

143 FERC ¶ 61,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket No. CP12-72-001

ORDER DENYING REHEARING

(Issued May 16, 2013)

1. On December 20, 2012, the Commission issued an order¹ granting Dominion Transmission, Inc. (DTI) a certificate of public convenience and necessity under section 7 of the Natural Gas Act (NGA)² authorizing it to construct and operate its Allegheny Storage Project, consisting of compression, pipeline, and storage facilities to be located in Frederick County, Maryland; Monroe County, Ohio; Lewis County, West Virginia; and Tioga County, Pennsylvania (Allegheny Storage Project). A number of timely requests for rehearing were filed. As discussed below, this order denies the requests for rehearing of the December 20 Order.

I. Background

2. On February 17, 2012, DTI filed an application requesting authorization to construct and operate compression, pipeline and storage facilities in Maryland, Ohio, West Virginia, and Pennsylvania. DTI stated that the proposed facilities will enable it to provide an additional 115,000 dekatherms (Dth) per day of firm transportation services on its PL-1 Line, and increase its system-wide maximum storage withdrawal by 125,000 Dth per day. As relevant here, the proposed facilities included a new 16,000 horsepower (hp) compressor station, consisting of one natural gas fired turbine, in Frederick County, Maryland, to be located in the Town of Myersville (Myersville Compressor Station), as well as two 0.6-mile, 30-inch-diameter discharge and suction

¹ *Dominion Transmission, Inc.*, 141 FERC ¶ 61,240 (December 20 Order).

² 15 U.S.C. § 717f(c) (2006).

pipelines to interconnect the Myersville Compressor Station with DTI's pipeline system. The Myersville Compressor Station will be used as a peaking facility, operated primarily during periods of high demand.

3. As a result of an open season held in June and July of 2007, DTI's February 2012 application noted that DTI executed precedent agreements with three customers³ for all of the capacity associated with the Allegheny Storage Project. DTI explained that it suspended that project in 2008 and notified the Commission at that time that it planned to revise the project in a manner that would enable DTI to meet the needs of the prospective Storage Factory Project customers. The Allegheny Storage Project is the revised Storage Factory Project. DTI noted that the precedent agreements from its 2007 open season were amended as necessary to reflect the Allegheny Storage Project.

4. On June 15, 2012, Commission staff issued an Environmental Assessment (EA) for the proposed Allegheny Storage Project, with a 30-day comment period (which was subsequently extended for two weeks, to July 31, 2012). The EA considered the written and verbal scoping comments from more than 650 individuals; the comments were almost exclusively associated with the proposed Myersville Compressor Station.

5. During the pre-filing process, eight potential compressor station sites were identified and discussed as alternatives to the proposed Myersville site. Of these eight alternatives, the EA analyzed in detail the Middletown, Maryland and Jefferson, Maryland sites, both of which were previously considered in conjunction with DTI's contemplated Storage Factory Project. The EA also considered other alternatives, including the use of electric compressor units in lieu of gas turbines at the Myersville site, and construction of a 30-mile pipeline loop that would preclude the need for the compressor station. These alternatives were ultimately eliminated from comprehensive study because they were not reasonable alternatives or did not offer any clear environmental benefit over the proposed configuration of the Myersville Compressor Station.

6. The EA analyzed potential impacts to geology and soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, socioeconomics, air quality, noise, safety, and cumulative impacts. Based on the EA's analysis, staff determined that, if constructed and operated in accordance with DTI's proposal and staff's recommended mitigation

³ Washington Gas Light Company, Baltimore Gas and Electric Company, and Peoples TWC, LLC.

measures, the Allegheny Storage Project would not have significant impacts on the quality of the human environment.

7. The Myersville Compressor Station site is adjacent to Interstate 70 and currently zoned General Commercial with a Highway Employment Overlay. The site is located next to a waste water treatment plant and gas station, although the surrounding areas are mainly agricultural and rural residential in nature. In April 2012, DTI submitted a Site Plan Amendment Application to the Myersville Town Council, requesting a zoning amendment to the Town's approved Site Master Plan, for the construction of the Myersville Compressor Station.

8. In August 2012, the Myersville Town Council denied DTI's Site Amendment permit application request on the grounds that the Myersville Compressor Station was inconsistent with the Site Master Plan and applicable town codes.⁴ Relying on this denial, a number of parties filed comments asserting that DTI's application should be rejected. On October 1, 2012, Myersville Citizens for a Rural Community (MCRC) filed a motion to dismiss DTI's application, claiming that the Town Council's rejection meant that DTI could not obtain a Clean Air Act air quality permit from the Maryland Department of the Environment (MDE) through its federally-approved state implementation plan (SIP). Specifically, MCRC contended that Maryland's SIP incorporates the Code of Maryland Regulation (COMAR), including Maryland Environmental Code § 2-404, which requires an applicant seeking to construct a new emissions source to demonstrate that its proposal has been "approved by the local jurisdiction for land and zoning requirements."⁵

9. The December 20 Order denied MCRC's motion to dismiss DTI's certificate application, explaining that, while applicants may be required to comply with appropriate state and local regulations where no conflict exists, state and local regulation is

⁴ December 20 Order, 141 FERC ¶ 61,240 at P 67 and n.47.

⁵ *Id.* at P 50. As discussed in the December 20 Order at P 69, MCRC cited Md. Code Ann. Envir. § 2-404(b)(9), which requires an applicant to demonstrate its project either "has been approved by the local jurisdiction for all zoning and land use requirements" or "meets all applicable zoning and land use requirements."

preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by this Commission.⁶

10. The December 20 Order also declined MCRC's request that the Commission agree with MCRC's interpretation of Maryland's Clean Air Act implementing regulations, that is, that an air quality permit applicant such as DTI is required to demonstrate that its proposal has been approved by the local jurisdiction for land and zoning requirements.⁷ We explained that the Commission could not interpret local, state and federal laws and regulations pertaining to MDE's authorities, as such laws were outside of the Commission's jurisdiction. The December 20 Order added that if MDE rejected DTI's air quality permit application, or refused to process it, then it would be up to DTI to determine how it wished to proceed.

11. The December 20 Order also concurred with the EA's conclusion that neither the Middletown and Jefferson sites offered economical or environmental advantages over the Myersville site.⁸

12. Finally, the December 20 Order dismissed as moot MCRC's two July 2012 requests that the Commission, before acting on DTI's certificate application, allow MCRC members 30 days to review any documents that might be released under pending critical energy infrastructure information (CEII)⁹ and Freedom of Information Act (FOIA)¹⁰ requests. We noted that the last such documents had been released on October 24, 2012, and that all comments filed in response to these documents were addressed in the December 20 Order.

13. Based on the analysis in the EA, and after consideration of all substantive comments, the Commission concluded in the December 20 Order that, with the adoption of certain proposed mitigation measures as recommended in the EA, construction and

⁶ *Id.* P 68 (citing *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992)).

⁷ See December 20 Order, 141 FERC ¶ 61,240 at PP 67-71.

⁸ December 20 Order, 141 FERC ¶ 61,240 at PP 54-56; EA at 94-96.

⁹ See 18 C.F.R. § 388.113 (2012).

¹⁰ See 18 C.F.R. § 388.108 (2012).

authorization of the Allegheny Storage Project would result in no significant impacts on the quality of the human environment; therefore, preparation of an EIS was not required. The Commission also concluded, based on the entire record, that the Allegheny Storage Project is required by the public convenience and necessity.

II. Requests for Rehearing

14. Requests for rehearing were timely filed by: the Town of Myersville; Dexter Tompkins; Janet Millward; Richard Millward; Meredith McKittrick; Melissa Popple; Kevin Kreger; Michelle Sweet; Lucy School; Coleman Carpenter; Franz Gerner; Tammy Mangan; Theodore Cady; and MCRC.¹¹ On February 2, 2013, DTI filed a motion for leave to answer and answer to the rehearing requests filed by MCRC, Mr. Cady, and the Town of Myersville.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹² provides that, unless otherwise ordered by the decisional authority, an answer may not be made to a request for rehearing. The Commission may find good cause to waive this rule, if the answer provides additional information to assist in the Commission's decision-making. We do not find good cause to waive the rule with respect to DTI's request since the Commission finds no need for additional information to address the arguments raised on rehearing. Therefore we will reject DTI's answer to the requests for rehearing.

A. Clean Air Act Permit

16. On rehearing, MCRC, the Town of Myersville and others contend that the Commission erred in issuing DTI's certificate to construct the Myersville Compressor Station because DTI cannot obtain from MDE the necessary air quality permits under the Clean Air Act to operate the Compressor Station. MCRC notes that on December 21, 2012, DTI resubmitted its air quality permit application to MDE for the Myersville Compressor Station. MCRC cites to a January 17, 2013 letter it received from MDE stating that the agency would be unable to process DTI's application because the applicable statutory provision -- § 2-404(b)(1) of the Maryland Code -- requires a permit applicant "to submit documentation with the application demonstrating that the

¹¹ Many of the individual requesters, including Franz Gerner, Theodore Cady, and Tammy Mangan, are also members of MCRC.

