that a day-night level of 55 dBA protects the public from indoor and outdoor activity interference. We have adopted this criterion and use it to evaluate the potential noise impact from operation of the compressor stations. Moreover, the EA concludes that blowdown noise would be mitigated (through use of a blowdown silencer) to 60 dBA at a distance of 50 feet from the noise source. The nearest NSA is 1,100 feet away from the compressor station. Therefore, blowdown noise will not be heard at nearby schools, the closest of which is approximately 1.0 mile away.

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<sup>84</sup> EA at 75.

<sup>85</sup> EA at 64.

<sup>86</sup> EA at 74.

119. The Town of Myersville and MCRC assert that low frequency noise from the Myersville Compressor Station would be disruptive, and several individuals expressed concern with vibration from the compressor station impacting the nearby wastewater treatment plant (storage tanks) and gas station. We note that the EA explains that DTI would install skid-mounted turbine units at the Myersville Compressor Station, which are less susceptible to vibration than reciprocal compressors. Moreover, Commission regulations require that operation of the station result in no perceptible vibration at any nearby NSA. The EA notes that preventive mitigation measures are incorporated into the design of skid-mounted industrial natural gas turbines. In addition, natural gas turbines are sensitive to vibration and are equipped with vibration sensors to automatically shut down the turbine if even minor vibrations are detected.

120. The MDNR requested that the 60-day time frame for DTI to file a noise survey, as required by Environmental Condition 12, be shortened. We believe that 60 days is a reasonable time frame to allow for full operation of the compressor station, recording of the noise levels, compiling a report, and filing the report with the Commission. Further, as stated previously, we believe that the noise level will be imperceptible at nearby NSAs.

### **Public Safety**

121. Several commenters expressed general concern with the impacts on public safety from the Myersville Compressor Station. Concerns include increased chances for accidents or explosion based on the station's proximity to a gas station, DTI's lack of an emergency response plan and consultation with local first responders, and locating a compressor station near I-70 (potentially impeding an evacuation route).

122. As discussed in section B.9.1 of the EA, DTI is required to comply with the U.S. Department of Transportation's (DOT) safety regulations at 49 C.F.R. Part 192. These regulations ensure safe operation of natural gas facilities. The safe operation of the compressor station is independent of surrounding infrastructure. As stated in the EA, the Myersville Compressor Station would be equipped with control systems that are designed to detect an upset condition (i.e., vibration, gas, fire, or heat) and implement safe shutdown of the pipeline system. In addition, the turbine and compressor building are equipped with gas, fire, and heat detection monitoring systems.<sup>87</sup> Further, DOT requires DTI to establish an emergency plan.<sup>88</sup> This plan will require DTI to work with first responders and develop an emergency response plan prior to station operation. DTI's

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<sup>87</sup> EA at 81.

<sup>88</sup> EA at 78.

emergency plan must also establish emergency evacuation procedures, which would include alternatives should I-70 be unsafe for travel. There is no requirement to work with local first-responders prior to our approval of a project.

123. Ann Nau expressed concern regarding the effects of increased compression on existing/older pipelines. The Myersville Compressor Station will not increase the maximum allowable operating pressure (MAOP) of the PL-1 pipeline system. DTI's operation of the PL-1 pipeline is regulated by the DOT, and DOT regulations require that pipelines are hydrostatically tested at pressures above their MAOP and require pipeline operators to conduct routine integrity inspections throughout operational life of the pipeline. Therefore, an increase in operating pressure will not result in an increase in MAOP or excessive stress on the PL-1 pipeline.

124. The MCRC and the Heinsohns assert that the compressor station would be at risk of a terrorist attack and would raise homeland security concerns based on its proximity to Camp David. The Heinsohns also suggest that air quality at Camp David would be impacted by the Myersville Compressor Station.

