

113 FERC ¶ 61,065
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Dominion Transmission, Inc.

Docket No. CP04-365-001

ORDER ON REHEARING AND CLARIFICATION

(Issued October 20, 2005)

1. Dominion Transmission, Inc. (DTI) requests rehearing and clarification of the Commission's order issued in this proceeding on June 16, 2005.¹ Vincent L. Quinlan, Margaret I. Quinlan and Jeanne A. Quinlan (the Quinlans) also filed a request for rehearing.² The Certificate Order authorized DTI³ to construct, install, own, operate, and maintain its Northeast Storage Project consisting of certain facilities located in West Virginia, Pennsylvania, and New York.

2. DTI requests that the Commission (1) revise the Certificate Order to allow DTI to charge an incremental transportation rate as the initial transportation rate, (2) clarify, to the extent deemed necessary, the scope of the certificate condition requiring DTI to execute firm contracts for each of its precedent agreements prior to commencing construction, (3) correct both the reference to the Fink/Kennedy-Lost Creek storage complex and the maximum storage pressure for the Fink/Kennedy-Lost Creek storage complex, and (4) clarify that DTI may allow injections to proceed commencing as of April 1, 2006.

¹ *Dominion Transmission, Inc.*, 111 FERC ¶ 61,414 (2005) (Certificate Order).

² The Quinlans state that they and DTI are diligently attempting to finalize a resolution of the issues raised in their request for rehearing; once an agreement is completed, the Quinlans' request will be withdrawn.

³ DTI is the interstate gas transmission business unit of Dominion Resources, Inc., a fully integrated natural gas and electric company. DTI is engaged primarily in the business of storing and transporting natural gas in interstate commerce for customers principally in New York, Ohio, Pennsylvania, West Virginia, Virginia, Maryland and the District of Columbia. DTI is an open access pipeline operating under the Commission's regulations and an approved tariff.

3. The Quinlans complain that the Commission failed to adequately address landowner issues; failed to adequately address the Quinlans' environmental concerns; and violated the requirements of NEPA⁴ and its own regulations in failing to prepare an Environmental Impact Statement (EIS) before issuing the Certificate Order.

4. The Commission will grant rehearing and require DTI to charge the proposed incremental transportation rate of \$4.6260 as the appropriate initial rate for the Northeast Storage Project transportation service. The Commission clarifies: that Ordering Paragraphs (I).4 and (I).5 of the Certificate Order refer to the entire Fink/Kennedy-Lost Creek storage complex; that the maximum storage pressure of the Fink/Kennedy-Lost Creek storage complex is limited to the wellhead pressure; and, injections may proceed when approved in writing by the Director of the Office of Energy Projects (OEP). The Quinlans' requests for rehearing are denied.

Background

5. The Certificate Order authorized DTI to develop a depleted production reservoir in Cattaraugus County, New York as the Quinlan Storage Pool (Quinlan Pool), install a new Quinlan Compressor Station, install and modify pipelines and measurement facilities in the Quinlan Pool area, make enhancements to the Fink storage complex in Lewis County, West Virginia, including construction of a new Wolf Run Compressor Station, and modify the existing Leidy Metering and Regulating (M&R) Station. The Northeast Storage Project will provide 9.4 Bcf of firm natural gas storage service and 163,017 dekatherms per day (Dth/d) of winter-season firm transportation service.

6. The Northeast Storage Project involves developing 4.0 Bcf of working gas capacity in the Quinlan Pool, enhancing the Fink storage complex to utilize 4.468 Bcf of existing Fink complex working gas capacity, and utilizing 0.932 Bcf of existing certificated storage capacity that is unsubscribed on DTI's system. The Quinlan Compressor Station will have two compressor units capable of providing 4,740 horsepower (hp) of compression and dry bed dehydration facilities. The Quinlan Pool will be able to provide approximately 4.0 Bcf of working gas capacity with approximately 3.9 Bcf of cushion gas capacity, at a maximum deliverability of 200 MMcf/d, and an injection rate of 100 MMcf/d. The active boundary of the Quinlan Pool is 191 acres. DTI will provide a protective buffer of approximately 1000 feet from the active gas storage boundary, which is approximately 335 acres, for a total acreage of 526 acres. The buffer will act to protect the integrity of the field by minimizing drilling encroachment by third party producers.