¹² 18 C.F.R. § 385.213(a)(2) (2012).

applicant's project has local zoning approval, or that it meets all applicable zoning and land use requirements."¹³

17. MCRC further claims that the Commission's issuance of a certificate conditioned on DTI's ability to obtain, among other things, Clean Air Act permits, violates the public interest, as it would allow DTI to take advantage of the powers conferred by the certificate for its own benefit by, for example, initiating condemnation proceedings "to buy up property at a discount even though the company has no intention or ability to develop the project."¹⁴

18. In addition, MCRC argues that the Commission erred in issuing a certificate conditioned on DTI's receipt of required Clean Air Act permits because doing so has potentially "changed the outcome of the state permit process."¹⁵ In short, MCRC asserts that, had the Commission withheld acting on DTI's certificate application until DTI obtained air quality permits, no certificate would have ever been issued because it would have been impossible for DTI to obtain an air quality permit from MDE, due to the Town Council's denial of a zoning amendment for the compressor station.¹⁶ MCRC asks that the Commission "vacate the conditioned certificate so that DTI cannot use it to apply for a clean air permit under Maryland law."¹⁷

19. Finally, MCRC asserts that the Commission erred in adopting the EA's finding that air emissions associated with the Myersville Compressor Station should be within environmentally acceptable levels.¹⁸ MCRC states that DTI has not obtained a federally-enforceable air quality permit, and contends that, as a result, its commitments to reduce air quality impacts are not valid.

¹³ MCRC Rehearing at Exhibit 2. DTI had initially submitted the air quality permit application with MDE on January 25, 2012; on June 5, 2012, MDE returned DTI's application, noting that it lacked documentation that the project had been approved by the local jurisdiction for all zoning and land use requirements.

¹⁴ MCRC Rehearing at 21.

¹⁵ *Id.* at 22.

¹⁶ *Id.* at 24.

¹⁷ *Id.*

¹⁸ *Id.*

Commission Response

20. We disagree with MCRC that the Myersville Town Council's denial of DTI's application for a zoning modification precluded the Commission from issuing the certificate because of the impact of the denial on DTI's ability to obtain a Clean Air Act permit from the state. First, it is entirely appropriate for the Commission to issue an NGA certificate conditioned on the certificate holder subsequently obtaining necessary permits under other federal laws. This is common Commission practice, affirmed by the courts.¹⁹

21. Second, to the extent the Myersville Town Council's zoning requirements conflict with the construction of the Myersville Compressor Station, as authorized by the Commission in the December 20 Order, those requirements are preempted by the NGA. As discussed in the December 20 Order, while applicants may be required to comply with appropriate state and local regulations where no conflict exists,²⁰ state and local regulations are preempted by the NGA to the extent they conflict with federal regulation, impose conditions above the federal requirements, or would delay the construction and operation of facilities approved by this Commission.²¹

¹⁹ See, e.g., *Broadwater Energy LLC*, 122 FERC ¶ 61,255 (2008); *Crown Landing LLC*, 117 FERC ¶ 61,2091 (2006); and *Millenium Pipeline Co., L.P.*, 100 FERC ¶ 61,277 (2002), citing *City of Grapevine, Texas v Department of Transportation*, 17 F.3d 1502 (D.C. Cir. 1994 (upholding Federal Aviation Administration's approval of a runway conditioned upon applicant's compliance with National Historic Preservation Act); *Public Utility Comm'n of the State of California*, 900 F.2d 269 (D.C. Cir. 1990) (affirming Commission's determination that, contingent upon the completion of environmental review, there were no non-environmental bars to construction of a pipeline, noting that an agency can make "even a final decision so long as it assessed the environmental data before the decision's effective date.")

²⁰ The Commission does not take preemption lightly, and consistently encourages applicants to cooperate with state and local authorities. See, e.g., *Iroquois Gas Transmission System, L.P.*, 59 FERC ¶ 61,094, at 61,346-47 (1992). In light of this goal, the Commission has found that not all additional costs or delays associated with state and local laws are necessarily unreasonable. See *Islander East Pipeline Co.*, 102 FERC ¶ 61,054 at P 113.

²¹ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC

(continued...)

22. We also find no merit in MCRC's claim that the conditioned certificate should be vacated because it could change the outcome of the MDE air quality permit proceeding by allowing DTI to apply for a permit which it could not qualify for but for having obtained its section 7 certificate. Our issuance of a certificate does not require MDE to take any particular action. Whether MDE finds the certificate order to be relevant to its consideration of DTI's application is up to that agency.

23. We also disagree with MCRC's claim that issuing a conditioned certificate violates the public interest by allowing DTI (or any private natural gas company) to take advantage of the right of eminent domain. As noted, consistent with longstanding practice, and as authorized by NGA section 7(e), the Commission typically issues certificates for natural gas pipelines subject to conditions that must be satisfied by an applicant or others before the grant of a certificate can be effectuated by constructing and operating a pipeline project.²² The practical reality of authorizing projects such as the Allegheny Storage Project is that they take considerable time and effort to develop. Perhaps, more importantly, their development is subject to many significant variables whose outcome cannot be predetermined. If every aspect of a project was required to be finalized before any part of the project could move forward, it would be difficult, if not impossible, to construct the project.²³

¶ 61,094 (1992). To the extent that MCRC suggests that we interpret Maryland law and/or opine as to how MDE should exercise its authority, we decline to do so. DTI has asked the courts to consider this matter through a February 1, 2013 petition for review in the U.S. Court of Appeals for the D.C. Circuit, seeking an order directing MDE to process DTI's air quality permit application.

²² Section 7(e) of the NGA provides that "[t]he Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted there under the reasonable terms and conditions as the public convenience and necessity may require." See also *Islander East*, 102 FERC ¶ 61,054 (2003); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091, at 61,402 n.195 (the Commission has a longstanding practice of issuing certificates conditioned on the completion of environmental work or the adherence by the applicants to environmental conditions (citing *Texas Eastern Transmission Corp.*, 47 FERC ¶ 61,341 (1989); *CNG Transmission Corp.*, 51 FERC ¶ 61,267 (1990))).

²³ For the reasons discussed above, we reject similar arguments raised by other rehearing applicants with respect to the Commission's authority to issue the certificate conditioned upon other pending federal authorizations such as Clean Water Act permits.

24. Further, MCRC's claim is based on speculation, and we find no merit to its assertion that DTI "has no intention or ability" to develop the project, or that DTI may "take advantage" of the rights of eminent domain.²⁴ Moreover, the right of eminent domain afforded a certificate holder by NGA section 7(h) extends only to property rights necessary for the construction and operation of the approved project. Accordingly, we deny rehearing on this matter.²⁵

25. We also reject MCRC's assertion that the EA and December 20 Order erroneously concluded that air emissions associated with the Myersville Compressor Station will be within environmentally acceptable levels. As explained in the EA, DTI made a commitment to limit the annual hours of operation for the Myersville Compressor Station in order to mitigate air emissions. It is not uncommon for an applicant to mitigate emissions through reduction of operating hours, and the Clean Air Act allows for such limitations. State agencies with federally delegated authority under the Clean Air Act maintain regulations for permitting such sources. DTI has committed to limiting the hours of operation of the Myersville Compressor Station, thereby making its self-imposed limit the potential-to-emit (PTE) for the compressor station.²⁶

26. We find that staff appropriately applied the Clean Air Act regulations²⁷ in its analysis of potential impacts on air quality. The EA discloses the air quality impacts and correctly found that the impact would not be significant. This determination was based

²⁴ We construe "able and willing" as referring to the capability to undertake the project, not to whether there are legal or regulatory issues that may affect project development.

²⁵ Moreover, as discussed in the December 20 Order at P 20, with respect to the Myersville Compressor Station, DTI has acquired an option to purchase the land necessary for its construction. Therefore, DTI will be able to acquire all the property rights necessary for its project through negotiation with willing sellers.

²⁶ Environmental Condition 8 of the December 20 Order requires DTI to obtain all federal permits prior to construction of project facilities. Therefore, DTI must obtain an air quality permit from MDE prior to commencing construction of the Myersville Compressor Station. If MDE processes, but subsequently denies, DTI's permit request, DTI would not receive Commission approval to construct the Myersville Compressor Station. We also note that, contrary to suggestions, MDE rejected DTI's air quality permit application on procedural, rather than substantive grounds.