125. Potential terrorist attacks are addressed in section B.9.3 of the EA. The EA states, among other things, that DTI maintains a Critical Gas Facilities Security Plan which addresses the assessment of risks to its facilities and includes measures such as ongoing training program for DTI personnel on security topics such as the signs of terrorism, sabotage, and suspicious incidents; developing working relationships with local, state, and federal law enforcement agencies responsible for responding to an emergency at DTI sites; and reporting of incidents to DTI Management, DTI Security, law enforcement, and the appropriate state and federal regulatory agencies. Further, DTI's design for operation includes a provision that the compressor station is manned on a daily basis and monitored remotely by DTI security personnel. The EA conclusion on air emissions hold true for Camp David as well, especially considering its distance from the compressor station site.

126. MCRC argues that the EA should have considered the proposed compressor station's vulnerability to risk of earthquakes, as well as the "fears" associated with risks of pipeline rupture. The EA discusses at length the probability of an earthquake, and concludes that there is no evidence that suggests that the South Mountain Fault, which runs between 3.5 miles to the west, and 1.5 miles to the south, of the proposed compressor site, has experienced activity within the last 12,000 years; accordingly, the South Mountain Fault is not considered active.<sup>89</sup>

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<sup>89</sup> EA at 21-22.

127. We also reject MCRC's assertion that the EA must address "fears" associated with the project. The Supreme Court has determined that "if a harm does not have a sufficiently close connection to the physical environment, NEPA does not apply."<sup>90</sup> In part, the Court based its decision on the difficulty in determining "the differences between someone who dislikes a government decision so much that he suffers anxiety and stress, someone who fears the effects of that decision so much that he suffers similar anxiety and stress, and someone who suffers anxiety and stress that 'flow directly'...from the risks associated with the same decision."<sup>91</sup> Accordingly the Court found that agencies are not required to undertake such an inquiry.

### **DTI's Compliance Record**

128. MCRC asserts that, as mitigation for some of the project's adverse impacts, the Commission imposes various conditions of construction and operation on DTI, such as placement of visible screens and post-construction site restoration. MCRC asserts that the Commission failed to consider DTI's compliance history with respect to violations associated with pipeline operations, which it states "casts doubt" on DTI's ability to comply with the EA's conditions, "thus increasing the probability that the proposed project will result in significant harm to the environment."<sup>92</sup>

129. There is no evidence that DTI's past history of non-compliance has any bearing in this proceeding. The non-compliance actions MCRC cites involve fines or compliance actions by the Pipeline and Hazardous Materials Safety Administration and state regulatory agencies in completely different proceedings. MCRC fails to explain how any of these violations call into question DTI's ability to construct and operate the Allegheny Storage Project as authorized.<sup>93</sup>

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<sup>90</sup> *Metropolitan Edison v. People Against Nuclear Energy*, 460 U.S. 766 at 779 (1983).

<sup>91</sup> *Id.* at 777-778.

<sup>92</sup> MCRC July 30, 2012 Comments at 23-24.

<sup>93</sup> Indeed, none of the enforcement actions were initiated by the Commission. Moreover, even if we attached significance to non-compliance actions taken by other agencies against DTI, we note that this order requires DTI to take certain actions to ensure its compliance with the mitigation measures, and to demonstrate that compliance to the Commission. *See, e.g.*, Environmental Condition 6, which requires, among other things, that DTI file a plan describing how it will implement the required mitigation measures and incorporate them into construction contracts; the number of environmental

(continued...)

### **Landowner Impact Radius**

130. Several commenters state that the impact radius for identifying potential impacts to landowners should be extended beyond the 0.5 miles evaluated in the EA in order to fully capture the town and accurately assess the impacts of the compressor station on the Myersville community. These commenters indicate, among other things, that because there are more homes within a 1- and 2-mile radius of the Myersville Compressor Station site than the alternative site in Middletown, the Middletown site is a better location for a compressor station. They also state that the Middletown site would eliminate the need for suction/discharge pipeline outside of the compressor station boundaries.

131. The Commission's regulations define "affected landowners" as "landowners whose property is within one-half mile of proposed compressors or their enclosures [...]."<sup>94</sup> While the EA considered the entire town in its review of environmental impacts on resources such as visual resources, air quality, cultural resources, public safety, property values, etc., we will not arbitrarily require DTI to extend its impact radius, nor do commenters explain why we should. Moreover, the only change resulting from an increase in the impact radius would be the number of homes near the compressor station, and the further the homes are from the compressor station, the less potential impact there might be. As a result, it is not clear that such a change would produce a different result.