⁴ National Environmental Policy Act of 1969, 42 USC § 4321 *et seq.*

7. As a result of an open season, DTI executed precedent agreements with three local distribution customers for ten-year terms at maximum rates. These customers purchased 146,664 Dth/d of winter-season firm transportation service (under Rate Schedule FT-GSS service) and firm storage services (under Rate Schedule GSS) totaling 8,799,800 Dt (approximately 8.46 Bcf) of storage capacity and 146,664 Dth/d of storage demand. There is currently 981,220 Dt of storage capacity and 16,353 Dth/d of storage demand not yet subscribed.

DTI's Requests for Rehearing and Clarification

Incremental Transportation Rate

8. In the Certificate Order, the Commission approved DTI's proposal that the initial rates for firm transportation service be DTI's existing Rate Schedule FT rates which, at the time DTI filed its application, were slightly higher than an incremental cost-based transportation rate for the project. At that time, DTI's demand rate for Rate Schedules FT and FT-GSS was \$4.6620;⁵ the incremental rate developed for the project's transportation service is \$4.6260.⁶

9. DTI states that after it filed its application, it entered into a settlement affecting its rates for jurisdictional transportation services, which the Commission approved in an order issued May 27, 2005.⁷ The settlement reduced the transportation rates under Rate Schedule FT to a maximum reservation base tariff rate of \$3.8820, effective July 1, 2005.⁸ As a result, the incremental transportation rate for the Northeast Storage Project of \$4.6260 is now higher than the recently revised generally applicable transportation rates under Rate Schedule FT. Further, DTI states that the Northeast Storage Project customers have agreed that the incremental transportation rate is the appropriate rate for the Project and DTI and the customers have amended the rate provisions of their precedent agreements to reflect the incremental rate as the applicable transportation rate. DTI attached to its request for rehearing copies of the amendments to the precedent agreements.

⁵ Application at Exhibit P, Schedule 2, page 3.

⁶ *Id.*

⁷ *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005) (Settlement Order).

⁸ Stipulation and Agreement at ¶ 2.1.

Commission Response

10. Under the Certificate Policy Statement, the Commission will not accept a proposed incremental rate that is lower than the pipeline's existing generally applicable Part 284 rate.⁹ At the time DTI filed its application, the cost-based incremental rate calculated for its proposal was slightly less than its generally applicable Part 284 rate. However, two weeks prior to issuance of the Certificate Order, DTI's rate settlement lowered its generally applicable rate so that it is now lower than the incremental rate. Since DTI's rates were lowered before we issued the certificate, the Certificate Order should have taken the DTI's settlement rates into account and approved the incremental rate as DTI's initial rate. Accordingly, we will grant rehearing and modify DTI's certificate so that DTI's initial rate will be the cost-based incremental transportation rate of \$4.6260 for service on the Northeast Storage Project.¹⁰

Regulatory Out Clause

11. DTI's application was supported by executed precedent agreements with three local distribution customers for ten-year terms at maximum rates. The Commission conditioned the certificate on DTI's executing firm contracts equal to the level of service and terms of service represented in the precedent agreements prior to commencing construction of the Project.¹¹ DTI states that it will have executed firm service agreements with all three customers for the same level of service and terms of service as the precedent agreement before beginning construction.

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 at 61,744 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

¹⁰ Shippers will also be charged Dominion's system fuel and electric surcharges for transportation and storage on the Northeast Storage Project. Certificate Order at P 23.

¹¹ The requested in-service date under the precedent agreements is April 1, 2006 for storage services and November 1, 2006 for firm transportation service. Under the Certificate Order, DTI will remain at risk to market the remaining unsubscribed 981,220 Dth of storage capacity and 16,353 Dth/d of storage demand.

12. However, the service agreement with one of the customers, KeySpan Gas East Corporation (KeySpan), contains a regulatory out clause allowing KeySpan to elect not to take service if regulatory approvals for downstream infrastructure are not secured by Transcontinental Gas Pipe Line Corporation (Transco).¹² DTI states that it has granted KeySpan's request that the deadline for satisfying this condition be extended from October 31, 2005 to March 31, 2006. DTI further states that both DTI and KeySpan expect that Transco will obtain the necessary authorizations. Yet, to meet the project's in-service dates, DTI must commence construction well before the parties will know if Transco obtains the required authorizations and, to comply with the Certificate Order, the parties must execute a service agreement prior to construction. DTI states that it is raising the issue on rehearing should the Commission deem it necessary to clarify, modify or waive Ordering Paragraph (H) of the Certificate Order to permit DTI to commence construction with the KeySpan service agreement conditioned by a regulatory out clause as contemplated.

