

114 FERC ¶61,266
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. CP06-10-000

ORDER DETERMINING JURISDICTIONAL STATUS OF FACILITIES

(Issued March 16, 2006)

1. On October 24, 2005, Dominion Transmission, Inc. (Dominion) filed an application under section 7 of the Natural Gas Act (NGA) seeking the necessary authorizations, including any necessary abandonment authority, to refunctionalize certain of its facilities from transmission to gathering. The facilities are located in Wetzel County, West Virginia. Since Dominion is not seeking to transfer the facilities to another entity, its request for abandonment authority is premature.¹ Therefore, its request for abandonment authority will be dismissed.

2. For the reasons discussed below, the Commission finds that the subject facilities' primary function is gathering and approves the requested refunctionalization.

Background and Proposal

3. Dominion, the successor-in-interest to CNG Transmission Corporation, is a corporation organized and existing under the laws of the State of Delaware and authorized to do business in New York, Ohio, Pennsylvania, West Virginia, Virginia, Maryland, and the District of Columbia. Dominion is a natural gas company as defined in the NGA, engaged in the business of storing and transporting natural gas in interstate commerce, subject to the jurisdiction of the Commission.

¹ See *Equitrans, LP*, 109 FERC ¶ 61,209 (2004), *order on rehearing*, 111 FERC ¶ 61,091 at P 2 (2005).

4. Dominion is seeking to refunctionalize the following facilities: (1) a five-foot long, 12-inch diameter segment of Line H-1 that delivers gas from Equitrans LP's (Equitrans) gathering system into the northern segment of Line H-4; (2) the 218-foot long, 12-inch diameter northern segment of Line H-10 that delivers gas to Dominion's Hastings Compressor Units; and (3) two 500 horsepower compressors, Hastings Compressor Units 1 and 2, which discharge gas into Line TL-413 for processing at Dominion's Hastings Extraction Plant.

5. Dominion states that the subject facilities were originally classified as gathering, but were refunctionalized as transmission in 1991 as part of a comprehensive settlement that implemented service restructuring and capacity brokering on Dominion's system.² In 1996, Dominion sold approximately 322 miles of facilities, including the majority of Lines H-10 and H-1, to Eastern States Oil & Gas, Inc. (Eastern States), which obtained an order declaring the acquired facilities to be gathering facilities exempt from the Commission's jurisdiction.³ In 2002, Dominion replaced five compressors at the Hastings Compressor Station with a single 12,000 horsepower compressor, which is located in a new building downstream of the Hastings Compressor Station. The 12,000 horsepower compressor performs a transmission function and is classified accordingly.⁴ Dominion states that the remaining two Compressor Units 1 and 2 in the Hastings Compressor Station and the retained northern portion of Line H-10 and Line H-1, all upstream of the 12,000 horsepower compressor, currently perform a gathering function, and proposes that these facilities be reclassified as such.

Interventions, Protests and Answers

6. Notice of Dominion's application was published in the *Federal Register* on November 4, 2005. (70 *Fed. Reg.* 67,156). Timely, unopposed motions to intervene were filed by New Jersey Natural Gas Company, Atmos Energy Corporation, Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works, Equitable Production Company (Equitable), and Independent Oil & Gas Association of West

² *CNG Transmission Corp.*, 54 FERC ¶ 61,213 and 55 FERC ¶ 61,289 (1991).

³ *CNG Transmission Corp.*, 74 FERC ¶ 61,217 (1996).

⁴ *Dominion Transmission, Inc.*, 99 FERC ¶ 61,180 (2002).

Virginia (IOGA).⁵ Equitable and IOGA protest Dominion's application. Equitable also filed a motion for consolidation of these proceedings with Dominion's application for refunctionalization and abandonment authority for other facilities in its proceeding in Docket No. CP05-415-000 and alternatively requests an evidentiary, trial-type hearing. Dominion filed an answer to the protests and motion to consolidate, and Equitable filed an answer to Dominion's answer. Rule 213(a) (2) of the Commission's Rules of Practice and Procedure prohibits answers unless otherwise ordered by the decisional authority.⁶ We will accept the answers because they have provided information that assisted us in our decision-making process.