### **Water Quality Impacts**

132. Donald Chu expressed concern with direct and indirect impacts on water wells in Myersville. Mr. Chu indicated that two of three water wells in Myersville have levels that are too low for consumption and any impact on Myersville's water supply would have serious consequences for the town's growing population. Debbie Bruns expressed concern with impacts on waterbodies in the event of a hazardous spill.

133. Construction of the Myersville facilities would involve shallow excavation and will not require blasting. Accordingly, we agree with the EA's finding that there will be

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inspectors assigned to the project; the training and instructions it will give to all personnel involved with construction; and procedures if noncompliance occurs. Condition 7 requires DTI to employ at least one full-time environmental inspector to be responsible for ensuring and documenting compliance with all of the Environmental Conditions set forth in this order, and any such conditions imposed by other federal, state, or local agencies, and evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract.

<sup>94</sup> 18 C.F.R. §157.6(d)(2)(iii) (2012).

no impacts on groundwater or water wells in the vicinity of the project. An existing access road crosses two streams (one intermittent and one ephemeral) to access the compressor station. This road may be widened as a result of the project and DTI will implement the measures included in the Commission's Wetland and Waterbody Construction and Mitigation Procedures (Procedures) to minimize or eliminate impacts on these waterbodies.<sup>95</sup>

134. In addition, waterbody crossings must comply with any conditions imposed by the U.S. Army Corps of Engineers. DTI is required to comply with its Spill Prevention Control and Containment (SPCC) Plan to avoid or minimize the impacts of a hazardous spill. Further, the EA states that DTI has an acceptable containment plan for hazardous liquids during operation of the project (secondary containment with a sump system within the compressor building, drum storage building, and two aboveground storage tanks). Additionally, DTI will implement its Spill Prevention and Response Procedures (SPRP) during construction, construct secondary containment for facilities likely to contain hazardous substances, and will continue using its SPRP and SPCC Plans during operation.<sup>96</sup> Therefore, we agree with the EA's finding that the Myersville Compressor Station will not result in any significant impact on groundwater or surface water resources.

135. The MDNR provided comments regarding potential impacts on water resources during construction of the Myersville facilities. The MDNR indicates that Grindstone Run is subject to a timing restriction and no instream work can be performed during October 1 – April 30 of any given year.<sup>97</sup> As required by the Commission's Procedures, DTI must abide by the state's time-of-year restrictions for crossing waterbodies.<sup>98</sup> The MDNR requests that culverts on intermittent and ephemeral streams be installed so as not to impede stream passage and maintain habitat. In accordance with the Procedures (V.B.3.e), DTI must maintain adequate flow rates to protect aquatic life, and prevent the interruption of existing downstream uses. Therefore, stream passage will not be impeded. Additionally, DTI must abide by any Clean Water Act conditions included by the state and/or U.S. Army Corps of Engineers which may reduce any residual impacts.

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<sup>95</sup> EA at 29-30.

<sup>96</sup> EA at 28-29.

<sup>97</sup> Grindstone Run is crossed by the proposed 0.6-mile-long, 30-inch-diameter suction and discharge pipelines extending from the Myersville Compressor Station to a new valve site on DTI's existing PL-1 pipeline system.

<sup>98</sup> Section V.B.1 of Commission staff's Procedures.

136. The MDNR expressed concerns with changes in turbidity, temperature, and water pH resulting from construction of the Myersville facilities and recommends water quality monitoring at Grindstone Run, including monitoring of sediment transport. While we will not specifically require this, we acknowledge that the State of Maryland may impose these conditions as part of its Clean Water Act permit. Further, DTI's proposed dry crossing construction method described in the EA will minimize instream impacts by isolating the work area from stream flow while constructing its pipeline crossing of Grindstone Run.