13. DTI states that it and KeySpan have agreed to enter into a service agreement that provides a regulatory out for KeySpan if Transco fails to obtain the required authorizations by the end of March, 2006.¹³ DTI believes that its approach complies with the Certificate Order and that no further Commission action on this issue is necessary. DTI states that it will be at risk for any unsubscribed project capacity, including that ear-marked for Key-Span should Key-Span ultimately fail to take service.¹⁴

14. DTI submits that the market need for northeast storage is well-established, and that this need will not be brought into question by DTI's allowing KeySpan an "out" if Transco is unexpectedly unable to secure timely regulatory authorization to construct downstream infrastructure. DTI argues that the binding service agreements with the other customers, along with the service agreement with a regulatory out for KeySpan, are sufficient to allow construction to go forward.

¹² Regulatory out clauses are clauses typically found in precedent agreements between a pipeline and its customers with respect to new construction projects. These clauses allow parties to alter or cancel their agreements if necessary governmental authorizations are not obtained by a certain date.

¹³ Were such a service agreement to remain in-place when service commences, DTI will file the agreement as containing a material deviation from the pro forma service agreement.

¹⁴ Without the Keyspan service agreement, approximately one-third of the project capacity will be subscribed under firm contract prior to the start of construction.

Commission Response

15. Under the Certificate Policy Statement, an applicant may rely on a variety of factors to demonstrate that the public benefits of its proposed project outweigh any residual adverse effects. The Commission will consider all evidence submitted by the applicant reflecting on the need for the project, including, but not limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market. Although precedent agreements continue to be important evidence of demand for a project, the Commission no longer requires an applicant to present agreements for any specific percentage of the new capacity as a part of its application. Of course, if an applicant has entered into precedent agreements for some portion of the capacity, those agreements constitute significant evidence of demand for the project.¹⁵

16. In the instant case, DTI presented precedent agreements with three customers for ten-year terms at maximum rates as evidence of need for its project, and our Certificate Order requires DTI to execute firm contracts equal to the level of service and terms of service represented in those precedent agreements prior to commencing construction. In its request for rehearing and clarification, DTI indicates that while it stands ready to execute contracts as required, one of those contracts will contain a provision which would allow the customer to elect not to take service if a downstream pipeline is unable to obtain regulatory authorization to construct the additional infrastructure necessary for the ultimate delivery of its gas. DTI requests the Commission either clarify that execution of the KeySpan contract, albeit with a regulatory out clause, is sufficient to satisfy the certificate condition or modify the condition to allow construction to commence with less than all capacity represented in the precedent agreements subscribed under firm contract.

17. We will grant DTI's request for clarification. While the contract with KeySpan does contain a regulatory "out" clause, the contingency it provides for is not one which raises any question regarding the need for the project. The demand for the service remains; the question is when facilities for ultimate delivery of the service will be in place. Moreover, DTI and KeySpan represent that they expect that Transco will obtain the necessary authorizations. Under these circumstances, we believe the proposed contract with KeySpan is sufficient to meet the requirements of the Certificate Order.

¹⁵ Certificate Policy Statement at 61,747 – 61,748.

18. In addition, the fact that DTI is willing to invest in the project, without financial subsidies, presents another important indicator of market-based need for the project.¹⁶ Since DTI will be charging incremental rates for the authorized service, there will be no subsidization of the project by existing customers regardless of the level of subscription. Accordingly, the Commission clarifies that DTI will be permitted to commence construction even though the KeySpan service agreement is conditioned by a regulatory out clause.

Maximum Well Head Pressure for the Fink/Kennedy-Lost Creek Storage Complex

19. The entire Fink/Kennedy-Lost Creek storage complex consists of three storage reservoirs: Fink, Kennedy and Lost Creek. The Project includes enhancements to DTI's Fink storage area. In Ordering Paragraph (I) at sub-sections 4 and 5, the Commission references the "Fink Complex" rather than using the full title of the storage complex - Fink/Kennedy-Lost Creek. Although the Commission indicates in paragraph 3 of the Certificate Order that it is using "Fink Complex" as the shorthand reference for the Fink/Kennedy-Lost Creek complex, to avoid potential future confusion regarding the application of Ordering Paragraph (I), DTI requests that the Commission clarify that it intends for Ordering Paragraph (I).4 and (I).5 to apply to the entire Fink/Kennedy-Lost Creek storage complex, not just the Fink storage area within Fink/Kennedy-Lost Creek storage complex.