²⁷ The Clean Air Act regulations and applicability levels used by staff in the air quality analysis can be viewed on EPA's website at <http://www.epa.gov/air/caa/>.

on federal regulatory standards established by the Environmental Protection Agency (EPA), which has the authority over Clean Air Act implementation, as well as MDE air quality regulations.

27. Finally, MCRC indicates that the PTE for a comparable compressor station, without limiting the hours of operation, would be 31.25 tons per year (tpy) of nitrogen oxides (NO_x) and that the EA did not demonstrate that the Myersville Compressor Station would not “adversely impact air quality.” As shown in tables 14 and 15 of the EA, the compressor station would not result in an exceedance of the EPA’s National Ambient Air Quality Standards, nor would the air emissions exceed the major-source federal or MDE thresholds. The total operational emissions for NO_x were estimated at 23.53 tpy for the Myersville Compressor Station, based on an operational limit of 6,000 hours. As stated in the EA, this PTE was based on DTI’s air quality modeling analysis to determine the maximum emission impacts and represents the maximum allowable operating capacity of the compressor station.

B. Need for Myersville Compressor Station

28. Several rehearing applicants assert that the December 20 Order minimized or ignored credible evidence that shows a decline in demand for natural gas, and thus demonstrates that there is no need for the Myersville Compressor Station. MCRC adds that the Commission did not fully consider the possibility that demand could be met by a smaller facility. Several rehearing applicants also contend that the 16,000-horsepower compressor station is far bigger than what is required to serve customer needs, and that this supports a conclusion that gas flowing through Myersville will ultimately be directed to Dominion’s Cove Point LNG Terminal for export.²⁸ MCRC cites to several previously-authorized compressor stations which it claims demonstrate that the Myersville Compressor Station reflects “overbuild.”

29. These challenges were previously raised and addressed in the December 20 Order. Rehearing applicants raise no new arguments here. Accordingly, we find no cause to respond in detail, and will deny rehearing.

30. DTI executed long-term agreements with three customers, including two local distribution companies, for the full capacity being offered. This is strong evidence of market demand. As explained in the Commission’s Certificate Policy Statement, service commitments for new capacity constitute “important evidence of demand for a project.” Consequently, when “an applicant has entered into contracts or precedent agreements for

²⁸ MCRC Rehearing at 28-29.

the proposed capacity,” we take this as “significant evidence of demand for the project.”²⁹

31. To the extent that rehearing applicants claim that there is a decline in the demand for natural gas, we note that they cite U.S. Energy Information Administration reports that provide general overviews of demand by sector (that is, residential vs. industrial consumption), as well as general overviews of domestic inventories which are tied to weather extremes. The studies do not demonstrate that there is a decline in demand for natural gas in the markets which the Allegheny Storage Project is intended to serve. Moreover, we note that the Commission relies on a company’s assessment and verification of a project’s viability before going forward, taking into account the state of the market. We are confident that DTI will not invest significant time and resources in a profitless endeavor, and thus find no reason to reverse our prior determination.

32. We also are not convinced that the Myersville Compressor Station reflects overbuild and that the gas transported by the project will ultimately be exported through the Cove Point LNG Terminal. Although a pipeline is constructed to meet contracted peak demands during periods of 100 percent load conditions, customers are not required to, and rarely do, use 100 percent of their contracted capacity every day of the year. This means that on any given day there may well be unutilized capacity in a pipeline. However, such capacity can be used to satisfy additional demand on an interruptible and short term firm basis.

33. In addition to the fact that the capacity associated with the Allegheny Storage Project is fully subscribed, the project proposal stems from a 2007 agreement related to natural gas storage and firm transportation services, and is not associated in any way with the Cove Point LNG Terminal or potential export authority at the terminal.³⁰ DTI does not currently have liquefaction capabilities sufficient to support exports from its Cove

²⁹ See also EA at 2 (Table 1), which describes the Project customers and service levels for the Allegheny Storage Project. MCRC asserts that the referenced precedent agreements are “old” and for a “different” project (Storage Factory Project). As discussed in the December 20 Order, DTI stated that the precedent agreements from its contemplated Storage Factory Project from 2007 were amended as necessary to reflect the current Allegheny Storage Project proposal. See December 20 Order, 141 FERC ¶ 61,240 at P 10, n.8. Moreover, both Baltimore Gas & Electric Company and Washington Gas Light Company intervened in support and noted that they are shippers on the project.

³⁰ December 20 Order, 141 FERC ¶ 61,240 at P 23, n.16; EA at 18.

Point LNG Terminal; as we discussed in the December 20 Order, as with any future expansion, DTI must request approval to export LNG from its Cove Point LNG Terminal, including separate Commission authorization, and permits/approvals from the appropriate state and federal agencies.³¹

C. Environmental Assessment

1. Alternatives

34. The rehearing applicants contend that the December 20 Order failed to take a sufficiently “hard look” at the project’s environmental impacts, as required by NEPA. Specifically, they argue that the Commission erred in approving the Myersville Compressor Station in light of the existence of what they contend are environmentally preferable alternatives. For example, MCRC and others argue that the Commission failed to take a hard look at alternative sites, and that we “dismissed out of hand” a number of “viable” alternatives, such as constructing a pipeline loop that would preclude the need to

³¹ On April 1, 2013, Dominion Cove Point LNG, LP, filed an application under NGA section 3 to, among other things, construct, modify, own and operate certain facilities to enable the liquefaction of natural gas for export at its existing Cove Point LNG terminal in Calvert County, Maryland (Docket Nos. CP13-113-000 and PF12-16-000). On May 15, 2013, Mr. Cady, on behalf of MCRC, filed a motion to reopen and supplement the record in this proceeding, asserting that this “new information” demonstrates that DTI and Dominion Cove Point LNG have unlawfully segmented the Allegheny Storage Project and the proposed Cove Point Liquefaction in violation of NEPA. This matter was previously raised and addressed in this proceeding. *See, e.g.*, PP 33-38. Moreover, although on notice for six weeks of Dominion Cove Point LNG’s application, Mr. Cady’s instant filing was made only one day before the Commission’s May 16, 2013 open meeting, and six days after we had issued a Government in the Sunshine Act notice, which includes the Allegheny Storage Project as a matter scheduled for consideration at the open meeting. The Commission has previously indicated that it does not favor parties filing pleadings that merely recount earlier arguments or raise extraneous arguments after issuance of the Sunshine Act notice, because such pleadings may disrupt the orderly consideration of matters before the Commission. *See The Electric Plant Board of the City of Paducah, Kentucky*, 121 FERC ¶ 61,091 at P 10 (2007). In any event, we note that Dominion Cove Point LNG’s application does not indicate that the Myersville Compressor Station is needed to support the export of the liquefied natural gas. Further, the environmental analysis for the proposed liquefaction project will include a full review of cumulative impacts including, if appropriate, those associated with the Myersville Compressor Station.

build a compressor station, a “no build alternative,” a smaller compressor station, or an electric compressor station.

35. NEPA requires that agencies take a “hard look” at the environmental impacts of a proposed action. However, in carrying out their NEPA responsibilities, agencies are governed by the rule of reason.³² The range of alternatives must be sufficient to permit a reasoned choice of alternatives, i.e., “reasonable alternatives” but is a matter within the agency’s discretion.³³

36. As explained at length in the EA and the December 20 Order, several “viable” alternatives identified by MCRC, Dr. Gerner and others, including looping and the use of electric compression, were considered, but ultimately eliminated from detailed study for various reasons, including unreasonable costs, reliability, increased land requirements, additional environmental impacts, and hydraulic limitations.³⁴

37. In addition, as discussed above, during the pre-filing process, eight compressor sites were identified and discussed as alternatives to the Myersville site. Three alternative sites were eliminated from detailed study because of hydraulic limitations, while three others were eliminated from detailed study due to constructability and/or residential impact issues.³⁵ The EA considered in detail the alternative sites at Middletown and Jefferson, and explained why neither site was selected. Accordingly, we have fulfilled NEPA’s requirements, and affirm the rationale set forth in the EA for recommending the Myersville Compressor Station.

³² *NRDC v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972).

³³ *See* 42 U.S.C. § 4332(2)(C)(iii); *see also North Carolina v. FPC*, 53 F.2d 702, 707 (D.C. Cir. 1976).

³⁴ *See, e.g.,* December 20 Order, 141 FERC ¶ 61,240 at PP 59-62.

³⁵ MCRC and others also assert that the Commission was arbitrary and capricious in taking account of local zoning considerations for some aspects of the project (e.g., by noting that the Myersville site is zoned for commercial while alternative sites are zoned for agricultural or residential use), while “ignoring” the Town of Myersville’s decision to deny a DTI’s request for a local zoning variance. We disagree. We fully explained our reasons for authorizing the Myersville site over the alternative sites in the December 20 Order and the EA.