### **Geology**

137. Anthony Lacovelli expressed concern with the landslide potential at the Myersville Compressor Station site. Mr. Lacovelli questioned the difference between the USGS landslide designation for Frederick County (high susceptibility/moderate incidence) and the Commission staff's determination of low landslide probability.

138. A landslide is the mass movement of rock or soil down a destabilized slope. The USGS map provides generalized data and, because of its small scale and lack of precise landslide data availability, is not intended to provide site-specific data. There is no local landslide data available for the Myersville site. However, Commission staff conducted a site evaluation and found that, as stated in the EA, based on the flat topography and lack of historical evidence indicating landslide occurrence at this location, there is a low landslide probability at the Myersville Compressor Station site.

139. Mr. Lacovelli requested information on geological methods that would determine the status of underlying rock at the Myersville Compressor Station site, presumably to support the conclusion of low sinkhole risk at this location. As stated in the EA, the bedrock underlying the site consists of Catoctin Metabasalt and the Metarhyolite formations and Associated Pyroclastic Sediments that are not susceptible to developing karst features.<sup>99</sup> Sinkholes do not develop in these rock types; rather they form in carbonate sedimentary formations such as limestone or dolostone.

### **Environmental Inspectors**

140. Mr. Lacovelli requests clarification on the number of environmental inspectors for the Myersville facilities. The MDNR requests that an environmental inspector be available full time during grading and instream activities.

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<sup>99</sup> (Geologic Maps of Maryland, Frederick County, 1968) (<http://www.mgs.md.gov/esic/geo/fre.html>).

141. As discussed in the EA, DTI must have one environmental inspector for each pipeline and associated compressor/meter station.<sup>100</sup> To clarify, there would be one environmental inspector overseeing construction of all the Maryland facilities (this includes the Myersville Compressor Station, Suction/Discharge pipelines, and the Tuscarora Meter Station). An environmental inspector would be utilized full time during earthmoving activities and initial construction. This will include grading and instream work. Additionally, Commission staff will conduct construction inspections (either personally or using its contractor) of the project facilities.

### **Invasive Species**

142. The USGS states that the EA does not address invasive species and recommends that the EA include measures to exclude invasive species on disturbed land. The EA does, however, address invasive species.<sup>101</sup> As discussed in the EA, DTI will limit construction activity and personnel and equipment access to the identified construction work areas and access roads and use weed-free straw or hay, wood fiber hydromulch, erosion control fabric, or the equivalent to stabilize the construction work area. Further, following construction and final grading, DTI will stabilize and reseed the construction work areas in accordance with our Plan to reduce the potential for the colonization and establishment of invasive species on disturbed soils. DTI is required to conduct follow-up inspections of all disturbed areas after the first and second growing seasons to determine the success of revegetation.

143. The USGS recommend replanting all disturbed areas with native plants. The EA describes DTI's revegetation plan to seed all disturbed areas in accordance with the county soil conservation district requirements and/or landowner requests. This is consistent with the best management practices in our Plan. The EA concludes that DTI's design for revegetation would minimize vegetation impacts to the extent practicable.

### **Migratory Birds**

144. The USGS expressed concern with migratory birds in the project areas and suggested that the magnitude of impacts on migratory birds be described in more detail. The EA states that the proposed construction areas represent a small portion of the available nesting habitat in the project vicinity and no species of special concern were identified in the project area. Further, DTI consulted with the FWS regarding potential impacts on migratory birds as a result of construction. The Maryland, Ohio, and West

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<sup>100</sup> EA at 16.

<sup>101</sup> EA at 36.

Virginia field offices of the FWS did not identify any specific concerns or recommendations for migratory birds. Given the limited disturbance and the predominance of open areas associated with construction of the project facilities in these states, the EA concludes it is unlikely that construction would have an adverse impact on migratory birds. We do not believe that further analysis is required.