20. In addition, the Certificate Order sets the maximum bottom hole storage pressure at 1,015 psia.¹⁷ DTI states that it requires 1000 psig wellhead pressure to achieve 161.5 Bcf storage capacity at the Fink/Kennedy-Lost Creek storage complex. DTI believes the Commission may have inadvertently limited the maximum storage pressure to a bottom hole storage pressure of 1000 psig, instead of a maximum well head pressure of the 1000 psig. Accordingly, DTI requests that the Commission revise Ordering Paragraph (I).4 to read as follows:

The maximum inventory of natural gas stored in the Fink/Kennedy-Lost Creek storage complex shall not exceed the certificated levels of 161,500 MMCF (without native [gas]) at 14.73 psia and 60 degrees Fahrenheit, at a

¹⁶ Certificate Policy Statement at 61,747.

¹⁷ 1015 psia is equivalent to 1000 psig (rounded).

maximum stabilized shut in wellhead pressure in the Fink/Kennedy-Lost Creek storage complex of 1000 psig, without prior authorization of the Commission.

Commission Response

21. The Commission clarifies that Ordering paragraphs (I).4 and (I).5 of the Certificate Order refer and apply to the entire Fink/Kennedy-Lost Creek storage complex.
22. The Commission inadvertently limited the maximum storage pressure of the Fink/Kennedy-Lost Creek storage complex to the bottom-hole pressure of 1000 psig instead of the wellhead pressure. Accordingly, Ordering Paragraph (I).4 is revised as follows:
23. The maximum inventory of natural gas stored in the Fink/Kennedy-Lost Creek storage complex shall not exceed the certificated levels of 161,500 MMcf at 14.73 psia and 60 degrees Fahrenheit, and the maximum wellhead storage pressure of 1,000 psig, without prior authorization of the Commission.

Injection into Storage Prior to Completion of the Facilities

24. Environmental Condition No. 10 of the Certificate Order provides that DTI “must receive written authorization from the Director of OEP before commencing service from the project. 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.” DTI requests that this condition be clarified, to ensure that its customers may begin injecting quantities of gas for storage service at the commencement of the 2006 storage injection season.
25. DTI acknowledges that it must meet all other conditions as set forth in the Certificate Order and its Appendix including, without limitation, Environmental Condition No. 12, prior to injecting gas into the Quinlan reservoir. However, because DTI’s storage services are provided on an integrated system basis, DTI anticipates that it can accommodate storage injections for these customers while the completion of facilities is pending, so that they will be able to fully utilize the storage services for withdrawal of inventories during the 2006-2007 winter season.

Commission Response

26. The request for clarification is granted. Complete rehabilitation and restoration of the right-of-way and other areas affected by the entire project are not prerequisites to beginning injection-only service into the storage reservoirs. However, DTI must meet all conditions related to those facilities involved in the injection service, as set forth in the

Certificate Order prior to injecting gas into the reservoirs. At such time that the facilities are prepared to receive storage injections, DTI may ask for written authorization from the Director of the Office of Energy Projects (OEP) to commence injection service. DTI must receive such written permission before commencing injection service using the subject facilities.

The Quinlans' Requests for Rehearing

Eminent Domain

27. The Quinlans complain that the Commission failed to adequately take their interests into account, including the fact that the property DTI seeks from them has been in the Quinlan family for over one hundred years. The Quinlans argue that, in clarifying the Certificate Policy Statement, the Commission expressly rejected claims that the amounts received by a landowner in eminent domain proceedings are essentially reflective of the economic impact of a proposal.¹⁸