38. Several rehearing applicants challenge specific findings with respect to the environmental and economic impacts of other alternatives relative to the impacts of the Myersville site. For example, Dr. Gerner renews his claim that the Commission erroneously rejected his assertion that the 30-mile loop alternative is an economically viable alternative, and would have less environmental impact than the Myersville Compressor Station.³⁶ Mr. Millward contends that the December 20 Order misstated the situation involving availability of land for a compressor station at the alternative Middletown site. He also contends that, while the Commission noted that more ground would be disturbed on the Middletown site (13.7 acres) in comparison to the Myersville site (7.7 acres), on a percentage basis, only 10 percent of the Middletown site parcel would be disturbed, versus 36 percent of the Myersville site parcel.³⁷

39. NEPA requires the Commission to consider and disclose all significant aspects of the environmental impact of a proposal, but NEPA does not mandate particular results.³⁸ As the Commission recently explained, even if we were to accept arguments here that other alternatives are environmentally preferable, which we do not,³⁹ neither NEPA nor Commission policy and precedent would require that we deny authorization of the Myersville Compressor Station:

³⁶ The December 20 Order rejected Dr. Gerner's estimated costs of a 30-mile loop alternative versus the Myersville Compressor Station because they were based on purely speculative prices of natural gas, as well as an Oil & Gas Journal article that provided average estimated costs of all pipelines built in 2011. As we noted, the costs-per-mile of pipeline construction vary widely for each individual pipeline, depending on numerous factors. On rehearing, Dr. Gerner assumes the cost of natural gas in the U.S. to be \$5.50 MMBtu, which he asserts is "likely to be underestimating the average price of natural gas in the next 40 years, the lifetime of the proposed Myersville Compressor Station." It appears he continues to base his costs of operating the compressor station on speculative prices of gas, although ultimately concluding that the total lifetime costs of the Myersville Compressor Station are \$153 million, versus \$155 million for the 30-mile loop alternative.

³⁷ Richard Millward Rehearing at 13-14.

³⁸ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

³⁹ As referenced above, the December 20 Order at P 59, and EA at 90, 94-96, more fully discuss why the alternatives considered offered no significant environmental advantages over the Myersville Compressor Station.

It is well settled that NEPA does not mandate that agencies reach particular substantive results. Instead, NEPA simply sets forth procedures that agencies must follow to determine what the environmental impacts of a proposed action are likely to be. If an agency adequately identifies and evaluates the adverse environmental effects of a proposed action, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.⁴⁰

40. As discussed in the December 20 Order, based on the EA and comments received, the Commission identified the reasonable alternatives to DTI's proposal and took a hard look at the environmental impacts of approving the Myersville Compressor Station. The Commission concluded that the Allegheny Storage Project would be an environmentally acceptable action under NEPA, if constructed and operated in accordance with various conditions. Accordingly, we have fulfilled NEPA's requirements, and deny rehearing on these matters.

2. Property Values

41. Several rehearing applicants argue that the Commission failed to consider the impacts of preemption on property values. MCRC asserts that Myersville and its residents suffered a loss "because a site that once sustained uses that would benefit the community has now been taken off the market."⁴¹ The Town of Myersville contends that the Commission did not consider the potential for future economic development at the Compressor Station site, nor the potential future income the Town could receive from the state from associated future job creation and real property taxes.⁴²

42. MCRC further contends that with respect to property values, the Commission "erroneously assumes that visual impacts are the most substantial detractor...rather than nuisance, pollution, noise and potential for explosion."⁴³ MCRC bolsters this argument by noting that, as mitigation for the effects of the compressor station on property values, the EA "proposes that DTI use part of the site as a buffer and further, design and screen

⁴⁰ See *Millennium Pipeline Company*, 141 FERC ¶ 61,198, at P 31 (2012).

⁴¹ MCRC Rehearing at 37.

⁴² Town of Myersville Rehearing at 3.

⁴³ MCRC Rehearing at 37.

the site to minimize residential impacts.”⁴⁴ MCRC also claims that “a number of jurisdictions” recognize that property in close proximity to compressor stations may suffer a drop in value, and that the Commission should have similarly identified ways to do the same in the EA.

43. We deny rehearing. The December 20 Order and EA explained that every potential property purchaser has varying criteria and considerations for purchasing property, and further, due to the lack of studies evaluating property values and aboveground natural gas facilities, any meaningful effects on property values at specific locations are difficult to quantify.⁴⁵ The December 20 Order recognized the general potential for property values to be adversely affected by nearby energy infrastructure, but found that, on balance, with visual screening and noise mitigation measures, any potential property value impacts would not be sufficient to alter our conclusion that the Myersville Compressor Station is required by the public convenience and necessity.⁴⁶

44. With respect to the impact of preemption, MCRC and the Town of Myersville speculate as to development that they contend may occur but for the Myersville Compressor Station. The Town of Myersville concedes that the compressor station site is currently undeveloped, and that there was a viable commercial project “as recently as 2007” by a local developer that was subsequently abandoned due to the recession.⁴⁷ Similarly, although the Town of Myersville asserts that the Commission ignores the potential for the Town to receive piggyback income taxes from the state from associated future job creation and real property taxes, it cites to no imminent or pending development which would ensure job creation and associated taxes.⁴⁸

⁴⁴ *Id.* at 38-39. Mr. Millward similarly argues that with respect to the Compressor Station, the December 20 Order gives “more importance to the visual aspect of the project rather than the health and welfare of the people around it.” *See* Richard Millward Rehearing at 13-14.

⁴⁵ December 20 Order, 141 FERC ¶ 61,240 at PP 101-104; EA at 57.

⁴⁶ *Id.*

⁴⁷ Town of Myersville Rehearing at 3.

⁴⁸ In a related theme, in his July 30, 2012 EA comments, Dr. Gerner provided a table listing various structures within the 0.5-mile landowner radius, including the future “Quail Run” development, which he describes as a development of 108 homes to be located 3,000 feet from the Myersville Compressor Station site. On rehearing, Dr. Gerner claims that the Commission failed to consider the impact on Quail Run; however,

(continued...)

45. MCRC's argument is similarly flawed. It fails to cite to any pending or imminent development that will be displaced by the Myersville Compressor Station, except to assert that the Town of Myersville and its residents "suffered a loss because a site that would have once sustained uses that would benefit the community."⁴⁹

46. We also disagree with assertions that the Commission "assumes" the visual impacts from the Myersville Compressor Station are the only significant issue relating to potentially lower property values. As explained above, the December 20 Order noted not only visual screening, but also the noise mitigation measures to mitigate the potential for decreases in property values.⁵⁰ Moreover, the EA recommended, and the Commission adopted, a number of health and safety measures with which DTI must comply regarding the Myersville Compressor Station, although the measures were not specifically discussed in the EA's section on property values.⁵¹

it appears the development has not been built, nor is there any additional information in the record on the Quail Run development.

⁴⁹ MCRC Rehearing at 37. MCRC adds that due to the downturn in the economy, interest in a development of the site "temporarily abated, which enabled DTI to acquire the site at a far lower value, thus reducing property values for all other commercial sites in the area." MCRC provides no evidence to support its statement, nor are we clear as to its relevance in this proceeding.

⁵⁰ For example, Environmental Condition 12 requires DTI to ensure that the noise from the Myersville Compressor Station does not exceed a day-night level of 55 decibels at the nearby noise-sensitive areas (NSAs). As explained in the EA and December 20 Order, the EPA has indicated that this level protects the public from indoor and outdoor activity interference. Moreover, DTI must file a noise survey no later than 60 days after placing the Myersville Compressor Station in service; if the noise level at full loads exceeds the day-night level of 55 decibels on the A-weighted scale, then DTI is required to install additional noise controls.

⁵¹ As explained in the December 20 Order at PP 122-125, DTI must comply with the DOT's safety regulations to ensure safe operation of natural gas facilities. To that end: (1) the Myersville Compressor Station must be equipped with control systems that are designed to detect an upset condition, such as vibration, gas, fire, or heat, and implement safe shutdown of the pipeline system; (2) the turbine and compressor building must be equipped with gas, fire, and heat detection monitoring systems; (3) DOT requires DTI to establish an emergency plan; and (4) DTI will maintain a Critical Gas Facilities Security Plan which addresses the assessment of risks to its facilities and includes

(continued...)

47. Finally, the cases MCRC cites to support its position that other jurisdictions have found ways to quantify impacts on property values, are inapposite. *Midwestern Gas Transmission v. 2.62 Acres*,⁵² in which MCRC claims the court allowed testimony on the impact of fear of a compressor station on property values, involved a natural gas pipeline company's condemnation proceeding for an individual landowner's property. While the court stated that it would allow testimony on market perception of danger, it would do so only "when supported by credible evidence" (emphasis added). Although the court stated that the defendant was permitted to offer credible evidence, there is no indication of what type of evidence, if any, would be offered.