145. On July 16, 2012, DTI filed several updates, including its mist-net survey results and documentation of its consultation with the FWS for Indiana bats in Ohio; survey results for timber rattlesnakes indicating there is no denning or gestating habitat in the project area in Pennsylvania; and a letter from the Pennsylvania Game Commission confirming that no state listed wildlife species will be impacted by the project in Pennsylvania. We have reviewed the mist-net survey results in Ohio and made a determination that construction of the Ohio facilities *is not likely to adversely affect* the federally endangered Indiana bat. The Ohio FWS reviewed and approved DTI's mist net survey report and, in a comment filed on July 11, 2012, concurred with our determination. With this information we have completed Endangered Species Act Section 7 consultation with the Ohio Field Office of the FWS for Indiana bats. Therefore, the requirements of recommendation 12 in the EA have been met and this recommendation has not been included in this Order.

146. DTI also filed a Phase 1 Cultural Resource Survey Report for the extra workspace at the Mullett Compressor Station as referenced in environmental recommendation 13 in the EA. As a result, we have modified Environmental Condition 11 to reflect DTI's filing update.

### **Additional EA Comments**

147. MCRC asserts that staff attempted to "downplay the level of opposition" to the proposed project and dismiss concerns by noting in the EA that numerous comments were filed as form letters. We disagree. The EA indicates that numerous commenters expressed similar concerns and in no way implies that those comments were not valid or would not be considered. Further, comments filed using form letters (or any other method) were included in the Commission's public record and considered during review of the project and addressed in the EA. No form letter comments were dismissed nor were "arbitrary rules" imposed on those that filed them.

148. MCRC argues that the EA "seems to assume" that because the Myersville Compressor Station will be located close to I-70, an interstate highway and a gas station, "that these characteristics somehow transform Myersville from a small rural

community...into a sprawling industrial wasteland.”<sup>102</sup> MCRC adds that the EA “minimizes impacts from air quality to noise since they are already caused by highway traffic, so why not add a 16000 horsepower compressor station to the mix.”<sup>103</sup> MCRC states that the compressor station’s proximity to the highways and gas station does not “detract from Myersville’s rural character, “and the EA must correct any implication to the contrary.”

149. Although it is not clear what legal argument MCRC raises, we note that it does not cite to any statement in the EA to support its claim. Indeed, the EA factually states where the Myersville Compressor Station will be sited, and provides context consistent with the Commission’s regulations.<sup>104</sup> We do not agree that the EA inappropriately characterizes the nature of the Myersville community, or that it minimizes any impacts from the proposed project.

150. The MCRC also argues that the Commission cannot make a finding of no significant impact while permit applications before other federal agencies are pending. MCRC notes that federal permitting agencies may deny the permit applications, or impose conditions that are “inconsistent with requirements in the EA”<sup>105</sup> and, if such is

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<sup>102</sup> MCRC July 30, 2012 Comments at 16.

<sup>103</sup> *Id.*

<sup>104</sup> For example, the EA at 50 notes that the compressor station

would be on an undeveloped property along the south/east bound lane of I-70, just west of the I-70/Route 17 interchange. The site consists of a mix of open land and forested land use types. Existing land uses within 0.25 miles of the site include active agricultural operations...isolated residences, the Myersville wastewater treatment plant, and business located south and southeast of the site along Milt Summers Road and Myersville Road (Route 17) including gas stations, a heavy equipment and tractor business, fast food restaurants, a bank, and medical and laboratory buildings. The Town of Myersville is situated within 2 miles of the compressor station site and sits primarily on the opposite side of I-70.

<sup>105</sup> Contrary to MCRC’s assertion, the EA does not set forth “requirements;” rather, it is a disclosure document that provides recommendations to the Commission, which in turn issues (in this case) a certificate of public convenience and necessity that sets forth terms and conditions based on the EA’s findings.

the case, the federal agencies imposing them “are not preempted by state nor are state agencies operating under the cloak of federal authority...”<sup>106</sup> MCRC asserts that “the Commission should hold the EA in abeyance until all permit proceedings are completed and then make a final decision on the certificate.”

151. Notwithstanding the fact that there are outstanding federal approvals, we find that the information available for use in preparing the EA was sufficient for our analysis of adverse impacts and appropriate mitigation measures across all resource areas. Accordingly, we conclude that the record is sufficient to make a “finding of no significant impact” pending issuance of certain federal permits.

