169 FERC ¶ 61,229
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Dominion Energy Transmission, Inc. Docket No. CP19-26-000

ORDER ISSUING CERTIFICATE

(Issued December 19, 2019)

1. On December 18, 2018, Dominion Energy Transmission, Inc. (DETI) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)[1] and Part 157 of the Commission's regulations[2] for authorization to construct and operate certain facilities in Beaver and Lawrence Counties, Pennsylvania, and Carroll County, Ohio (West Loop Project).[3] The West Loop Project is designed to provide up to 150,000 dekatherms per day (Dth/day) of firm transportation service for one customer.

2. For the reasons discussed below, we will grant the requested authorizations, subject to the conditions described herein.

I. Background and Proposal

3. DETI, a Delaware corporation,[4] is a natural gas company as defined by NGA section 2(6).[5] It stores and transports natural gas in interstate commerce for customers located primarily in the Mid-Atlantic and the Northeast. DETI maintains approximately

[1] 15 U.S.C. § 717f(c) (2018).

[2] 18 C.F.R. pt. 157 (2019).

[3] On December 31, 2018, DETI refiled its application to include a public version.

[4] DETI is a wholly-owned subsidiary of Dominion Energy Gas Holdings, LLC, which is a wholly-owned subsidiary of Dominion Energy, Inc.

[5] 15 U.S.C. § 717a(6).

7,700 miles of pipeline in Maryland, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

4. The West Loop Project would enable DETI to provide 150,000 Dth/d of firm transportation service from a primary receipt point at an interconnection with Texas Eastern Transmission, LP in Greene County, Pennsylvania, to a primary delivery point at a virtual point on DETI's system in Ohio, known as Dominion South Point,[6] to provide fuel for a new approximately 1,100 megawatt natural gas-fired electric combined cycle power generation facility to be located in Wellsville, Columbiana County, Ohio. To provide this service, DETI proposes to construct and operate approximately 5.1 miles of 36-inch-diameter pipeline loop (TL-657 Pipeline) southwest of DETI's Koppel Junction site and parallel to its TL-400 pipeline, and various ancillary facilities including pig launchers/receivers and new control valves. The project will also involve the replacement of an existing ultrasonic meter, changes to the existing regulation runs at the Beaver Compressor Station to increase flow capacity, and re-wheeling two existing centrifugal compressor units at the Carroll Compressor Station. No additional compression or horsepower will be installed at either existing compressor station. DETI estimates the cost of the West Loop Project to be approximately $94 million.[7]

5. DETI states that the proposed project is in response to a request from the owner of a new electric generation facility to provide the electric generator with enhanced supply diversity. DETI held a binding open season from October 5 through October 11, 2016, and as a result, executed a binding precedent agreement with the project customer for the entire 150,000 Dth/d of transportation service created by the West Loop Project.

6. DETI proposes to establish an incremental firm recourse reservation charge under Rate Schedule FT and to apply its generally applicable system fuel retention rates for service on the West Loop Project. DETI states that the project customer has elected to pay a negotiated rate.

[6] DETI states that the customer plans to construct a new measurement and regulation facility on DETI's TL-400 pipeline in Columbiana County, Ohio, and DETI has agreed to change the primary delivery point for service to this point, subject to the terms and conditions of DETI's FERC Gas tariff.

[7] West Loop Project Application, Exhibit K.

II. Notice, Interventions, and Comments

7. Notice of DETI's application was published in the *Federal Register* on January 10, 2019, with comments, interventions, and protests due on January 22, 2019.[8] Atlanta Gas Light Company and Virginia Natural Gas, Inc.; Atmos Energy Corporation; National Grid Gas Delivery Companies; New Jersey Natural Gas Company; New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation; NJR Energy Services Company; Philadelphia Gas Works; Piedmont Natural Gas Company, Inc.; and PSEG Energy Resources & Trade LLC filed timely, unopposed motions to intervene.[9] NiSource Distribution Companies[10] filed an untimely motion to intervene, which was denied by Secretary's Notice issued on April 17, 2019.

8. Marcellus Shale Coalition; Pennsylvania Senator Elder Vogel, Jr.; Pennsylvania Chamber of Business and Industry; Pennsylvania State Representative Chris Sainato; and Pipeliners Local Union 798 filed comments expressing support for the West Loop Project.