7. IOGA objects to Dominion's proposed reclassification because it would result in producers having to pay separate gathering charges to both Equitrans and Dominion, which, IOGA states, is inconsistent with the NGA and the Commission's unbundling policy. IOGA and Equitable object to Dominion charging both a transmission and gathering rate. IOGA states that such changes would result in over-recovery of the cost of service, and Equitable states that they would result in undue discrimination because the negotiated gathering rate charged to Dominion's affiliate, Dominion Field Services, would be lower than the recourse gathering rate charged to Equitable.

8. Dominion responds that Equitable's claim regarding discriminatory gathering rates is an inappropriate restatement of Equitable's arguments in Dominion's ongoing rate case in Docket No. RP96-383-069. Dominion further states that the rates a pipeline may charge for gathering service are not relevant in determining the jurisdictional status of facilities.

9. IOGA also claims that Dominion's primary function analysis is deficient, specifically noting that there are no wells located along the subject facilities. IOGA also objects to the proposed reclassification on grounds that Dominion stated that the facilities would be classified as transmission when it filed in 2002 for approval of its proposal to replace the other five compressors at the Hastings Compressor Station with a single, 12,000 horsepower unit at a location downstream of the Hastings Compressor Station.

⁵ Timely, unopposed motions to intervene are granted by operation of Rule 214, 18 CFR § 385.214.

⁶ 18 CFR § 385.213(a)(2) (2006).

10. Dominion responds that the historical classification of facilities does not dictate the actual function of the facilities. Dominion states that the remaining Hastings Compressor Units 1 and 2 always operated separately from the other compressor units previously in operation at the Hastings Compressor Station, but were classified as transmission because they were all housed in the same building. Dominion emphasizes that the new 12,000 horsepower compressor performs a transmission function and operates at a separate location downstream from the building housing the two remaining 500 horsepower compressors.

11. Equitable also claims that Dominion does not own the subject portions of Line H-10 and Line H-1 identified in Dominion's application, citing an April 11, 2005 e-mail from a Dominion employee discussing an error in a FERC filing regarding Line H-10. In response, Dominion explains that the facility referenced in the e-mail is the southern portion of Line H-10, which is at issue in another proceeding, as discussed below.

12. Equitable states that this proceeding should be consolidated with Dominion's pending application for abandonment of a southern portion of Line H-10 in Docket No. CP05-415-000 because many factual and legal principles are applicable to both dockets. Dominion opposes consolidation on the grounds that the two dockets are unrelated because the two segments of Line H-10 at issue in the two dockets are physically and operationally separate. Dominion states that the southern portion at issue in Docket No. CP05-415-000 feeds Dominion's Deep Valley Compressor Station, while the segment at issue in this docket feeds the Hastings Compressor Station.

Discussion

13. Because Dominion intends to continue to use the subject facilities and does not seek to transfer them to a third party, its request for abandonment authority is premature and will be dismissed as unnecessary. If Dominion does seek in the future to transfer the facilities to another entity, however, it must first seek abandonment authority from the Commission under section 7(b) of the NGA.⁷

14. Under section 1(b) of the NGA, the Commission's jurisdiction does not extend to facilities used for "the production or gathering of natural gas" or to gathering services.⁸

⁷ See *Dominion Transmission, Inc.*, 114 FERC ¶ 62,145 (2006).

⁸ The courts have narrowly construed the NGA Section 1(b) exemption to "the physical act of drawing gas from the earth and preparing it for the first stages of

The Commission has developed, over the years, a number of legal tests to determine which facilities are non-jurisdictional gathering facilities.⁹ The Commission presently relies on the modified “primary function test,” which includes consideration of several physical and geographical factors, including: (1) the length and diameter of the pipelines; (2) the extension of facilities beyond the central point-in-the-field; (3) the facilities’ geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressures of pipelines. The Commission does not consider any one factor to be determinative and recognizes that all factors do not necessarily apply to all situations.¹⁰

15. In addition to the factors enumerated above, the Commission also weighs any and all other relevant facts and circumstances of a particular case, including non-physical criteria.¹¹ The Commission also may consider the purpose, location, and operation of facilities, the general business activity of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978. The United States Court of Appeals for the Fifth Circuit stated in *Sea Robin*,¹² however, that while non-physical factors, such as the business of the owner or prior certification of facilities, may be relevant considerations for determining the demarcation point between transmission and gathering facilities, these kinds of non-physical factors are secondary to the physical factors.