Commission Response

28. The Commission encourages project sponsors to acquire as much of the right-of-way as possible by negotiation with the landowners and considers the extent to which the applicant has attempted to limit the need to obtain rights-of-way by eminent domain in weighing the benefits against any adverse effects of the proposed project. The Policy Statement recognized that, under section 7(h) of the Natural Gas Act (NGA), a pipeline with a Commission-issued certificate has the right to exercise eminent domain to acquire the land necessary to construct and operate its proposed new pipeline when it cannot reach a voluntary agreement with the landowner.¹⁹ Generally, issues of compensation for land taken by a pipeline company under the eminent domain provisions of the NGA are matters for state or federal court. Although the Commission encourages pipeline companies to enter into fair negotiations with landowners regarding the use of their

¹⁸*Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128, at 61,398 (2000) (Even though the compensation received in such a proceeding is deemed legally adequate, the dollar amount received as a result of eminent domain may not provide a satisfactory result to the landowner and this is a valid factor to consider in balancing the adverse effects of a project against the public benefits).

¹⁹ *Id.*

property, it does not intervene in such negotiations when the parties cannot reach an agreement. If that occurs, the pipeline company may bring an eminent domain action in the appropriate state or federal courts which will determine fair compensation.

29. The Commission has considered all the valid factors in balancing the adverse effects of this project against the public benefits and has determined to authorize the project. The Quinlans have presented no fact or argument that convinces us to alter that decision. Therefore, we will deny the Quinlans' request for rehearing on this issue.

Quinlan Compressor Station

30. The Certificate Order allows DTI to place the Quinlan Compressor Station at the top of a high location on the Quinlans' property. The result, the Quinlans state, will be to scar the land at the location and cause harm to the Quinlans' economic interests on land owned by them adjacent to the proposed Quinlan Compressor Station. Further, the Quinlans claim that the Quinlan Compressor Station will be highly visible and will restrict their use of their remaining land, due to noise and emissions.

Commission Response

31. After construction is completed, DTI will be required to restore all ground disturbances in accordance with the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan. Any harm which the Quinlans claim would be done to their economic interests is a compensation issue that should be addressed by the Quinlans with DTI.

32. We disagree with the Quinlan's claim that the Quinlan Compressor Station will be highly visible as the site is effectively surrounded by forest land which would obscure the compressor station site. Hostageh Road borders the northeast property line of the Quinlan Compressor Station site. On its approach to the compressor station site, the road runs through forested land. While the site may be visible from the road along the northeast property line, and possibly from other more distant high elevation locations, it would not be a significant visual impact from the immediate surroundings.

33. We disagree that the compressor station's location would restrict the Quinlan's use of their remaining land due to noise and emissions from compressor station operation. The noise issue has been previously addressed in the Environmental Assessment (EA) and in the Certificate Order:

The Quinlans express concern that the potential noise impact at two locations near the fence line of the proposed Quinlan Compressor Station would be greater than 55 dBA Ldn. The Quinlans state that they do, in fact, have plans to develop these properties for home sites; however, as stated in

the EA, there are no plans on file with local authorities for proposed residential development of the property. It is accepted practice at the Commission that we limit noise at prospective home sites when plans are on file with local authorities. To implement this, the Director of OEP is authorized under environmental condition 2 to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation. These steps may include requiring DTI to install additional noise mitigation measures for newly constructed homes, if deemed necessary.²⁰

34. The air emissions issue has also been previously addressed in the EA. As stated in the EA, the New York State Department of Environmental Conservation has adopted the U.S. Environmental Protection Agency's National Ambient Air Quality Standards, and would strictly control emissions of NO_x from the Quinlan Compressor Station.

35. In summation, the Quinlans' claim of irreparable harm to the 9.05-acre Quinlan Compressor Station site is unavailing, and we will deny rehearing on this issue. The Quinlans' concerns about compensation, visibility, noise and NO_x emissions have been previously addressed in the EA or the Certificate Order, and once again here. Further, we note that the duration of use of the Quinlan Compressor Station site would be for the life of the project. Upon termination of the project, and an application by DTI for abandonment authorization under section 7(b) of NGA, the Commission will address the removal of the compressor station facilities

Buffer Zone

36. The Quinlans complain that the 1000-foot buffer zone demanded by DTI could prevent the future development of potential hydrocarbon resources on the property.