III. Discussion

9. Because the proposed facilities will be used to transport natural gas in interstate commerce, subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.[11]

A. Application of the Certificate Policy Statement

10. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.[12] The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed

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[8] 84 Fed. Reg. 101 (2019).

[9] Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2019).

[10] NiSource Distribution Companies is comprised of Columbia Gas of Pennsylvania, Inc. and Columbia Gas of Virginia, Inc.

[11] 15 U.S.C. §§ 717f(c) and (e).

[12] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227; *corrected,* 89 FERC ¶ 61,040 (1999), *order on clarification*, 90 FERC ¶ 61,128; *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

11. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the proposed route or location of the new pipeline facilities. 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.

12. With respect to the subsidization threshold requirement, the Commission has determined, in general, that when a pipeline proposes an incremental rate for service utilizing proposed expansion capacity that is higher than the generally applicable system rate, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing customers.[13] As noted above, DETI has proposed an incremental recourse reservation rate to recover the costs of the project and that rate is higher than its existing applicable system recourse reservation rate. Accordingly, we find that DETI's proposal satisfies the requirement that it financially support the project without relying on subsidization from its existing customers.

13. We find that the proposed project will not adversely affect service to DETI's existing customers because the proposed expansion facilities are designed to provide incremental service to meet the needs of the project shipper, without degrading service to DETI's existing customers. We also find that there will be no adverse impact on other pipelines in the region or their captive customers, and no other pipelines or their captive customers have filed adverse comments regarding DETI's proposal.

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[13] *See, e.g.*, *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106, at P 15 (2016); *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155, at 61,552 (2002).

14. We are further satisfied that DETI has taken appropriate steps to minimize adverse impacts to landowners. DETI's project will disturb approximately 103.6 acres of land during construction, and approximately 31.7 acres of land during operation.[14] DETI proposes to co-locate all of the new pipeline parallel to its existing TL-400 pipeline. Further, aside from the use of temporary workspace during construction, 95 percent of the project facilities will be constructed and installed within DETI's existing right of way.

15. The West Loop Project will enable DETI to provide up to 150,000 Dth/day of firm transportation service for the project shipper. Based on the benefits the project will provide and the minimal adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of the project, subject to the environmental and other conditions in this order.

B. Rates

1. Initial Rates

16. DETI proposes to establish an initial incremental firm recourse reservation charge under Rate Schedule FT for firm service using the incremental capacity created by the project facilities. Specifically, DETI proposes an initial incremental monthly reservation charge of $7.9732 per Dth based on a Year 1 cost of service of $14,351,687 and annual billing determinants of 1,800,000 Dth.[15] The proposed cost of service reflects DETI's system depreciation rate of 2.5 percent. DETI also proposes to use a pre-tax rate of return of 11.8 percent, which is based on DETI's last pre-tax return as adjusted to reflect a 21 percent federal income tax rate. Both the system depreciation rate and the pre-tax rate of return (prior to adjustment) were approved in DETI's rate case settlement proceeding in Docket No. RP97-406.[16] DETI also proposes to charge all other applicable rates, charges, and surcharges under DETI's Rate Schedule FT for service on the project such as the Transportation Cost Rate Adjustment and Electric Power Cost Adjustment charges. In addition, DETI proposes to use its existing system usage charge of $0.0083 per Dth under Rate Schedule FT for firm transportation service.

[14] West Loop Application, Resource Report 1, Table 1.2-1.

[15] Exhibit P, Page 2 of 4. The annual billing determinants are equal to the maximum daily capacity of the project, times 12.

[16] *CNG Transmission Corp.,* 85 FERC ¶ 61,261 (1998) (now known as DETI).

17. The Commission has reviewed DETI's proposed cost of service and initial incremental rates and finds them reasonable. Under the Commission's Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.[17] Because DETI proposes a $7.9732 per Dth initial incremental monthly reservation charge, which is higher than the existing system-wide firm transportation charge of $3.8820 per Dth under DETI's currently-effective Rate Schedule FT, the Commission will approve the incremental charge for the project. We will also approve DETI's proposal to use its existing system usage charge under Rate Schedule FT.