152. Moreover, Environmental Condition No. 1 allows for modifications to the Environmental Conditions in order to allow the Commission and the applicants to, among other things, ensure other agencies are able to apply additional conditions as they deem necessary. We also note that Environmental Condition 8 requires DTI to obtain any outstanding federal permits prior to receiving approval to start construction.

153. Mr. Lacovelli questions why topsoil segregation is not required in non-agricultural areas to reduce soil disruption and promote revegetation of native vegetative species. Mr. Lacovelli also requests that topsoil removed during excavation of the compressor station site (not used for site revegetation) be sent to other agricultural sites to avoid loss of vital soils. DTI is not required to segregate topsoil in forested areas in accordance with our Plan in order to minimize the width of clearing. The grading and excavation of the site may result in excess soil, which is typically hauled to a disposal area. Excess topsoil may be made available for beneficial offsite use, which DTI may take into consideration.

154. Ann Nau states that because DTI’s Tioga Area Expansion and Sabinsville to Morrisville Projects (Docket Nos. CP12-19-000 and CP12-20-000, respectively) are interrelated, the impacts associated with these projects should be disclosed under a single EA.

155. Section B.10 of the EA addresses cumulative impacts associated with these two DTI projects. The EA is clear that the cumulative impact analysis focuses on actions taking place in the same general area over a given period of time. For the projects listed by the commenter, these criteria are only met for facilities in Pennsylvania.

156. As part of its work area for installing the Sabinsville replacement pipelines in this proceeding, DTI intends to use one proposed pipeyard which would be located

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<sup>106</sup> MCRC July 30, 2012 Comments at 25.

approximately 1.7 miles north of the Sabinsville Storage Station; this proposed pipeyard is a component of the pending Sabinsville to Morrisville proceeding, which is currently under Commission review in Docket No. CP12-20-000. Ms. Nau states that the Allegheny Storage Project should be denied because it relies on a pipeyard which the Commission has not approved.

157. If the proposed pipeyard facility in Docket No. CP12-20-000 has not been authorized by the time DTI is ready to construct here, then DTI would be required to file, in compliance with Environmental Condition 5 of this Order, all necessary documents (such as cultural resources survey reports, threatened and endangered species clearances, etc.) to request use of temporary workspace facilities. DTI will not be permitted to use the proposed pipeyard facilities unless and until these facilities are authorized by the Commission.

158. Judy Darrah expressed concern with fugitive dust, noise (construction activities and equipment engines), and potential damage to barns from vibration during construction of the Mullett Compressor Station. DTI anticipates that construction of the Ohio facilities would last about eight months. As discussed in the EA, DTI has committed to implement dust suppression mitigation which includes spraying water to dampen the surfaces of dry work areas and/or applying calcium chloride or other dust suppressants, as needed. DTI has committed to limit construction activities to daytime hours. The EA concluded, therefore, that while individuals would experience an increase in noise during daytime construction activities, there would be no impact on ambient noise levels during nighttime hours. Vibration from typical construction equipment is also not expected to be significant enough to cause structural damage to barns or any other nearby structures. As stated in the EA, construction would be temporary and any associated impacts would subside when construction has been completed.

159. Mrs. Darrah also raises concerns over post-construction traffic impacts on farm traffic and cattle moving activities, operational dust and noise, and odor from the compressor station. DTI stated that one employee is required to operate the Mullett Compressor Station. As a result, the EA concluded that there would be no discernable impact on local roadways. Fugitive dust during operation would be minor as there would be no ground disturbance during normal operation of the station. The estimated operational noise from the Mullett Compressor Station was addressed in the EA<sup>107</sup> which states that noise would be less than an increase of 3 dBA at the nearest NSA, which is the threshold of perception for the human ear. As the EA explains, natural gas is odorless and the gas flowing through the Mullett Compressor Station would not contain odorant.

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<sup>107</sup> EA at 72.