Commission Response

37. As discussed in the EA, the purpose of the buffer zone is to protect the integrity of the storage field by preventing third-party drillers from completing wells in the storage formation at any point within the area identified by the outer boundary of the buffer zone. It does not limit the development of potential hydrocarbon resources in formations above or below the storage formation. Nothing prevents the Quinlans from developing potential hydrocarbon resources on their property, as long as the Quinlan storage reservoir is not adversely impacted. Any well drilled would have to be in compliance with New York

²⁰ Certificate Order at P 49.

state drilling and well completion requirements, monitored by DTI, and completed sufficiently above or below the storage reservoir so as not to affect the integrity of the caprock or the reservoir. Accordingly, we will deny rehearing on this issue.

Decision to Issue EA

38. The Quinlans argue that, had the Commission taken the requisite hard look at the EA as well as the earlier-filed comments of the Quinlans, it would have ordered that an EIS be prepared in this case based on the numerous environmental impacts noted by the Quinlans. The Quinlans assert that the Certificate Order fails to resolve whether the potential environmental impacts noted by the Quinlans have been mitigated such that an EIS is not required in this proceeding.

Commission Response

39. The Commission will generally issue a Finding of No Significant Impact (FONSI) on a project if mitigation measures will render a project's environmental impacts insignificant. Contrary to the Quinlans' assertion, the certificate order found:

Each of the environmental concerns identified by the Quinlans has been addressed in the EA. In this order, the Commission is finding that, although there would be some environmental effect, the impact would not be significant and could be mitigated. Under these circumstances, an EIS is not required.²¹

40. Thus, the Commission did resolve whether the potential environmental impacts noted by the Quinlans have been mitigated such that an EIS is not required. Accordingly, we will deny rehearing on this issue.

Gravelling

41. The Quinlans argue that that the Commission failed to address their concerns relating to the grading, excavation, paving, and hauling and placement of gravel for construction of the Quinlan Compressor Station. Further, they argue that the Commission's endorsement of gravelling as an "industry-accepted practice" does not, by itself, resolve whether the practice imposes significant environmental impacts.

²¹ Certificate Order at P 52.

Commission Response

42. Contrary to the Quinlans' statement, the project-related construction activities were previously addressed. Section 1.6 of the EA describes the construction-related activities that would be undertaken as part of the project. The section, among other things, states that DTI would implement the Commission's 2003 version of the Plan (see above) in upland areas, the Wetland and Waterbody Construction and Mitigation Procedures (Procedures), as well as DTI's Erosion and Sedimentation Control Plan which was found to be consistent with the Plan and Procedures.

43. The Commission endorses the use of gravelling for ground cover as an industry-accepted practice for construction of aboveground facilities such as meter stations and compressor stations because of the lack of adverse impacts associated with its use. The Commission views the use of gravel at such construction sites as having the beneficial impacts of erosion control and weed abatement. Accordingly, we will deny rehearing on this issue.

Hazardous Fluids

44. The Quinlans argue that the Commission inadequately addressed their concerns relating to the use of hazardous fluids that would be injected into storage wells on the property. The Quinlans assert that the Commission's response to the Quinlans' concern in this instance is essentially to rely entirely on state laws to ensure that use of hazardous fluids will be contained and controlled.

Commission Response

45. We disagree that the hazardous fluid issue has been inadequately addressed. The construction of a storage field involves the drilling of wells, during which fluids, which may or may not be considered hazardous, are utilized. As part of drilling permit, DTI is required to drill and complete all of the storage wells in accordance with the regulations, laws, and policies of the state of New York, which include the utilization, handling, and disposal of drilling fluids, including drilling muds, completion fluids, and stimulation fluids. Accordingly, we will deny rehearing on this issue.

Adding, Subtracting and Moving Facilities

46. The Quinlans are concerned that DTI will be free to add, subtract and move facilities on property subject to the certificate, without restraint or approval by the Commission. The Quinlans are also concerned that they remain at risk if they build any permanent structures, especially on the land in the buffer zone and storage field, because DTI can still tell them to tear it down if the structure subsequently is alleged to "impact gas storage operations."

Commission Response

47. As explained in the Landowner Notification Preambles, once a storage field is certificated, there may be future construction within the boundaries of the field for which no additional Commission authorization will be required. The regulations governing such construction are set out in Part 157, subpart F of the Commission's regulations. A subpart F blanket certificate gives a natural gas company NGA section 7 authority to automatically, or after prior notice, perform certain eligible activities related to the construction, acquisition, replacement and operation of pipeline facilities.²² The Quinlans' loss of the potential to build on the subject easement is a matter to be considered when establishing compensation through settlement or court action. Accordingly, we will deny rehearing on this issue.