2. Fuel

18. DETI proposes to apply its generally applicable system fuel retention rate for firm service on the project. In a March 25, 2019 response to a staff data request, DETI submitted a fuel study that shows that the annual aggregate fuel rate of the project is 0.87 percent, which is less than DETI's system-wide fuel retention percentage. Because DETI's current fuel rate and electric power costs will not be adversely impacted, the Commission approves DETI's proposal to charge its generally applicable system fuel rates for transportation on the capacity associated with the project facilities.

3. Reporting Incremental Costs

19. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are charged. The requirements ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers.[18] Therefore, DETI must keep separate books and accounting of costs and revenues attributable to the project as required by section 154.309. The books should be maintained with applicable cross-references as required by section 154.309. This information must be 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 case, and the information must be provided consistent with Order No. 710.[19]

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[17] Certificate Policy Statement, 88 FERC at 61,746.

[18] 18 C.F.R. § 154.309 (2019).

[19] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262 at P 23 (2008).

4. Negotiated Rate Agreements

20. DETI proposes to provide service to the project shipper under a negotiated rate agreement. DETI must file either its negotiated rate agreement or tariff records setting forth the essential terms of the agreement associated with the project, in accordance with the Alternative Rate Policy Statement[20] and the Commission's negotiated rate policies.[21] DETI must file the negotiated rate agreements or tariff records at least 30 days, but not more than 60 days, before the proposed effective date for such rates.[22]

C. Environmental Analysis

21. On January 9, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed West Loop Project and Request for Comments on Environmental Issues* (NOI). 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. We received no responses to the NOI.

22. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),[23] our staff prepared an Environmental Assessment (EA) for DETI's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The EA was placed into the public record on May 28, 2019. DETI suggests

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[20] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

[21] *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

[22] Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. 18 C.F.R. § 154.112(b) (2019). *See also, e.g.*, *Texas Eastern Transmission, LP,* 149 FERC ¶ 61,198, at P 33 (2014).

[23] 42 U.S.C. §§ 4321 *et seq.* (2018). *See also* the Commission's NEPA-implementing regulations at Title 18 of the Code of Federal Regulations, Part 380.

a number of minor clarifications in response to the EA, including identifying some small errors. These comments are acknowledged, and we find that they do not change the conclusions reached in the EA.

23. In a letter dated August 7, 2019, the U.S. Fish and Wildlife Service (FWS) concurs that the proposed project *may affect, but is not likely to adversely affect* the Indiana bat and the northern long-eared bat. This is based, at least in part, on DETI's commitment to clear trees between November 15 and March 31, rather than between September 1 and March 31, as stated in the EA.[24] No other federally listed or proposed threatened or endangered flora or fauna under FWS jurisdiction are known to occur within the proposed project's impact area. No further consultation pursuant to the Endangered Species Act is required for the project; thus, the EA's recommended Environmental Condition 12 is not included in this order.

24. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with DETI's application and supplements, including any commitments made therein, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

25. 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.[25]

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[24] EA at 20.

[25] *See* 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); *see also Schneidewind v. ANR Pipeline*

26. At a hearing held on December 19, 2019, 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, and all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to DETI authorizing it to construct and operate the proposed West Loop Project, as described and conditioned herein, and as more fully described in the application, and subsequent filings by the applicant, including any commitments made therein.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on:

(1) DETI's 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) DETI's compliance with all applicable Commission regulations under the NGA 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) DETI's compliance with the environmental conditions listed in the appendix to this order; and

(4) DETI filing a written statement affirming that it has executed a firm service agreement for volumes and service terms equivalent to those in its precedent agreement, prior to commencing construction.

(C) DETI's proposed incremental recourse reservation charge, and proposal to use the system recourse usage charge, and its generally applicable system-wide fuel retention rate are approved.

(D) DETI shall keep separate books and accounting of costs attributable to the proposed incremental services, as more fully described above.

Co., 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers,* 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

(E) DETI shall file actual tariff records setting forth the initial rate for service no earlier than 60 days and no later than 30 days, prior to the date the facilities go into service.

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

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.
Commissioner McNamee is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A – Environmental Conditions

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Dominion Energy Transmission, Inc. (DETI) 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 environmental assessment (EA), unless modified by the Order. DETI 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, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:

    a. the modification of conditions of the Order;

    b. stop-work authority; and

    c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, DETI 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, DETI 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.