**E. Request for Extension of Time to Comment on EA**

160. In May 2012, Franz Gerner filed requests for flow data and diagrams under the Commission's procedures for gaining access to critical energy infrastructure information (CEII),<sup>108</sup> and, as noted above, FOIA requests seeking information pertaining to gas supply and historic and cultural resources. On July 5, 2012 and July 30, 2012, MCRC asked the Commission to refrain from acting in this proceeding until MCRC has access to all information sought under the FOIA and CEII requests. MCRC further asks that once all outstanding CEII and FOIA requests are "resolved," the Commission should provide MCRC a month to review the additional material and file comments on the EA.

161. It appears that, to date, all FOIA and CEII requests filed by Mr. Gerner have been satisfied. On August 5 and August 10, the CEII information was released to Mr. Gerner and MCRC counsel; on October 24, Mr. Gerner was provided the requested historical and cultural resource information of publicly known sites, with some limitations. More than 30 days have passed since the August 5 and August 10 release of the CEII information; as noted above on November 5, 2012, Mr. Gerner filed comments on the released historic and cultural resources information, which are addressed in this Order.<sup>109</sup> Accordingly, we find that the request to allow a 30-day extension of time to comment on the EA is moot.<sup>110</sup>

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<sup>108</sup> 18 C.F.R. § 388.112 (2012); *see also Critical Energy Infrastructure Information*, Order No. 683, 71 Fed. Reg. 58,273 (October 3, 2006), FERC Stats. & Regs. ¶ 31,288 (2006).

<sup>109</sup> On December 14, 2012, members of the MCRC filed additional comments, based on their analysis of the provided CEII information. MCRC members purport to identify inaccuracies and contradictions in the information provided by DTI sufficient to undermine the Commission's determination that the proposed project is required to provide the subscribed level of service. Specifically, they allege, among other things, that DTI will be delivering "excess volume[s]...to Loudoun and Cove Point rather than exclusively to WGL and BGE." However, this argument overlooks the fact that Washington Gas has numerous delivery points off the Dominion Cove Point Pipeline (which interconnects with DTI at Loudoun). The analysis also seeks to compare design day (contractual obligation) flow with non-coincidental peak deliveries; such comparisons are not valid.

<sup>110</sup> On November 21, 2012, Ted Cady, Secretary of the MCRC, filed comments citing "numerous errors" in the EA. Mr. Cady does not explain why his comments are so late; in any event, all of his comments were either already addressed in this order;

(continued...)

## Conclusion

162. We have reviewed the information and analysis contained in the record regarding the potential environmental effects of DTI's proposed project. Based on our consideration of this information, and the discussion above, we agree with the conclusions presented in the EA and find that, if constructed and operated in accordance with DTI's application and supplement(s), and in compliance with the environmental conditions in Appendix B to this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

163. 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, as supplemented, submitted in support of the authorizations sought herein, and upon consideration of the record.

### The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing DTI to construct and operate the Allegheny Storage 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 DTI'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 Commission's regulations;
- (2) compliance with all applicable Commission regulations including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) compliance with the environmental conditions in Appendix B to this Order;

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overlooked or misinterpreted the information set forth in the EA; or have no bearing on the EA's recommendations or our findings. Accordingly, we decline to address them.

(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) DTI's request for authority to charge incremental rates for firm storage service under Rate Schedule GSS and firm transportation service under Rate Schedule FT is approved.

(D) DTI shall submit actual tariff records with the incremental rates no earlier than 60 days and no later than 30 days prior to the date the Allegheny Storage Project facilities go into service.

(E) DTI shall file its negotiated rate agreements or a tariff record describing the negotiated rate agreements no earlier than 60 days and no later than 30 days prior to the date the Allegheny Storage Project facilities go into service.

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

(G) 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 within 24 hours.

