

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division**

DOMINION TRANSMISSION, INC.
445 West Main Street
Clarksburg, West Virginia 26301,

Plaintiff,

v.

TOWN OF MYERSVILLE TOWN COUNCIL
Myersville Municipal Center
P.O. Box 295
301 Main Street
Myersville, MD 21773

Serve: Wayne S. Creadick, Jr.
Council President
Myersville Municipal Center
P.O. Box 295
301 Main Street
Myersville, MD 21773

CIVIL ACTION NO. _____

and

TOWN OF MYERSVILLE
Myersville Municipal Center
P.O. Box 295
301 Main Street
Myersville, MD 21773

Serve: John R. Clapp
Town Attorney
Clapp & Carper, LLC
1 W Church St
Frederick, MD 21701-5991

and

WAYNE S. CREADICK, JR.
Mayor
Town of Myersville

Myersville Municipal Center *
P.O. Box 295 *
301 Main Street *
Myersville, MD 21773 *
*
Serve: Wayne S. Creadick, Jr. *
Mayor *
Myersville Municipal Center *
P.O. Box 295 *
301 Main Street *
Myersville, MD 21773, *
*
Defendants. *
*

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff Dominion Transmission, Inc. (“DTI”), by counsel and pursuant to Rule 3 of the Federal Rules of Civil Procedure, respectfully files this complaint against Defendants Town of Myersville Town Council (“Town Council”), Town of Myersville (“Town”), and Wayne S. Creadick, Jr., Mayor, Town of Myersville (“Mr. Creadick” or “Mayor”) (collectively “Defendants”). For its complaint, DTI states as follows:

PARTIES

1. DTI is a corporation organized under the laws of the State of Delaware with its principal place of business in Clarksburg, West Virginia. DTI is a natural gas company as defined in Section 2 of the Natural Gas Act, codified at 15 U.S.C. § 717 *et. seq.* DTI is engaged in the business of storing and transporting natural gas in interstate commerce for customers principally located in the Northeast and Mid-Atlantic markets, including Maryland. DTI is registered to do business in the State of Maryland.

2. The Town Council is a body corporate created under the laws of the State of Maryland. The Town Council is authorized to exercise powers pertaining to planning and zoning, including the power to adopt amendments to certain Site Master Plans.

3. Town of Myersville is a body corporate created under the laws of the State of Maryland.

4. Mr. Creadick is the Mayor of the Town of Myersville and the President of the Town Council. Upon information and belief, Mr. Creadick is a resident of the State of Maryland.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the causes of action arise under the Constitution and laws of the United States, including, but not limited to, the Supremacy Clause, U.S. Const. Art VI, cl. 2, and the Natural Gas Act, 15 U.S.C. § 717 *et. seq.*

6. Further, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. This Court is empowered to provide declaratory and injunctive relief in this action pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, and Federal Rules of Civil Procedure 57 and 65.

8. Costs and attorney's fees may be awarded pursuant to 49 U.S.C. § 60121(b) and Federal Rule of Civil Procedure 54.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. The events giving rise to this action occurred in this district.

STATEMENT OF FACTS AND STATUTORY BACKGROUND

10. On February 17, 2012, DTI filed an application (the “Application”) with the Federal Energy Regulatory Commission (“FERC”) pursuant to Section 7(c) of the Natural Gas Act for a Certificate of Public Convenience and Necessity (the “FERC Certificate”) for the construction and operation of certain facilities collectively known as the Allegheny Storage Project. The application was assigned FERC Docket No. CP12-72-000.

11. The Allegheny Storage Project is necessary to provide increased natural gas storage and transportation services to Washington Gas and Light Company, Baltimore Gas and Electric, and TW Phillips Gas and Oil Company. As further described in Exhibit C, facilities are required in Ohio, West Virginia, Pennsylvania, and Maryland in order to provide these services.

12. Among the facilities comprising the Allegheny Storage Project is a compressor station to be located in the Town of Myersville in Frederick County, Maryland (the “Myersville Compressor Station”). The Myersville Compressor Station will consist of a 16,000 horsepower natural gas fired combustion turbine.

13. The Myersville Compressor Station will receive natural gas from DTI’s existing main pipeline PL-1 in Frederick County and will return compressed gas to the main pipeline via two new 30” suction/discharge pipelines, designated PL-6 and PL-7. Approximately 500 feet of the PL-6 and PL-7 pipelines will be located within the Town limits as they enter the Myersville Compressor Station lot.

14. The PL-1 natural gas pipeline is an interstate pipeline that runs from Leesburg, Virginia, through Maryland, to Perulack, Pennsylvania, where it becomes known as PL-1 Ext. 2. PL-1 Ext. 2 terminates in Leidy, Pennsylvania.