DETI's exercise of eminent domain authority granted under the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. DETI's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its 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. DETI shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

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

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

   a. implementation of cultural resources mitigation measures;

   b. implementation of endangered, threatened, or special concern species mitigation measures;

   c. recommendations by state regulatory authorities; and

   d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of the Certificate and before construction begins**, DETI shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. DETI must file revisions to their plan as schedules change. The plan shall identify:

    a. how DETI 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 DETI 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 DETI 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 DETI will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);

    f. DETI personnel (if known) and specific portion of DETI's organization having responsibility for compliance;

    g. the procedures (including use of contract penalties) DETI will follow if noncompliance occurs; and

    h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:

        i. the completion of all required surveys and reports;
        ii. the environmental compliance training of onsite personnel;
        iii. the start of construction; and
        iv. the start and completion of restoration.

7. DETI shall employ at least one EI per construction spread. The EI shall be:

    a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;

b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (*see* condition 6 above) and any other authorizing document;

c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;

d. a full-time position, separate from all other activity inspectors;

e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and

f. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, DETI shall file updated status reports with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

a. an update on DETI'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 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;

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 DETI from other federal, state, or local permitting agencies concerning instances of noncompliance, and DETI's response.

9. DETI must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, DETI must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

10. DETI must receive written authorization from the Director of OEP **before placing the project 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.

11. **Within 30 days of placing the authorized facilities in service**, DETI 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 conditions of the Order DETI 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.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Dominion Energy Transmission, Inc. Docket No. CP19-26-000

(Issued December 19, 2019)

GLICK, Commissioner, *dissenting in part*:

1. I dissent in part from today's order because it violates both the Natural Gas Act[1] (NGA) and the National Environmental Policy Act[2] (NEPA). The Commission once again refuses to consider the consequences its actions have for climate change. Although neither the NGA nor NEPA permit the Commission to assume away the climate change implications of constructing and operating this project, that is precisely what the Commission is doing here.

2. In today's order authorizing Dominion Energy Transmission Inc.'s (DETI) proposed West Loop Project (Project), the Commission continues to treat greenhouse gas (GHG) emissions and climate change differently than all other environmental impacts. The Commission again refuses to consider whether the Project's contribution to climate change from GHG emissions would be significant, even though it quantifies the direct GHG emissions from the Project's construction, operation[3] as well as the indirect GHG emissions from the downstream consumption of natural gas.[4] The refusal to assess the significance of the Project's contribution to the harm caused by climate change is what allows the Commission to state that approval of the Project "would not constitute a major federal action significantly affecting the quality of the human environment"[5] and, as a result, conclude that the Project is in the public interest and required by the public convenience and necessity.[6] Claiming that a project has no significant environmental

[1] 15 U.S.C. § 717f (2018).

[2] National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.*

[3] West Loop Project Environmental Assessment at Tables 10–11 (EA).

[4] *Id.* at 48.

[5] *Dominion Energy Transmission, Inc.*, 169 FERC ¶ 61,229, at P 24 (2019) (Certificate Order); EA at 52.

[6] Certificate Order, 169 FERC ¶ 61,229 at P 15.

impacts while at the same time refusing to assess the significance of the project's impact on the most important environmental issue of our time is not reasoned decisionmaking.

I. The Commission's Public Interest Determination Is Not the Product of Reasoned Decisionmaking

3. We know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, released in large quantities through the production, transportation, and the consumption of fossil fuels, including natural gas. The Commission recognizes this relationship, finding, as it must, that climate change is "driven by accumulation of GHG in the atmosphere through combustion of fossil fuels"[7] and that emissions from the Project's construction and operation, in combination with emissions from other sources, would "contribute incrementally to future climate change impacts."[8] In light of this undisputed relationship between anthropogenic GHG emissions and climate change, the Commission must carefully consider the Project's contribution to climate change, both in order to fulfill NEPA's requirements and to determine whether the Project is in the public interest and required by the public convenience and necessity.[9]

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[7] EA at 47. It is worth noting that the Commission used to acknowledge the combustion of fossil fuels as the primary cause behind the accumulation of GHGs in the atmosphere, see, for example, Environmental Assessment, Docket No. CP18-332-000, at 11 (2018) (South Mainline Expansion Project—the Commission's most recent NGA section 7 order), but, for reasons that are not explained, appears to have backed off that conclusion in the EA.

[8] EA at 48.