48. MCRC also cites *Natural Gas Pipeline Company of America v. Justiss*,⁵³ in which the Texas Court of Appeals awarded landowners "\$645,000 in reduced property values based on noise and pollution" from a compressor station.⁵⁴ However, this case involved an already-established permanent nuisance caused by a gas company's compressor station, and individual landowners' stated valuations of diminished market value. Moreover, MCRC fails to note that the Texas Supreme Court subsequently reversed the Court of Appeals, stating that the landowners inappropriately valued their property by noting the sales prices of nearby property, which reflected only the property values *after* the nuisance, "not how much the value had changed."⁵⁵ In short, the Court concluded that landowners' "bare conclusions" provided "no evidence of the damage caused by the nuisance."⁵⁶

measures such as ongoing training programs for DTI personnel on a number of security topics.

⁵² Case No. 3:06-cv-0290 (M.D. Tennessee 2011), cited in MCRC Rehearing at 38, n. 37.

⁵³ Case No. 06-09-00047 (Tx. Court of Appeals, Sixth District), cited in MCRC Rehearing at 38, n. 37.

⁵⁴ *Id.*

⁵⁵ *Natural Gas Pipeline Company of America v. Justiss*, Case No. 10-0451 (Tx. Supreme Court December 14, 2012).

⁵⁶ *Id.*

49. These cases do not support MCRC's position, and indeed, in our view, tend to underscore the difficulties in quantifying impacts to property values in a meaningful way, even where landowners' individual properties have been condemned or been subjected to an established nuisance. Accordingly, we deny rehearing on this matter.⁵⁷

3. Noise and Safety

50. MCRC and Mr. Cady provide what they deem "new" and "credible evidence" regarding impacts to safety and noise. They rely on a number of studies and reports cited in Mr. Cady's rehearing request which purport to demonstrate that the Commission underestimates the Myersville Compressor Station's potential for noise and safety impacts. Mr. Cady's studies include: citations to a number of newspaper articles and other media sites that mention various gas compressor accidents since January 2011,⁵⁸ charts and tables from DOT's Pipeline and Hazardous Materials Safety Administration, which he contends show that the number of "catastrophic events" is increasing over time;⁵⁹ and EPA studies which he asserts demonstrate that gas compressor stations produce various emissions "not properly reflected in DTI's application."⁶⁰ These citations, some of which are introduced for the first time in Mr. Cady's rehearing request, purport to show that safety, noise, and air emissions impacts are significant.

51. The Commission's longstanding policy is not to accept additional evidence at the rehearing stage of a proceeding, absent a compelling showing of good cause.⁶¹ Because other parties are precluded under Rule 713(d)(1)⁶² from filing answers to requests for rehearing, allowing Mr. Cady to introduce new evidence at this stage would raise

⁵⁷ MCRC cites a third case that has no bearing in this proceeding: *Willsey v. Kansas City Power & Light*, 631 P.2d 268 (1981) involved a state condemnation proceeding involving a 90-foot easement for a high-voltage electric transmission line that bisected an individual landowner's 75-acre tract of land.

⁵⁸ Cady Rehearing at 27-28.

⁵⁹ *Id.* at 28-30.

⁶⁰ *Id.* at 37-40.

⁶¹ See, e.g., *Nevada Power Co.*, 111 FERC ¶ 61,111, at P 10 (2005); *Midwest Independent Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,178, at P 11 (2008); *Tennessee Gas Pipeline Co., L.L.C.*, 142 FERC ¶ 61,025, at P 28 (2013).

⁶² 18 C.F.R. § 385.713(d) (2012).

concerns of fairness and due process for other parties to the proceeding. In addition, accepting such evidence at the rehearing stage disrupts the administrative process by inhibiting the Commission's ability to resolve issues with finality. Mr. Cady does not explain or justify why the additional information should be admitted after the close of the record and after the issuance of a dispositive order in this proceeding.

52. Although both MCRC and Mr. Cady suggest that delayed release of FOIA and CEII materials forced Mr. Cady to submit his studies and reports after the December 20 Order, we note that, as explained above, and in more detail below, the FOIA and CEII documents were timely released, and parties had ample opportunity to file comments. Indeed, Mr. Cady provided extensive comments throughout this proceeding, which were addressed in both the EA and the December 20 Order. Accordingly, we will not permit the introduction of Mr. Cady's supplemental evidence at the rehearing stage of this proceeding.

53. In any event, even if the Commission elected to consider Mr. Cady's additional information concerning noise and safety, it would be of little assistance in our decisionmaking. Mr. Cady provides only citations to articles, studies, and websites, or snippets of information from each, to highlight his points; he provides no information showing how this material relates to the Myersville Compressor Station.⁶³

⁶³ For example, in response to concerns that blowdowns of the Myersville Compressor Station would release 15,000 cubic feet of gas and subject residents to volatile organic compounds (VOCs) in the atmosphere, the December 20 Order at P 115 notes that, as explained in the EA:

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

Mr. Cady provides a citation to an EPA report that he asserts shows that "there are gas emissions (methane, carbon dioxide, and nitrous oxide) from the gas compressor engines as well as fugitive leaks." See Cady Rehearing at 38. However, Mr. Cady provides no context or explanation of the purported relevance of this report, particularly as it relates to the Myersville Compressor Station.

54. We find that the EA and December 20 Order considered sufficient quantitative and qualitative data to permit the Commission to reach an informed decision on safety, noise, and blowdown impacts. MCRC and Mr. Cady provide no compelling evidence to cause us to conclude otherwise. Accordingly, we will deny rehearing.

4. Cultural/Historic Resources

55. Several rehearing parties challenge the adequacy of the EA and December 20 Order's conclusion that the Myersville Compressor Station would not have significant impacts on cultural and historic resources. MCRC asserts that it was not able to access DTI's reports on cultural resource sites until October 24, 2012, and that upon receiving these reports, MCRC member Franz Gerner "filed extensive comments about viewshed and stability of these sites, which are not adequately addressed in the EA."⁶⁴ Mr. Gerner contends that the Commission relied on a flawed cultural resources survey report, and asserts that because he did not receive the reports until October 24, 2012, the Maryland Historic Trust and the Advisory Council on Historic Preservation (ACHP) did not have adequate time "to examine the flaws."⁶⁵ Mr. Cady cites to a number of arguments previously raised in Dr. Gerner's earlier comments on the EA with respect to cultural resources.⁶⁶

56. We find no merit to claims that Dr. Gerner and MCRC were harmed because they did not obtain the cultural resources reports until October 24, 2012. The December 20 Order fully addressed Dr. Gerner's comments, which were filed in response to the release of the documents, including comments he filed on November 6, 2012, November 14, 2012, and December 17, 2012.⁶⁷ Rehearing applicants' issues were extensively

⁶⁴ MCRC Rehearing at 40.

⁶⁵ Gerner Rehearing at 8. We note that pursuant to Section 106 of the National Historic Preservation Act, staff, in consultation with the Maryland State Historic Preservation Officer, found that construction of the Myersville Compressor Station would have no effect on historic properties. Accordingly, no notification of the ACHP was required. However, ACHP received copies of our NOI and project updates, and, pursuant to its June 7, 2012 request, received a letter from staff explaining the status of the Section 106 process. ACHP had no response or comment. *See* December 20 Order, 141 FERC ¶ 61,240 at P 86.

⁶⁶ Cady Rehearing at 32-33.

⁶⁷ December 20 Order, 141 FERC ¶ 61,240 at PP 85-96.

addressed in both the EA and the December 20 Order. They raise no new issues that cause us to reconsider our findings. Accordingly, we will deny rehearing.

5. Wetlands Impacts

57. MCRC states that the December 20 Order finds that there will be no significant impacts to wetlands “provided that DTI complies with the requirements of the Clean Water Act.”⁶⁸ MCRC contends that there is no indication that DTI has received a Clean Water Act permit, or that it will be able to do so. MCRC argues that until DTI receives the permit, “the EA cannot assume that it will, and therefore, the proposed mitigation for adverse impacts to wetlands is not adequate.”

58. We disagree with MCRC’s suggestion that the only wetlands protection measures required by the December 20 Order are those that may be imposed in relevant Clean Water Act permits. As discussed in the EA and December 20 Order, DTI must also comply with the *FERC Wetland and Waterbody Construction and Mitigation Procedures* (Procedures), which set forth best management practices to minimize impacts on wetlands, including segregation of the top twelve inches of topsoil from subsoil along the trenchline in unsaturated soils, and limiting the duration of disturbance in wetland areas.⁶⁹ The EA recommends, and the December 20 Order adopts, a number of measures that DTI must take pursuant to the Procedures. Moreover, Environmental Condition 8 requires DTI to obtain any outstanding federal permits prior to receiving approval to start construction.