15. The Myersville Compressor Station will be located at the Northwest intersection of Milt Summers Road and Myersville Road (MD Route 17) (the “Property”). The Property is owned by DTI and consists of approximately 21.08 acres¹. The Property is part of the Town of Myersville’s Highway Employment Overlay (“HEO”) District.

16. On April 5, 2012, DTI filed an application with the Town of Myersville for an amendment to a previously approved Site Master Plan for the Property (the “Amendment Application”). A true and correct copy of DTI’s Amendment Application is attached as Exhibit A. The purpose of the Amendment Application was to secure approval under the Town’s zoning ordinances for the construction and operation of the Myersville Compressor Station on the Property.

17. The requirement to submit a master plan is one of the several requirements the Town’s zoning ordinance imposes on applicants like DTI who seek to construct and maintain federally-regulated pipeline facilities.

18. DTI’s Amendment Application was submitted to the Town on April 5, 2012, and introduced to the Town Council and Mayor on May 8, 2012. On June 20, 2012, the Myersville Planning Commission (“Planning Commission”) held a public hearing and recommended rejection of DTI’s Amendment Application on June 26, 2012.

19. Prior to the Town Council and Mayor’s decision to reject DTI’s Amendment Application, DTI, in compliance with the Town of Myersville Code, attended and participated in public meetings held by the Planning Commission and the Town Council.

¹ At the time DTI filed its Application with FERC and its Amendment Application with the Town of Myersville, the Property was owned by private individuals. DTI subsequently purchased the Property.

Town of Myersville Decisions

20. The Town Council and Mayor conducted a public hearing on DTI's Amendment Application on August 1, 2012.

21. On August 27, 2012, the Town Council and Mayor denied DTI's Amendment Application and found, among other things, that:

- (A) The Amendment Application was inconsistent with the Town Comprehensive Plan;
- (B) The Amendment Application was inconsistent with the intent and special conditions of the HEO District;
- (C) The proposed primary use for the Property would pose a hazard to public health and safety in contravention of §165-150.D(1) of the Town Code due to the processing of inherently hazardous material;
- (D) The proposed primary use for the Property would pose a nuisance to the public by reason of noise in contravention of §165-150.D(1); and
- (E) The proposed primary use is not a permitted use as allowed under §165-150.C "Permitted uses [HEO]."

A true and correct copy of the Town Council and Mayor's decision is attached as Exhibit B.

Issuance of FERC Certificate

22. On December 20, 2012, FERC granted to DTI the FERC Certificate in FERC Docket No. CP12-72-000 for the construction and operation of the Allegheny Storage Project, including the Myersville Compressor Station. A true and correct copy of the FERC Certificate is attached as Exhibit C.

23. In the FERC Certificate, FERC noted that because the proposed facilities will be used to transport natural gas in interstate commerce, "[they are] subject to the jurisdiction of the Commission[.]" See Ex. C. at 5.

24. In granting the FERC Certificate to DTI, FERC concluded that “the public convenience and necessity requires approval of DTI’s proposal[.]” See Ex. C at 7. Additionally, FERC found that the Allegheny Storage Project will “have no significant adverse impacts on the environment.” Id. at 31.

25. With respect to the Myersville Compressor Station in particular, FERC made the following findings:

- (A) Out of the nine alternatives considered for the construction of the Myersville Compressor Station, “the Myersville site is the most appropriate site[.]” See Ex. C at 20-21.
- (B) The Myersville Compressor Station is “required by the public convenience and necessity.” Id. at 33.
- (C) The Myersville Compressor Station “will not result in significant impacts on visual resources.” Id. at 33.
- (D) The operation of the Myersville Compressor Station will benefit the Town of Myersville and Frederick County. Id. at 34.
- (E) The level of noise created by the Myersville Compressor Station will be imperceptible in the nearby noise-sensitive areas. Id. at 37.

Natural Gas Act

26. Because DTI owns and operates interstate natural gas facilities, including the proposed Myersville Compressor Station, and is engaged in transportation and storage of natural gas in interstate commerce, DTI is subject to the jurisdiction and regulation of FERC under the Natural Gas Act.

27. Pursuant to § 717(b) of the Natural Gas Act, FERC has plenary jurisdiction over the transportation of natural gas in interstate commerce, the sale of natural gas in interstate commerce for resale, and natural gas companies that are engaged in such transportation or resale.

28. Pursuant to the FERC Certificate, any state or local permits issued with respect to FERC approved facilities must be consistent with the conditions of the FERC Certificate. Furthermore, while FERC encourages cooperation between owners of interstate pipelines and local authorities, state and local agencies, through application of state or local laws, may not prohibit or unreasonably delay the construction or operation of facilities approved by FERC. See Ex. C at 22, 50. As such, FERC has exclusive jurisdiction over the Myersville Compressor Station.