[9] Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline's benefits outweigh its harms. 15 U.S.C. § 717f. Furthermore, NEPA requires the Commission to take a "hard look" at the environmental impacts of its decisions. *See* 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). This means that the Commission must consider and discuss the significance of the harm from a pipeline's contribution to climate change by actually evaluating the magnitude of the pipeline's environmental impact. Doing so enables the Commission to compare the environment before and after the proposed federal action and factor the changes into its decisionmaking process. *See Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*) ("The [FEIS] needed to include a discussion of the 'significance' of this indirect effect."); 40 C.F.R. § 1502.16 (a)–(b) (An agency's environmental review must "include the environmental impacts of the alternatives including the proposed action," as well as a discussion of direct and

4. Today's order falls short of that standard. As part of its public interest determination, the Commission must examine the Project's impact on the environment and public safety, which includes the facility's impact on climate change.[10] That is now clearly established D.C. Circuit precedent.[11] The Commission, however, insists that it need not consider whether the Project's contribution to climate change is significant because there is "universally accepted methodology to attribute discrete, quantifiable, physical effects on the environment to the Project's incremental contribution to GHGs or to the end-use combustion of the natural gas supplied by the Project."[12] However, the most troubling part of the Commission's rationale is what comes next. Based on this alleged inability to assess significance, the Commission concludes that the Project will not significantly affect the quality of the human environment.[13] Think about that. The Commission is saying out of one side of its mouth that it need not assess the significance of the Project's impact on climate change while, out of the other side of its mouth, assuring us that all environmental impacts are insignificant. That is ludicrous, unreasoned, and an abdication of our responsibility to give climate change the "hard look" that the law demands.[14]

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indirect effects *and their significance*. (emphasis added)).

[10] *See Sabal Trail*, 867 F.3d at 1373 (explaining that the Commission must consider a pipeline's direct and indirect GHG emissions because the Commission may "deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment"); *see also Atl. Ref. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959) (holding that the NGA requires the Commission to consider "all factors bearing on the public interest").

[11] *See Allegheny Def. Project v. FERC*, 932 F.3d 940, 945-46 (D.C. Cir. 2019), *reh'g en banc granted, judgment vacated*, 2019 WL 6605464 (D.C. Cir. Dec. 5, 2019); *Birckhead v. FERC*, 925 F.3d 510, 518-19 (D.C. Cir. 2019); *Sabal Trail*, 867 F.3d at 1371-72.

[12] *See* EA at 49 (The Commission states that "[a]bsent such a method for relating GHG emissions to specific resource impacts, we are not able to assess potential GHG-related impacts attributable to this Project." As a result, the Commission states "we are unable to determine the significance of the Project's contribution to climate change.").

[13] *See* Certificate Order, 169 FERC ¶ 61,229 at P 24 (stating that "approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment"); EA at 52.

[14] *E.g.*, *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) ("[A]gencies cannot overlook a single environmental consequence if it

5. It also means that the volume of emissions caused by the Project does not play a meaningful role in the Commission's public interest determination, no matter how many times the Commission assures us otherwise. Using the approach in today's order, the Commission will always be able to conclude that a project will not have any significant environmental impact irrespective of the project's actual GHG emissions or those emissions' impact on climate change. So long as that is the case, a project's impact on climate change cannot, as a logical matter, play a meaningful role in the Commission's public interest determination. A public interest determination that systematically excludes the most important environmental consideration of our time is contrary to law, arbitrary and capricious, and not the product of reasoned decisionmaking.

II. The Commission's NEPA Analysis of the Project's Contribution to Climate Change Is Deficient

6. The Commission's NEPA analysis is similarly flawed. In order to evaluate the environmental consequences of the Project under NEPA, the Commission must consider the harm caused by the Project's GHG emissions and "evaluate the 'incremental impact' that these emissions will have on climate change or the environment more generally."[15] Today's order quantifies the GHG emissions caused by the Project's operation and construction as well as the GHG emissions caused by the downstream consumption of natural gas the South Field Energy power plant.[16] Although quantifying

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is even "arguably significant."); *see Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015) ("Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational." (internal quotation marks omitted)); *see also Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (explaining that agency action is "arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency").

[15] *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008); *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 51 (D.D.C. 2019) (explaining that the agency was required to "provide the information necessary for the public and agency decisionmakers to understand the degree to which [its] decisions at issue would contribute" to the "impacts of climate change in the state, the region, and across the country").