Noise Impacts

48. The Quinlans argue that the Commission fails to adequately address their concerns with regard to noise impacts on potential residential development. The Quinlans state that the Commission dismisses the Quinlans' assertion that they intend to develop their lands because no plans are currently on file with the Cattaraugus County Department of Economic Development Planning, and Tourism, stating "[i]t is accepted practice at the Commission that we limit noise at prospective home sites when plans are on file with local authorities."²³ The Quinlans argue that the fact that plans are not currently on file does not mean that the Quinlans have no plans to develop this property.

Commission Response

49. We disagree that the Quinlans' assertion that their plan to develop their property was ignored. The Quinlans' quotation from the Certificate Order is incomplete. The text continues:

To implement this, the Director of OEP is authorized under environmental condition 2 to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation. These steps may include requiring [DTI] to install additional noise mitigation measures for newly constructed homes, if deemed necessary.

²² 18 C.F.R. § 157.201 *et seq.* (2005).

²³ *Citing*, Certificate Order at P 49.

50. Thus, at such time as the Quinlans develop their property, they may approach DTI and the Commission regarding installation of additional noise mitigation measures for newly constructed homes. Accordingly, we will deny rehearing on this issue.

Size of the Project

51. In their protest and initial comments the Quinlans asserted that the “sheer size” of the project required that an EIS, rather than an EA should have been prepared in this case. The Commission responded that “[N]either NEPA nor the Commission’s regulations has established that the size of a project, alone, requires a finding of “significant impact.”²⁴ On rehearing, the Quinlans argue that the Commission oversimplifies their argument that the project will impose significant adverse impacts on the property, by reducing the substance of their objection to being solely about the size of the project.

52. The Quinlans state that although they made note of the project’s considerable size in their comments (costing \$64 million), the substance of their objection involved specific and detailed concerns about potential adverse environmental impacts which were not adequately addressed by the EA. The Quinlans argue that a closer review of their concerns reveals numerous instances of unaddressed potential environmental impacts which necessitate an EIS.

Commission Response

53. An EIS for DTI’s project was not prepared because the EA concludes that the project would not constitute a major federal action significantly affecting the quality of the human environment. The Quinlans’ discussion of this issue in their protest and initial comments begins with the sentence, “The sheer size of the Northeast Storage project belies DTI’s contention [that the proposal did not constitute a major federal action significantly impacting the environment];” and ends with, “The sheer size and scope of the Northeast project reflects that it will have a significant impact upon the environment within the meaning of NEPA.” The body of the discussion mentions the cost of the project and that around 123-155 acres of forest and 20.34 acres wetlands will be affected. Their arguments lack any reference whatsoever to statute, regulation, or case precedent supporting their position that the cost or amount of acreage involved necessitates preparation of an EIS. The Certificate Order stated:

²⁴ *Id.*

The Quinlans take exception to this finding and argue that the "sheer size and scope" of the project reflects that it will have a significant impact upon the environment. The Quinlans point out that the project would: traverse eleven streams and one river, adversely impact wetlands, have temporary and permanent impacts on vegetation, cause loss of vegetation and wildlife habitat, and permanently denude 134.84 acres of forested upland. The Quinlans submit that these are significant impacts and therefore, under the National Environmental Policy Act of 1969 (NEPA),²⁵ the Commission is required to prepare an EIS prior to issuing a certificate authorizing [DTI]'s project.

54. The contention that there are numerous instances of unaddressed potential environmental impacts which necessitate an EIS is incorrect. Each of the environmental concerns identified by the Quinlans has been addressed in the EA. Furthermore, the Quinlans have not shown that the decision to forego an EIS was uninformed or that the analysis in the EA was faulty. Accordingly, we will deny rehearing on this issue.