29. Because DTI is subject to the exclusive jurisdiction of FERC as it pertains to the siting, design, construction, and operation of the Myersville Compressor Station, the Town's denial of DTI's request to amend the Site Master Plan, as well as the Town Code and any local ordinances, rules, and regulations upon which the Town Council and Mayor relied in denying DTI's Amendment Application, are preempted by the FERC Certificate and the Natural Gas Act.

30. By denying DTI's Amendment Application for construction of the Myersville Compressor Station, the Town Council and Mayor purported to have jurisdiction, pursuant to Town Code § 165-150, to regulate the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement and maintenance of natural gas transportation and storage facilities, including the Myersville Compressor Station.

31. The Town of Myersville's Code, ordinances, rules and regulations, as well as the actions undertaken by Defendants to deny DTI's Amendment Application, conflict with federal law and would prevent or unreasonably delay the construction and operation of the Myersville Compressor Station. As a result, the Town Code, and any ordinances, rules, and regulations contained therein, as well as Defendants' actions, are preempted by the Natural Gas Act.

COUNT I
(Declaratory Judgment Against All Defendants)

32. DTI realleges and incorporates by references the allegations in Paragraphs 1 through 31 as though fully set forth herein.

33. By denying DTI's Amendment Application to construct the Myersville Compressor Station in the Town of Myersville, Defendants have sought to implement and enforce ordinances, laws and regulations in a manner that purports to regulate the construction and siting of DTI's natural gas transportation and storage facilities.

34. DTI seeks a declaration from this Court that the Natural Gas Act preempts Defendants from purporting to control the construction and siting of natural gas transportation and storage facilities, including the Myersville Compressor Station.

35. DTI has no adequate remedy at law.

COUNT II
(Preliminary and Permanent Injunction Against All Defendants)

36. DTI realleges and incorporates by references the allegations in Paragraphs 1 through 35 as though fully set forth herein.

37. Defendants' actions in seeking to bar DTI from constructing the Myersville Compressor Station impinge on DTI's obligation to comply with federal law in the transportation of natural gas in interstate commerce.

38. If Defendants are not enjoined, DTI will suffer irreparable harm in that it will not be able to construct the Myersville Compressor Station, which is necessary to provide efficient supply of natural gas to distributors and consumers.

39. In the event an injunction is not granted, Defendants will continue to enforce the various requirements and processes under the Town's zoning ordinance, thereby causing detrimental delay to the construction of the Myersville Compressor Station.

40. DTI is likely to succeed on the merits because the Natural Gas Act preempts the Town of Myersville Code, and all zoning ordinances, rules, and regulations contained therein, to the extent the Code prohibits or unreasonably delays the construction or operation of the Myersville Compressor Station, a FERC-approved facility.

41. The degree of injury the Defendants will suffer if an injunction is granted is less than the injury that will result if the injunction is refused because the Myersville Compressor Station poses no undue risks or hardship to the Town of Myersville and is, in fact, necessary to provide natural gas to Washington Gas and Light Company, Baltimore Gas and Electric and TW Phillips Gas and Oil Company. As a result, the balance of equities tips in DTI's favor.

42. An injunction will allow DTI to construct the Myersville Compressor Station and ensure safe and efficient distribution of natural gas to consumers. As a result, the general public will benefit from the granting of an injunction.

WHEREFORE, DTI prays that this Court:

(A) Enter a judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that the Town Code, and all ordinances, rules, and regulations contained therein, are preempted by federal law in their entirety and are thus null and void as applied to the siting, construction, and operation of DTI's interstate natural gas facilities and transportation and storage system, including DTI's proposed compressor station in the Town of Myersville; and

(B) Enter a judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that DTI is not required to secure any amendments, approvals, reviews, or other actions under the Town of

Myersville Code in order to proceed with the construction of the Myersville Compressor Station authorized by the FERC in the Town of Myersville; and

(C) Award DTI preliminary and permanent injunctive relief enjoining Defendants from implementing and enforcing the Town Code, and all ordinances, rules, and regulations contained therein, that purport to govern the siting, construction and/or operation of natural gas transportation and storage facilities, including the Myersville Compressor Station; and

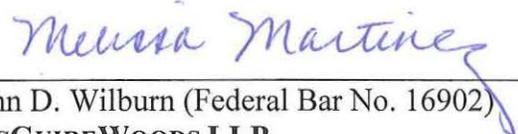
(D) Maintain jurisdiction over this matter should DTI be required to address any future actions by Defendants that contravene this Court's orders, the FERC Certificate, or the Natural Gas Act; and

(E) Grant DTI such other relief as may be just and equitable, including, without limitation, costs and reasonable attorney's fees.

Dated: January 31, 2013

Respectfully submitted,

DOMINION TRANSMISSION, INC.



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