[16] EA at 48 ("The Project can deliver up to 150,000 dekatherms per day of new volumes of natural gas, which if combusted at the facility above, would produce 2.9 million metric tons of CO2 per year.").

the Project's GHG emissions is a necessary step toward meeting the Commission's NEPA obligations, simply reporting the volume of emissions is insufficient.[17]

7. In *Sabal Trail*, the court explained that the Commission was required "to include a discussion of the 'significance' of" the indirect effects of the Project, including its GHG emissions.[18] That makes sense. Identifying and evaluating the consequences that the Project's GHG emissions may have for climate change is essential if NEPA is to play the disclosure and good government roles for which it was designed.[19] But neither today's order nor the accompanying EA provide even attempt to assess the significance of the Project's GHG emissions or how they contribute to climate change. It is hard to see how hiding the ball by refusing to assess the significance of the Project's climate impacts is consistent with either of those purposes.

8. In addition, under NEPA, a finding of significance informs the Commission's inquiry into potential ways of mitigating environmental impacts.[20] An environmental review document must "contain a detailed discussion of possible mitigation measures" to address adverse environmental impacts.[21] "Without such a discussion, neither the agency

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[17] See Ctr. for *Biological Diversity,* 538 F.3d at 1216 ("While the [environmental document] quantifies the expected amount of CO2 emitted . . . , it does not evaluate the 'incremental impact' that these emissions will have on climate change or on the environment more generally . . . ."); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 995 (9th Cir. 2004) ("A calculation of the total number of acres to be harvested in the watershed is a necessary component . . . , but it is not a sufficient description of the actual environmental effects that can be expected from logging those acres.").

[18] *Sabal Trail*, 867 F.3d at 1374.

[19] *See, e.g.*, *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (explaining that one of NEPA's purposes is to ensure that "relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision"); *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C. Cir. 2008) ("The idea behind NEPA is that if the agency's eyes are open to the environmental consequences of its actions and if it considers options that entail less environmental damage, it may be persuaded to alter what it proposed.").

[20] 40 C.F.R. § 1502.16 (2018) (NEPA requires an implementing agency to form a "scientific and analytic basis for the comparisons" of the environmental consequences of its action in its environmental review, which "shall include discussions of . . . [d]irect effects and their significance.").

[21] *Robertson*, 490 U.S. at 351.

nor other interested groups and individuals can properly evaluate the severity of the adverse effects" of a project, making an examination of possible mitigation measures necessary to ensure that the agency has taken a "hard look" at the environmental consequences of the action at issue.[22]

9. Instead, the Commission insists that it need not assess the significance of the Project's GHG emissions because it lacks a "universally accepted methodology" to "attribute discrete, quantifiable, physical effects on the environment to the Project's incremental contribution to GHGs or to the end-use combustion of the natural gas supplied by the Project."[23] But that does not excuse the Commission's failure to evaluate these emissions. As an initial matter, the lack of a single methodology does not prevent the Commission from adopting *a* methodology, even if that methodology is not universally accepted. The Commission has several tools to assess the harm from the Project's contribution to climate change, including, for example, the Social Cost of Carbon. By measuring the long-term damage done by a ton of carbon dioxide, the Social Cost of Carbon links GHG emissions to actual environmental effects from climate change, thereby facilitating the necessary "hard look" at the Project's environmental impacts that NEPA requires. Especially when it comes to a global problem like climate change, a measure for translating a single project's climate change impacts into concrete and comprehensible terms plays a useful role in the NEPA process by putting the harms from climate change in terms that are readily accessible for both agency decisionmakers and the public at large. The Commission, however, continues to ignore the tools at its disposal, relying on deeply flawed reasoning that I have previously critiqued at length.[24]

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[22] *Id.* at 352. The discussion of mitigation is especially critical under today's circumstances where the Commission prepared an EA instead of an Environmental Impact Statement to satisfy its NEPA obligations. The EA relies on the fact that certain environmental impacts will be mitigated in order to ultimately find that the Project "would not . . . significantly affect[] the quality of the human environment." EA at 52. Absent these mitigation requirements, the Project's environmental impacts would require the Commission to develop an Environmental Impact Statement—a much more extensive undertaking. *See Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983) ("If *any* 'significant' environmental impacts might result from the proposed agency action then an [Environmental Impact Statement] must be prepared *before* the action is taken.").