16. Applying the primary function test to the subject facilities, the Commission finds that gathering is the primary function of the Hastings Compressor Units 1 and 2 and the segments of Lines H-10 and H-1 feeding into the Hastings Compressor Station. The gas that is compressed by the Hastings Compressor Units 1 and 2 is wet, raw gas that

distribution.” See, e.g., *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*, 474 U.S. 409, 418 (1986) (quoting *Northern Natural Gas Co. v. State Corporation Commission of Kansas*, 372 U.S. 84 (1963)).

⁹ See *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983) (*Farmland*).

¹⁰ See, e.g., *TOMCAT*, 59 FERC ¶ 61,340, at 62,239 (1992).

¹¹ *Id.* and *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990).

¹² 127 F.3d 365 at 371 (5th Cir. 2003).

receives no treatment or processing other than compressing it from less than 10 psig to about 130 psig -- relatively low pressures consistent with a gathering function. The H-1 and H-10 pipeline segments have diameters of 12 inches and are 5 and 218 feet long. The maximum allowable operating pressure of these lines is 60 psig. Thus, these lines are relatively small and short and operate at low pressure. Regarding the geographical configuration and location, the lines are located upstream of a field compressor station. After compression, the gas enters Dominion's transmission system and is transported to the Hastings Extraction Plant for processing.

17. IOGA notes that there are no wells currently attached to the subject pipeline segments. This is not particularly significant here, however, in view of the subject lines' short lengths -- 5 and 218 feet, respectively. In any event, the Commission has held that no one factor is determinative when applying the primary function test to facilities; rather, the Commission considers all of the relevant factors in a particular case.¹³ Here, when all of the physical characteristics of these facilities are considered, on balance, the Commission concludes that the primary function of these facilities is gathering. This finding is supported by the relatively low pressure at which these segments of Lines H-10 and H-1 operate, the lines' relatively small diameters and lengths, the lines' geographical location upstream of the Hastings Compressor Units 1 and 2, and the fact that the lines move wet, unprocessed gas.

18. The protesters state that if the subject facilities are found to be gathering facilities, producers will pay higher rates, which, the protesters argue, would be discriminatory and not in the public interest. Potential rate impacts of the proposed reclassification, however, have no bearing on the proper functionalization of the subject facilities; the Commission's jurisdictional determinations must be consistent with the actual function of the facilities.

19. Finally, we will deny Equitable's motion for consolidation or, alternatively, an evidentiary hearing on Dominion's application in this proceeding to refunctionalize certain facilities from transmission to gathering and Dominion's application for refunctionalization and abandonment authority for other facilities in Docket No. CP05-415-000. In response to Equitable's assertions, Dominion has adequately explained that the facilities at issue in this proceeding are physically unconnected to each other and

¹³ *TOMCAT*, 59 FERC ¶ 61,340 at 62,239 (1992).

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operationally separate and distinct from the facilities at issue in Docket No. CP05-415-000. We also find that Equitable's claim that Dominion does not own the subject facilities in this proceeding is without merit. As explained by Dominion, the subject of the e-mail attached to Equitable's protest is the southern portion of Line H-10, which is at issue in Docket No. CP05-415-000, but is not at issue in this proceeding. We further note that the fact that the facilities at issue here were classified as transmission by Dominion is not a bar to a pipeline's seeking to refunctionalize them as gathering; the historical classification of facilities is not always consistent with their actual or current function.

Conclusion

20. For all of the reasons discussed herein, the Commission approves Dominion's proposal to refunctionalize from transmission to gathering the facilities described herein.

The Commission orders:

- (A) Dominion's request for abandonment authority is dismissed.
- (B) Dominion's proposal to refunctionalize the facilities described herein from transmission to gathering is approved.
- (C) IOGA's and Equitable's protests are denied for the reasons discussed herein.
- (D) Equitable's motion to consolidate is denied.
- (E) The answers filed in this proceeding are accepted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.