New River

55. The Certificate Order dealt with the Quinlans' claim that the "EA fails under the *New River* standards."²⁶ The Commission responded:

The Quinlans' reliance on *New River* is misplaced. Contrary to the Quinlans' assertion, *New River* does not establish or even mention any standard for determining whether to prepare an EIS. Other than the fact that the construction projects in both this case and in *New River* include HDDs (the instant project involves HDDs under two water bodies) there is no relevant correlation between the cases. The matter of concern in *New River* was under what circumstances a DEIS must be supplemented. There is no mention of EAs, or any discussion of the Commission's decision to prepare an EIS rather than an EA. Neither do the

²⁵ National Environmental Policy Act of 1969, 42 USC § 4321, *et seq.*

²⁶ *East Tennessee Natural Gas Co.*, 102 FERC ¶ 61,225 (2003), *aff'd sub nom. National Committee for the New River, Inc. v. FERC*, 373 F.3d 1323, 1330-31 (D.C. Cir. 2004) (*New River*) (upholding the Commission's determination not to supplement a Draft EIS after it received a report that, among other things, identified factors that could result in horizontal directional drilling (HDD) failure.).

court's findings or analysis have any analogical application to the EA issue in the instant case. There is simply nothing in *New River* that supports the Quinlans' position that an EIS for Dominion's proposal should be prepared.²⁷

56. On rehearing, the Quinlans argue that the Commission misunderstands the Quinlans' citation to *New River*. The Quinlans now state that the citation to *New River* was "to show an instance where following the EIS procedures led to information presented to FERC that raised substantial environmental issues, before FERC made its decision."²⁸

Commission Response

57. As stated in the Certificate Order, "there is simply nothing in *New River* that supports the Quinlans' position that an EIS for Dominion's proposal should be prepared."²⁹ Accepting the argument on rehearing at face value, the Commission finds no reason to alter its decision. Accordingly, we will deny rehearing on this issue.

Major Pipeline Construction

58. The Quinlans repeat their position that an EIS should have been prepared in this case because the Commission's regulations require preparation of an EIS for "major pipeline construction...using right-of-way in which there is no existing natural gas pipeline."³⁰ The Commission, however, has concluded that the project does not constitute "major pipeline construction."

59. The Quinlans repeat the factors which they believe constitute major construction: the placement of 20-inch pipeline on an entirely new right of way for 19 miles, approximately 17.2 acres of Quinlan property is "involved," there will be horizontal directional drilling (HDD) for hundreds of feet under two water bodies, and "several other significant adverse environmental impacts."

²⁷ Certificate Order at P 54.

²⁸ *New River* at 1330-31.

²⁹ Certificate Order at P 54.

³⁰ 18 CFR § 380.6(a)(3) (2005).

Commission Response

60. As stated in the Certificate Order, there are not any convenient engineering or environmental criteria for drawing a bright line distinction between major and non-major pipeline projects.³¹ The determination is case specific. In this case, after considering all the factors and circumstances of this particular project as modified and mitigated, including those listed above, the Commission concludes that the proposal would not constitute major pipeline construction. The Quinlans have presented no precedent, fact, or argument that compels a different conclusion. Accordingly, we will deny rehearing on this issue.

Depleted Oil or Natural Gas Producing Fields

61. The Commission's regulations require preparation of an EIS for an NGA section 7 application "to develop an underground storage facility except where depleted oil or natural gas producing fields are used."³² On rehearing, the Quinlans renew their contention that an EIS should have been prepared for Dominion's proposal because the Quinlan Storage Pool is not "depleted" since there is still over 1 Bcf of gas in the reservoir, which is more than 10 percent of the reservoir's original total gas. The Quinlans make no new argument on this issue but state that "a search of case law revealed no decisions interpreting this subsection of 18 C.F.R. § 380.6 indicating that resolution of this issue may not be as simple as the Commission's order suggests."

Commission Response

62. The Commission reaffirms its interpretation of the regulations as set forth in the Certificate Order:

The decision to prepare an EA does not turn on what percentage of the reservoir's original contents remain. The salient feature is that the reservoir formerly contained oil or natural gas. The regulations do not require an EIS for the development of an underground natural gas storage facility where depleted oil or natural gas producing fields are used because the Commission reasonably expects

³¹ See *Regulations Implementing the National Environmental Policy Act of 1969, Notice of Proposed Rulemaking*, 52 FR 20314, May 29 1987.

³² 18 CFR § 380.6(a)(2) (2005).

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that refilling such a reservoir with natural gas would present fewer environmental concerns than would the creation of a new reservoir which had not previously contained oil or gas.³³

63. Thus, the regulations do not require an EIS in this case. Accordingly, we will deny rehearing on this issue.

The Commission orders:

The requests for rehearing and clarification in this docket are granted or denied as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

³³ Certificate Order at P 58.