[23] EA at 49.

[24] *See, e.g.*, *Transcontinental Gas Pipe Line Co., LLC*, 167 FERC ¶ 61,110 (2019) (Glick, Comm'r, dissenting in part at P 6 & n.11) (noting that the Social Cost of Carbon "gives both the Commission and the public a means to translate a discrete project's

10. Regardless of tools or methodologies available, the Commission also can use its expertise to consider all factors and determine, quantitatively or qualitatively, whether the Project's GHG emissions have a significant impact on climate change. That is precisely what the Commission does in other aspects of its environmental review. Consider, for example, the Commission's findings that the Project will not have a significant effect on issues as diverse as "soils,"[25] "groundwater resources,"[26] and "wetland resources"[27] Notwithstanding the lack of any "universally accepted methodology" to assess these impacts, the Commission managed to use its judgment to conduct a qualitative review, and assess the significance of the Project's effect on those considerations. The Commission's refusal to, at the very least, exercise similar qualitative judgment to assess the significance of GHG emissions here is arbitrary and capricious.[28]

11. That refusal is even more mystifying because NEPA "does not dictate particular decisional outcomes."[29] NEPA "'merely prohibits uninformed—rather than unwise—agency action.'"[30] In other words, taking the matter seriously—and rigorously examining a project's impacts on climate change—does not necessarily prevent any Commissioner from ultimately concluding that a project meets the public interest standard.

12. Even if the Commission were to determine that a project's GHG emissions are significant, that would not be the end of the inquiry nor would it mean that the project is not in the public interest or required by the public convenience and necessity. Instead,

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climate impacts into concrete and comprehensible terms"); *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099 (2018) (Glick, Comm'r, dissenting).

[25] EA at 10.

[26] *Id.* at 12.

[27] *Id.* at 15.

[28] After all, the standard the Commission typically uses for evaluating significance is whether the adverse impact would result in a substantial adverse change in the physical environment. *See e.g.* Adelphia Gateway Project Environmental Assessment, Docket No. CP18-46-000 at 33 (Jan 1, 2019). Surely that standard is open to some subjective interpretation by each Commissioner. What today's order does not explain is why it is appropriate to exercise subjective interpretation and judgment when it comes to impacts such as groundwater resources and soils, but not climate change.

[29] *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31, 37 (D.C. Cir. 2015).

[30] *Id.* (quoting *Robertson*, 490 U.S. at 351).

the Commission could require mitigation—as the Commission often does with regard to other environmental impacts. The Supreme Court has held that, when a project may cause potentially significant environmental impacts, the relevant environmental impact statement must "contain a detailed discussion of possible mitigation measures" to address adverse environmental impacts.[31] The Court explained that, "[w]ithout such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects" of a project, making an examination of possible mitigation measures necessary to ensure that the agency has taken a "hard look" at the environmental consequences of the action at issue.[32] The Commission not only has the obligation to discuss mitigation of adverse environmental impacts under NEPA, but also the authority to condition certificates under section 7 of the NGA,[33] which could encompass measures to mitigate a project's GHG emissions.

13. Furthermore, a rigorous examination and determination of significance regarding climate change impacts would bolster any finding of public interest by providing the Commission a more complete set of information necessary to weigh benefits against adverse effects. By refusing to assess significance, however, the Commission short circuits any discussion of mitigation measures for the Project's GHG emissions, eliminating a potential pathway for us to achieve consensus on whether the Project is consistent with the public interest.

* * *

14. Today's order is not the product of reasoned decisionmaking. Its analysis of the Project's contribution to climate change is shoddy and its conclusion that the Project will not have any significant environmental impacts is illogical. After all, the Commission itself acknowledges that the Project will contribute to climate change, but refuses to consider whether that contribution might be significant before proclaiming that the Project will have no significant environmental impacts. So long as that is the case, the record simply cannot support the Commission's conclusion that there will be no significant environmental impacts. Simply put, the Commission's analysis of the

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[31] *Robertson*, 490 U.S. at 351.

[32] *Id.* at 352; *see also* 40 C.F.R. §§ 1508.20 (defining mitigation), 1508.25 (including in the scope of an environmental impact statement mitigation measures).