D. Need to Prepare an Environmental Impact Statement

59. On rehearing, MCRC and others reiterate that an environmental impact statement (EIS), rather than an EA, should have been prepared, citing to the Council on Environmental Quality’s (CEQ) NEPA regulations which set forth criteria that may be relevant in determining whether a proposed action will have significant impacts. The CEQ regulations identify ten factors agencies should consider in determining the “intensity” of the project, including, as relevant here, whether the action is “highly controversial” (factor four) and whether the action threatens a violation of federal, state or local law or requirements imposed for the protection of the environment (factor ten).⁷⁰

⁶⁸ MCRC Rehearing at 40.

⁶⁹ EA at 32.

⁷⁰ 40 C.F.R. §§ 1508.27(b)(3) and (b)(10) (2011).

60. With respect to factor four, MCRC and Mr. Cady claim that the Commission erred in concluding that there was no substantial dispute over the size, nature or effect of the proposed Myersville Compressor Station. They cite to the “new” evidence discussed in Mr. Cady’s rehearing request regarding potential safety and noise which, they contend, demonstrate that the impacts will be significant. As further evidence that the Compressor Station is highly controversial, MCRC contends that there is a dispute over the need for the Compressor Station, which undermines “the very nature and purpose of the certificate.” MCRC and Mr. Cady state that these factors demonstrate that there is sufficient controversy to warrant an EIS.⁷¹

61. MCRC and others also challenge the Commission’s determination that factor ten is not implicated because construction and operation of the Myersville Compressor Station will not violate local laws or the Clean Air Act. MCRC states that the Town Council’s denial of DTI’s request for a zoning variance requires the Commission to “take a closer, more in depth look” at the impacts. MCRC adds that DTI “cannot comply with the Clean Air Act,” which it asserts is another factor militating in favor of an EIS.⁷²

62. Finally, several rehearing applicants contend that the Commission wrongly concluded that DTI did not improperly segment the Allegheny Storage Project and its Sabinsville Storage Pool Boundary Project (CP12-59-000) in order to evade reviewing the two projects in a single environmental document.⁷³ MCRC asserts that the Commission “found that the impetus for the Sabinsville Project was increased development around the storage pool,” yet “the Commission ignores that the reason that increased development necessitated the boundary resulted from DTI’s plans to use Sabinsville Storage to serve Allegheny Storage Project customers.”⁷⁴

63. We deny rehearing on these matters. As discussed in this Order, neither MCRC nor any of its members were hampered by the Commission in their ability to present “persuasive evidence.” We find that the EA and December 20 Order considered sufficient quantitative and qualitative data to permit the Commission to reach an informed decision on the potential environmental impacts of the Myersville Compressor

⁷¹ MCRC Rehearing at 30-32; Cady Rehearing at 28-30.

⁷² MCRC Rehearing at 34.

⁷³ On November 30, 2012, the Commission authorized the addition of a protective buffer around DTI’s Sabinsville Storage Project. *See Dominion Transmission, Inc.*, 141 FERC ¶ 61,183 (2012).

⁷⁴ MCRC Rehearing at 43-44.

Station, including safety, noise, and blowdown impacts. For the reasons discussed above, MCRC and others provide no compelling reason to challenge the Commission's findings that there is a need for the Myersville Compressor Station. Accordingly, we find that the Myersville Compressor Station is not "highly controversial" as contemplated by the CEQ regulations.

64. We also reject arguments that an EIS is required because the construction and operation of the Myersville Compressor Station will violate local zoning laws and the Clean Air Act. As explained in the December 20 Order, the NGA preempts the Town of Myersville's local zoning laws, and in our view, "preemption of a particular state or local law is not tantamount to a violation of that state or local law."⁷⁵ MCRC does not refute this statement, but instead asserts that an EIS is all the more necessary where preemption applies. As explained earlier, any potential economic impacts from preemption are purely speculative here. Accordingly, an EIS would not assist in the Commission's decision making process.

65. We disagree that, with respect to the Clean Air Act, there "will be a lack of compliance" if the Commission finds that the local zoning laws are preempted by the NGA, and "that is all the more reason for the Commission to prepare an EIS rather than an EA."⁷⁶ There is no danger of a Clean Air Act violation; as explained at length, the state of Maryland, through its federally delegated authorities, has jurisdiction over issuing the relevant air quality permit under the Clean Air Act. MDE has not processed DTI's permit application, much less made a determination on its merits.

66. We also note that the CEQ regulations do not require an agency to prepare an EIS whenever it determines a proposed action is "highly controversial" or "would result in a violation of federal, state, or local laws." Even if, for the sake of argument, the Commission agreed that the Myersville Compressor Station fit either or both of these categories, an EIS would still not be required. At most, the CEQ regulations indicate that these are two factors to be *considered* in determining whether a proposed action will have a significant impact on the environment. Here, we appropriately considered the potential impacts of the Myersville Compressor Station, and concluded that there would be no resulting significant impacts. Preparing an EIS would not result in a contrary finding.

⁷⁵ December 20 Order, 141 FERC ¶ 61,240 at P 78.

⁷⁶ MCRC Rehearing at 34.

67. Finally, we find no merit to challenges to our findings on segmentation. As discussed in the December 20 Order, agencies may not artificially segment projects in order to avoid consideration of an entire actions' effects on the environment.⁷⁷ The CEQ regulations provide that actions are "connected," thus requiring consideration in the same environmental analysis, if they: (1) automatically trigger other actions which may require an environmental impact statement; (2) cannot or will not proceed unless other actions are taken previously or simultaneously; or (3) are interdependent parts of a larger action and depend on the larger action for their justification.⁷⁸

68. The December 20 Order explained that MCRC failed to demonstrate that any of the three factors apply. We noted that the two projects are stand-alone and distinct, and serve two different purposes: the purpose of the authorized Sabinsville Storage Project is to establish a protective boundary or buffer zone around the existing active storage reservoir boundary in order to protect the security and integrity of the storage reservoir from increased development and production in the vicinity of the storage reservoir, thus maintaining the reliability of existing customers' storage service. The storage field's capacity remained unchanged, and its physical boundary was not expanded. The purpose of the Allegheny Storage Project is to increase existing levels of storage and transportation capacity in order to meet demands for additional amounts of service.

69. As discussed in the December 20 Order, neither project depends on the other. While they both involve the same storage pool, they are not "connected actions" under the CEQ regulations. The Sabinsville Storage Project would have gone forward, with or without the Allegheny Storage Project, and vice versa. Accordingly, we reaffirm our finding that the two projects were not inappropriately segmented.

E. Additional Issues Raised on Rehearing

70. Mr. Cady raises numerous claims in addition to those discussed herein. The remainder of his comments challenge the adequacy of the analysis of virtually every resource issue addressed in the EA and December 20 Order. The majority of his challenges raise no new issues, so we decline to address them in detail.⁷⁹

⁷⁷ December 20 Order, 141 FERC ¶ 61,240 at P 80 (citing *Hammond v. Norton*, 370 F. Supp. 2d 226 (D.D.C. 2005)).

⁷⁸ *Id.* P 81.

⁷⁹ For example, the following claims were addressed in the December 20 Order: flawed historic survey (at PP 85-91); staff did not properly engage County officials to

71. Mr. Cady's new claims take issue with the level of the analysis in a number of areas. For example, he asserts that the EA provides no detailed dispersion modeling of the proposed Waste-to-Energy facility located 13 miles from the Myersville site, nor a substantive analysis or modeling to determine the impact of emissions from the Waste to Energy facility on the area around Myersville specifically.⁸⁰ He also claims that the Emergency Response Plan DTI is required to prepare is "so general and non-specific as to be worthless."⁸¹ Mr. Cady argues that "the EA is lacking depth of analysis, scientific methodology, and the proper due diligence to make any valuable conclusion as to render a decision inherently flawed."⁸²

72. We disagree. The Commission's decision was based on the EA's comprehensive analysis, as well as the comments filed after the EA's issuance. We find that the Commission took the requisite hard look at the potential environmental impacts, and appropriately concluded that the Myersville Compressor Station will not have significant impacts on the quality of the human environment.

73. We note that:

NEPA does not require that every conceivable study be performed and that each problem be documented from every angle to explore its every potential for good or ill. Rather, what is required is that officials and agencies take a 'hard look' at environmental consequences.⁸³

Accordingly, we will deny rehearing.

74. Mr. Cady also asserts that the Commission's process for granting NGA section 7 certificates is an inherently flawed process that inappropriately favors the gas industry over local citizens and violates citizen's due process rights. He contends that the

help identify appropriate industrial site for Compressor Station (at P 59); staff did not use "due diligence" in addressing impacts to property values (at PP 101-104).