(H) MCRC's request to extend by 30 days the comment period on the EA is dismissed as moot.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A - Timely Motions to Intervene**

PECO Energy Company	Joseph M. Mrozinski
UGI Distribution Companies	Angela J. Brinkley Morris
National Grid Gas Delivery Companies	Kim Howell
NJR Energy Services Company	Chris M. Popple
New Jersey Natural Gas Company	Genevieve E. Linthicum
Baltimore Gas and Electric Company	Ellen L. Doreen
New York State Electric and Gas Company	Tammy Mangan
Rochester Gas and Electric Corporation	Ted Cady
Piedmont Natural Gas Company, Inc.	Dexter Tompkins
National Fuel Gas Distribution Corporation	Kevin Kreger
PSEG Energy Resources & Trade, LLC	Faith M. Lotsikas
Town of Myersville	Debbie Burns
New York State Public Service Commission	Melissa C. Popple
Atmos Energy Corporation	Meredith McKittrick
City of Richmond, Virginia	Andris M. Paza
Washington Gas Light Company	J. Szabo
Myersville Citizens for a Rural Community, Inc. (MCRC)	Elizabeth A. Buckheit
Consolidated Edison Company of New York, Inc.	Ted Jenkins
Susan Derse	Barbara T. Ramsey
Michelle D. Sweet	The Lucy School
Nikki Cline	Peter J. Lotsikas
Franz M. Gerner	M. Binzer
CNX Gas Company	Richard H. Millward
Janet A. Millward	Stephanie Flores
Ann M. Nau	Carol A. Keenan
Megan Rigby	Anita V. Paza
Coleman R. Carpenter	Stephen N. Mueller
Jeff S. Olson	Chad Tasker
Tracy Hammond	Ronald Hammond
Michael R. Holtz	Stephan A. Williams
Margie Binzer	Daniel P. Andrews
Dorothy A. Heinsohn	Eric E. Hanson
Gerhard J. Heinsohn	Raymond Mann
Stephanie L. Simek	Deborah Gilles
James Derse	William J. Adamo
	Peoples TWC, LLC
	Jennifer M. Bertulaitis
	Chris Isleib
	Michelle M. Tartaglia

## Appendix B

### Environmental Conditions

#### Allegheny Storage Project

#### Docket No. CP12-72-000

As recommended in the EA, this authorization includes the following condition(s):

1. DTI shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. DTI must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of the Order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, DTI shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, 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 the Order. All requests for modifications of

environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets. DTI's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. DTI's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of their 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. DTI shall file with the Secretary detailed alignment maps and aerial photographs at a scale not smaller than 1:6,000 identifying all 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/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by our Upland Erosion Control, Revegetation, and Maintenance Plan and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificate and before construction begins**, DTI shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. DTI must file revisions to its 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 the 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 each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how DTI 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 DTI will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. DTI personnel (if known) and specific portion of the company'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 environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, DTI shall file updated status reports with the Secretary **on a monthly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on 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 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 DTI from other federal, state, or local permitting agencies concerning instances of noncompliance, and DTI's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, DTI shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
  9. DTI must receive written authorization from the Director of OEP **before placing its project facilities 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.
  10. **Within 30 days of placing its authorized 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.
  11. DTI **shall not begin construction** of the Mullett Compressor Station, Mullett Suction/Discharge pipelines, and Mullett 1 M&R Station, and/or use of associated staging, storage, or temporary work areas and new or to-be-improved access roads **until**:
    - a. DTI files with the Secretary the Ohio State Historic Preservation Office's comments on the survey report for the extra work space at the Mullett Compressor Station; and
    - b. the FERC staff reviews and the Director of OEP approves the cultural resources report and notifies DTI in writing that construction may proceed.

All materials filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CONTAINS**

**PRIVILEGED INFORMATION--DO NOT RELEASE."**

12. DTI shall file noise surveys with the Secretary **no later than 60 days** after placing the Myersville and Mullett Compressor Stations in service. If the noise attributable to the operation of all of the equipment at the Myersville and Mullett Compressor Stations at full load exceeds a day-night level of 55 decibels on the A-weighted scale at the nearby noise-sensitive areas, DTI shall install additional noise controls to meet the level **within 1 year** of each station's in-service date. DTI shall confirm compliance with the above requirement by filing second noise surveys for each station with the Secretary **no later than 60 days** after it installs the additional noise controls.