[33] 15 U.S.C. § 717f(e); Certificate Order, 169 FERC ¶ 61,133 at P 57 ("[T]he Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources . . . , including authority to impose any additional measures deemed necessary . . . .").

Project's consequences for climate change does not represent the "hard look" that the law requires.

For these reasons, I respectfully dissent in part.

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Richard Glick
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Dominion Energy Transmission, Inc. Docket No. CP19-26-000

(Issued December 19, 2019)

McNAMEE, Commissioner, *concurring*:

1. Today's order issues Dominion Energy Transmission, Inc. (Dominion) a certificate to construct and operate its proposed West Loop Project (Project) to provide 150,000 dekatherms per day of firm transportation service to Advanced Power's South Field Energy Power Plant.[1]

2. I fully support the order as it complies with the Commission's statutory responsibilities under the Natural Gas Act (NGA) and the National Environmental Policy Act (NEPA). The order determines that the Project is in the public convenience and necessity, finding that the project will not adversely affect Dominion's existing customers or competitor pipelines and their captive customers, and that Dominion had taken appropriate steps to minimize adverse impacts on landowners.[2] The order also finds that the project will not significantly affect the quality of the human environment.[3] Further, the Commission adopted the Environmental Assessment (EA) for the Project in which quantified and considered greenhouse gases (GHG) directly emitted by the construction and operation of the Project and by the South Field Energy Power Plant,[4] consistent with the holding in *Sierra Club v. FERC* (*Sabal Trail*).[5]

3. I write separately to further explain that although the Commission quantified an upper bound estimate of the amount of GHG emissions that could be combusted at the South Field Energy Power Plant, the NGA does not permit the Commission to act on that information (i.e., deny the application or require a pipeline to mitigate such effects) in determining whether the Project is in public convenience and necessity. In *Adelphia*

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[1] 169 FERC ¶ 61,229 (2019).

[2] *Id.* P 15.

[3] *Id.* P 24.

[4] EA at 48-49.

[5] 867 F.3d 1357 (D.C. Cir. 2017).

Gateway, LLC (*Adelphia*),[6] I am issuing a concurrence explaining that the text of the NGA does not support denying an application based on the environmental effects related to the upstream production and downstream use of natural gas. Rather, the text of NGA sections 1 and 7 make evident that Congress enacted the NGA to provide public *access* to natural gas,[7] and does not provide the Commission with the authority to regulate the environmental impacts of upstream production or downstream use of natural gas, since such authority was provided to the U.S. Environmental Protection Agency (EPA) and the States.[8] Further, acting on GHG emissions related to the upstream production and downstream use of natural gas would be contrary to subsequent acts by Congress—including the National Gas Policy Act of 1978,[9] repeal of the 1978 Fuel Use Act of 1978,[10] the Natural Gas Wellhead Decontrol Act of 1989,[11] and Energy Policy Act of 1992.[12] In addition, the meaning of the public convenience and necessity does not support denying an application based on environmental effects that are unrelated to the construction and operation of the pipeline itself.[13]

4. In my concurrence, I also explain that the Commission does not have the authority to unilaterally establish measures to mitigate GHGs emitted by the Project or the upstream production or downstream use of natural gas.[14] Congress delegated the Administrator of the EPA the exclusive authority to establish standards of performance for air pollutants, including GHGs, and the Commission can only require mitigation that is reasonable and required by the public convenience and necessity.[15] My concurrence also explains why the Social Cost of Carbon is not a useful tool to determine whether the

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[6] *Adelphia*, 169 FERC ¶ 61,220 (2019) (McNamee, Comm'r, concurring).

[7] *Id.* PP 15-24.

[8] *Id.* PP 25-31.

[9] *Id.* PP 33-35.

[10] *Id.* P 36.

[11] *Id.* PP 37-38.

[12] *Id.* P 39.

[13] *Id.* PP 41-47.

[14] *Id.* PP 52-61.

[15] *Id.* PP 53-57, 61 n.126

GHG emissions are "significant" and the Commission has no authority or reasoned basis to make such determination.[16] I hereby incorporate my analysis in *Adelphia* by reference and, due to logistical reasons and administrative efficiency, am not reprinting the full text of my analysis here.

For the reasons discussed above and incorporated by reference herein, I respectfully concur.

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Bernard L. McNamee
Commissioner

[16] *Id.* PP 62-73.