⁸⁰ Cady Rehearing at 17.

⁸¹ *Id.* at 18.

⁸² *Id.* at 42.

⁸³ *Sierra Club v. Froehlke*, 486 F.2d 946, 951 (7th Cir. 1973) (*quoting Sierra Club v. Froehlke*, 345 F. Supp. 440, 444 (1972)).

Commission is not impartial because it recovers the full costs of its operations through fees assessed on the industry and is thus motivated to favor industry interests.

75. The implication that the Commission is motivated to approve more projects because it could then derive more revenue is unfounded.⁸⁴ As recently explained in *Texas Eastern Transmission, LP, et al.*, the Commission is not self-funding in the sense of keeping what it collects. Instead, each year Congress appropriates funds for the Commission's operations, with the stipulation that the Commission reimburse the Treasury the same amount by collecting the fees and charges from the entities it regulates.⁸⁵ For jurisdictional natural gas companies, the Commission annually compares the amount of gas each company transports to the total amount transported by all jurisdictional gas companies, then calculates and imposes a proportional volumetric charge on each company.⁸⁶ "All moneys received" by the Commission from fees and charges are "credited to the general fund of the Treasury."⁸⁷ At the end of each year the Commission "trues up" its collection by making "such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person."⁸⁸

76. Therefore, there is no financial incentive for the Commission to grant or deny an application for a gas project, as the outcome will have no more than a de minimis impact on the total cost of carrying out the Commission's regulatory responsibilities. Further, whether this total cost rises or falls is immaterial to the Commission, since it will reimburse the Treasury no more and no less than what it actually expends to meet its statutory mandates.⁸⁹

⁸⁴ *Texas Eastern Transmission, LP, et al.*, 141 FERC ¶ 61,043 (2012). The Commission is directed, by 42 U.S.C. § 7178(a)(1) (2006), to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year."

⁸⁵ 42 U.S.C. § 7178 (2006).

⁸⁶ 18 C.F.R. § 382.202 (2012).

⁸⁷ 42 U.S.C. § 7178(f) (2006).

⁸⁸ *Id.* at 7178(e).

⁸⁹ Mr. Cady also asserts that the Commission lacks accountability because it has steadily decreased the time it takes to act on a proposed project yet there is no oversight of the Commission's decisions because they are not reviewed by the President or

(continued...)

77. Mr. Cady and others assert that the December 20 Order erroneously characterized “as inadvertent” DTI’s use of the official Commission seal on DTI’s draft EA, which was submitted with its February 17, 2012 application. Mr. Cady contends that DTI’s use of the seal was a “clear intention” by DTI to create confusion, as evidenced by a drop in the number of commenters from 650 during scoping, to 12 during the EA comment period.⁹⁰

78. We disagree. It is not unusual to have numerous participants during the EA scoping process, only to see a significant reduction in active participants once the EA is issued. This is due in large part to the fact that the EA addresses or otherwise resolves comments received during the scoping process. Indeed, as noted in the December 20 Order, the vast majority of the EA comments revisited matters previously raised during the scoping process, and addressed in the EA.⁹¹ Rehearing applicants provide no additional cause for believing DTI’s action was intentional, or resulted in confusion sufficient to undermine the EA’s validity.⁹²

79. Mr. Cady asserts that the Commission’s notification and communication process is “seriously flawed.” He states that the “timing for citizen response is repeatedly short (30 days); the initial communication and notification is lacking; and the EA comment period “was less than the 30 day norm, requiring citizens to request an extension.”⁹³

Congress. It is unclear why Mr. Cady believes that the Commission’s ability to streamline the certificate process (without, we note, reducing the amount of time interested parties may participate in the process) somehow reflects our lack of accountability. Moreover, the Commission was created by Congress, which established the Commission as “a federal body that can make choices in the interests of energy consumers nationally,” and as such the Commission indeed has congressional oversight (*see National Fuel Gas Supply Corporation v. Public Service Commission of the State of New York*, 894 F.2d at 579).

⁹⁰ We note that EA comments were filed by twelve individuals, the Town of Myersville, MCRC, and the Maryland Department of Natural Resources.

⁹¹ December 20 Order, 141 FERC ¶ 61,240 at P 57.

⁹² The December 20 Order at P 27, n.21, explains that, given that DTI’s document was labeled “draft,” and that we received numerous comments throughout the EA process (including from those who claimed confusion), DTI’s use of the Commission seal prior to the initiation of our EA process did not cause confusion sufficient to invalidate the June 2012 EA, or in any way prevent the public from exercising its due process rights.

⁹³ Cady Rehearing at 3.

80. An NOI for the proposed Allegheny Storage Project was issued on October 24, 2011; the NOI was mailed to interested parties, including landowners within 0.5 mile of DTI's proposed site for the Myersville Compressor Station; staff participated in an open house sponsored by DTI in Myersville, Maryland in September 2011 to explain the Commission's environmental review process to interested stakeholders; staff held a public scoping meeting near the Myersville site in November 2011; hundreds of scoping comments were received on the proposed Myersville Compressor Station; the EA provided a 30 day comment period, which was subsequently extended by two weeks; and, as explained elsewhere in this Order, the December 20 Order addressed comments received up through December 17, 2012. Mr. Cady provided extensive comments in this proceeding, all of which have been considered.

81. Several rehearing applicants contend that the December 20 Order erroneously relied on an EA that was prepared by DTI, and that the Commission accepted the EA's assertions at face value without conducting or contracting for an independent review.

82. As explained in the June 2012 EA,⁹⁴ DTI filed an applicant-prepared draft EA in consultation with Commission staff as part of DTI's commitment to enter into our pre-filing process. It is a separate document from the Commission's EA, which was prepared pursuant to NEPA, and contains staff's independent analysis, findings and recommendations, and upon which the Commission relied in informing its decision.

83. Several rehearing applicants also take issue with language in paragraph 4 of the December 20 Order, which states that the proposed Myersville Compressor Station is "near the Town of Myersville," rather than *in* the Town of Myersville. Although commenters do not explain why this is significant, we note that the December 20 Order repeatedly states that the Compressor Station would be located *in* Myersville.⁹⁵

84. Several rehearing applicants renew claims that DTI's record of non-compliance in other proceedings warrants stricter scrutiny in the form of an EIS rather than an EA to determine whether DTI's failure to comply increases the likelihood of significant environmental impacts. Mr. Cady takes issue with the Commission's response to these arguments in the December 20 Order, in which we noted that the non-compliance actions cited by commenters had no bearing in this proceeding because they involved fines or

⁹⁴ EA at 9.

⁹⁵ See, e.g., December 20 Order, 141 FERC ¶ 61,240 at PP 27, 53, 54, 55, 56, 64, 72, 108; see also EA at 9 ("...the Myersville Compressor site is within the Town of Myersville limits and [we] have considered the Town of Myersville in its entirety during our environmental analysis of the potential impacts of the Project.").

compliance actions by other agencies in completely different proceedings.⁹⁶ Mr. Cady states that given this response, “it is reasonable to assume...that any willful non-compliant and poor performing company will always have FERC approval regardless of past performance.”⁹⁷

85. The Commission takes matters of non-compliance seriously, but such matters must be addressed in the proper venue. The non-compliance issues cited by rehearing applicants involve completely different proceedings and are properly addressed in those proceedings, not here. They do not call into question DTI’s ability to construct and operate the Allegheny Storage Project as authorized.

86. Moreover, we find that the conditions imposed in the December 20 Order, viewed as a whole, are sufficient to ensure DTI’s compliance with the requirements of the Commission order. We will ensure that DTI is fulfilling its duties by conducting our own compliance monitoring during construction, including regular field inspections. We impose sanctions and/or penalties for non-compliance on a case-by-case basis in order to tailor our remedies to the specific facts presented. If DTI fails to comply with the conditions of this order, it is subject to sanctions and the potential assessment of civil penalties.⁹⁸

87. Several rehearing applicants challenge the Commission’s determination that commenters had not provided sufficient justification for extending the 0.5-mile radius for identifying potential impacts to landowners.⁹⁹ They cite to previous compressor station explosions which, they assert, had impacts well beyond the 0.5-mile radius. The Town of Myersville notes that its emergency evacuation center is located within the 0.5-mile radius.

88. While the potential for a low-probability event can never be completely eradicated, we find no justification for expanding the 0.5-mile radius. As discussed in the

⁹⁶ December 20 Order, 141 FERC ¶ 61,240 at P 129.

⁹⁷ Cady Rehearing at 40.

⁹⁸ *See* 15 U.S.C. § 717t-1(c) (2006).

⁹⁹ The Commission’s regulations define “affected landowners” as “landowners whose property is within one-half mile of proposed compressors or their enclosures[...]. *See* December 20 Order, 141 FERC ¶ 61,240 at P 131.

December 20 Order and the EA,¹⁰⁰ DTI is required to comply with the DOT's safety regulations at 49 C.F.R. Part 192 for ensuring safe operation of natural gas facilities. The Myersville Compressor Station would be equipped with control systems that are designed to detect an upset condition (i.e., vibration, gas, fire, or heat) and implement safe shutdown of the pipeline system. In addition, the turbine and compressor buildings are equipped with gas, fire, and heat detection monitoring systems. Further, DTI must prepare an emergency plan that requires it to work with first responders and develop an emergency response plan prior to station operations. DTI's plan must also establish emergency evacuation procedures, which would include alternatives should I-70 be unsafe for travel.¹⁰¹

89. As further discussed in the December 20 Order, the EA considered the entire town of Myersville, that is, an area beyond the 0.5-mile radius, in its review of potential environmental impacts on resources such as visual resources, air quality, cultural resources, public safety, and property values.¹⁰² In addition, the only change resulting from an extended radius would be the number of residents that would have initially been notified about the compressor station; the further the homes are from the compressor station, the less potential impact there might be.¹⁰³ For all of these reasons, we affirm our finding that there is no need to extend the 0.5-mile radius. Accordingly, we will deny rehearing on this matter

F. Due Process Arguments

90. MCRC and its members contend they were denied due process in this proceeding because the Commission denied them timely access to documents requested pursuant to our CEII and FOIA procedures. They suggest that timely receipt of the requested information would have allowed them to file more informed comments. They also submit that they were harmed by "egregious delays" because they were "forced to submit comments in a piecemeal manner rather than provide comprehensive comments which might have been more persuasive."¹⁰⁴

¹⁰⁰ See, e.g., December 20 Order, 141 FERC ¶ 61,240 at PP 121-122; EA at 78-81 and section B.9.1.

¹⁰¹ December 20 Order, 141 FERC ¶ 61,240 at P 122.

¹⁰² *Id.* P 131.

¹⁰³ *Id.*

¹⁰⁴ MCRC Rehearing at 49.

91. With respect to FOIA, MCRC asserts that Dr. Gerner filed a request for cultural resources information in May 2012, but did not receive the requested information until October 24, 2012. MCRC contends that the “time and expenses” of obtaining these FOIA materials served as “unnecessary distractions” and by the time Dr. Gerner received the materials and filed comments, “the deadline for considering them had long since closed.”¹⁰⁵

92. More generally, MCRC contends that the Commission’s application of its CEII regulations in disputed proceedings is troubling because it permits applicants (in this case DTI) to offer feedback on whether materials should be released. MCRC asserts this is akin to allowing “the fox to guard the henhouse.” MCRC adds that the CEII regulations are problematic because they lack firm deadlines for releasing information and that, “at a minimum, the CEII regulations must establish tight time frames for responses to intervenors’ requests....”¹⁰⁶

93. We disagree with these due process claims. The December 20 Order noted that the rehearing applicants had, as requested, at least 30 days to review and file comments once they had access to documents released under the final pending FOIA request. All of the comments were addressed in the December 20 Order, including those filed up through December 17, 2012.

94. On rehearing, MCRC does not dispute these findings. Rather, it attempts to move the goalposts by now claiming that, notwithstanding the more than 30 days its members had to file comments on the CEII and FOIA information, MCRC members’ due process rights were violated because of “delay” in receiving the documents.

95. Notwithstanding that MCRC and its members had ample time to review and file comments with respect to CEII and FOIA documents, MCRC and others suggest that the Commission failed to fully consider comments filed after the July 30, 2012 deadline for filing EA comments. MCRC insists that the “period for timely comment lasted six months (February to August 2012),” while the entire certificate process lasted ten months, “from February to December 2012, and as such, MCRC and intervenors should

¹⁰⁵ *Id.* at 51.

¹⁰⁶ *Id.* at 50. MCRC contrasts the lack of CEII deadlines with our FOIA regulations, which require the Commission to act within twenty working days of a request. *See* 18 C.F.R. § 388.108(c)(1).

have been granted access to FOIA and CEII documents “from the beginning of the process.”¹⁰⁷

96. We disagree. Although it is unclear how MCRC defines “beginning of the process,” assuming for the sake of argument that it refers to February 2012,¹⁰⁸ we note that the first CEII request was filed on May 10, 2012, when Dr. Gerner filed a request for Exhibit G documents; staff released them on July 20, 2012. On July 5, 2012, MCRC counsel filed a CEII request seeking the identical Exhibit G documents; they were released on August 15, 2012. On August 3, 2012, Ms. Mangan and Mr. Cady filed a request for access to the same Exhibit G documents; the information was released to them on November 4, 2012.¹⁰⁹

97. Dr. Gerner filed the first and only FOIA request on June 14, 2012, in which he sought a landowner list and a cultural resources report. On July 20, 2012, portions of his request were released, but he was denied access to the cultural resources report.¹¹⁰ On September 4, 2012 -- the last day of the 45-day deadline for appeals -- MCRC counsel filed an appeal of the denial. On October 24, 2012, the information was released.

¹⁰⁷ *Id.* at 49. Mr. Cady asserts that the “EA approval” was prepared “prior to input” from MCRC and its members in response to their comments on the FOIA and CEII information.

¹⁰⁸ Alternatively, if MCRC defines “beginning of the process” as close to the time in which CEII or FOIA requests are filed, we note that, considering the volume and sensitive nature of the information sought, staff requires time to process the requests. Moreover, MCRC does not cite to any violations of our CEII or FOIA regulations with respect to the processing time.

¹⁰⁹ MCRC asserts that Dr. Gerner had “hoped to share” his CEII comments with MCRC members “to ensure consistency,” but was unable to do so because Mr. Cady and Ms. Mangan did not receive the same information in time. This does not demonstrate any significant harm; in reaching our decision, we did not note or rely on any inconsistency that may have existed between various comments.

¹¹⁰ MCRC implies that the Commission missed its deadline “by a week” in responding to Dr. Gerner’s FOIA request. This is not correct. Staff timely issued a notice of intent to release letter on July 13, 2012, in compliance with our regulatory deadlines.

98. The December 20 Order addressed all EA comments filed up to December 17, 2012.¹¹¹ Accordingly, intervenors' due process rights were not violated. Moreover, we reject MCRC's assertion that the Commission would have found intervenors' comments more persuasive had we received them comprehensively, rather than in a piecemeal fashion. Although we are unclear as to what MCRC means with respect to "comprehensive comments," we assure them that the Commission accords all comments the same due consideration, regardless of how they are packaged.

99. MCRC asserts that the Commission's CEII and FOIA procedures are discriminatory because they "adversely impact communities and property owners" but do not similarly affect larger companies involved in disputed proceedings before the Commission. Specifically, MCRC notes that "virtually all" evidentiary, trial-type hearings pending before the Commission involve disputes involving large companies over rates, transmission access or contracts."¹¹² MCRC asserts that these large companies hold an advantage in these hearings because, through the discovery process, they can "promptly" avail themselves of CEII or otherwise privileged material.¹¹³ MCRC claims this is in marked contrast to the typical intervenor in certificate proceedings, which MCRC claims includes "resource-strapped municipalities, landowners and non-governmental organizations" who do not enjoy such prompt access and must "waste precious resources" to obtain the same information.¹¹⁴

100. We are not persuaded by these arguments, and reject the general claims regarding our FOIA and CEII regulations as unsupported. The Commission's CEII and FOIA procedures have been in place for many years and apply equally to both large and small entities. Both large and small entities have for many years availed themselves of our

¹¹¹ MCRC observes that the cultural resources report requested under FOIA by Dr. Gerner was released on October 24, 2012. MCRC then makes the puzzling claim that "there is no indication in the Commission's decision" that his subsequent comments filed in response to the FOIA information "were ever considered" (MCRC Rehearing at 51). However, the December 20 Order unambiguously addressed the November 6 and 14, 2012 comments Dr. Gerner filed in response to the FOIA information. *See* December 20 Order, 141 FERC ¶ 61,240 at PP 89-96. The December 20 Order also noted that Dr. Gerner filed additional comments on December 17, 2012, which reiterated the same issues he previously raised. December 20 Order, 141 FERC ¶ 61,240 at P 96, n.74.

¹¹² MCRC Rehearing at 51.

¹¹³ *Id.*

¹¹⁴ *Id.* at 52.

CEII and FOIA procedures in “paper” hearings such as this one, as well as in trial-type hearings. We are unaware of any instances in which these regulations have operated to discriminate against any class of entities. MCRC and its members had ample opportunity to provide comments in this proceeding, and MCRC does not demonstrate to the contrary.

The Commission orders:

The requests for rehearing of the December 20, 2012 Order are denied, as discussed in the body of this order.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.