



Town Of Myersville MAYOR & COUNCIL

301 Main St., P.O. Box 295
Myersville, MD 21773

BEFORE THE UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

REQUEST FOR REHEARING IN DOCKET NO. CP12-72-000 DOMINION TRANSMISSION, INC. – ALLEGHENY STORAGE PROJECT

I. INTRODUCTION

The Town of Myersville, a municipal body incorporated under the laws of the State of Maryland, is a local plan review and approving authority for a component in the above referenced docket and is a registered timely intervener party to this case in accordance with Commission Rules 385.214(b) and 157.10.

Pursuant to Commission Rule 385.713, the Town of Myersville (hereinafter “the Town”) hereby seeks a rehearing of the Commission's December 20, 2012 order issuing a Certificate of Public Convenience and Necessity for the Allegheny Storage Project, including a 16,600 horsepower compressor station to be located within the municipal limits of Myersville, Maryland.¹ The Commission erred in its discretion by issuing the certificate because it neglected to fully account for the negative environmental and economic impacts of the proposed compressor station in Myersville and did not sufficiently consider Dominion Transmission's inability to obtain required interrelated permits.

II. STATEMENT OF ISSUES

1. The Commission erred in inadequately considering the “Application of the Certificate Policy Statement

¹ *Dominion Pipeline, Inc.*, Order Issuing Certificate, 141 FERC ¶ 61,240 (December 20, 2012).

2. The Commission did not completely consider the “adverse impact to economic interests on surrounding landowners and economic development of the [Battiata] property,” or adjacent properties.
3. The Commission erred in relying upon the Environmental Assessment in evaluating the potential environmental impacts to town residents by only considering a ½ mile study radius. The Commission also inaccurately concluded that the “[Myersville] site would have environmental advantages,” over and above the other alternative sites considered.
4. The Commission did not completely consider potential negative impacts on Town infrastructure in installing pipelines across Grindstone Run.
5. The Commission did not adequately evaluate Dominion’s proposals to limit environmental impacts in or potential excessive noise levels within the Environmental Assessment.
6. The Commission neglected to adequately consider the far-reaching implications raised by the Town’s denial of Dominion’s Site Master Plan amendment as it relates to other plan and permit approvals.
7. The Commission erred in its failure to deny issuing the Certificate where it is evident that Dominion cannot obtain a necessary State of Maryland Air Quality Permit which is a requirement of the Clean Air Act and for compliance with the Conditions set forth in the Commission’s order.

III. SUPPORTING ARGUMENTS

1. **Issue #1** - The Commission erred in inadequately considering the “Application of the Certificate Policy Statement” as it relates to potential system overbuilding².

The Town states its concern regarding this issue and the corollary issue illustrated in CEII Exhibit G that the Commission has not sufficiently addressed the issue of potential systemic overbuilding by approving the Allegheny Storage Project. The Certification

² December 2012 Order Issuing Certificate, at ¶ 16.

Policy Statement³ requires the Commission give consideration of the potential for overbuilding and to avoid unnecessary disruptions of the environment, however the Town does not feel that the Applicant nor the Environmental Assessment have adequately proven that issuance of the Certificate would not increase supply beyond reasonable demand nor minimize potential environmental impact to the proposed Myersville compressor station site.

2. **Issue #2** - The Commission did not completely consider the “adverse impact to economic interests on surrounding landowners and economic development of the [Battiata] property,” or adjacent properties⁴.

While the Commission acknowledges the potential adverse impact of a proposed compressor station on adjacent properties, the Town contends that these impacts were not adequately considered within the greater context of the adjacent properties and the 21+ acre Battiata property (the proposed compressor station site) inclusive serving as economic development opportunities for the Town and community. Construction of the compressor station would be inconsistent with Town and State Smart Growth Goals which factored into the Mayor & Council’s August 1, 2012 denial of the Applicant’s land use and zoning application, however the Commission has not adequately evaluated this disproportionate impact.

While this property is currently undeveloped, there was a viable proposed commercial project as recently as 2007 by a local developer that was subsequently abandoned due to the economic recession. In stating that the land in question is undeveloped and poses no commercial viability, the Commission also ignores the potential for the Town to receive piggyback income taxes from the state from associated future job creation and the Town’s real property tax. With only one to three employees, the compressor station would not be in keeping with the Town’s goal of utilizing one of the last remaining viable commercial properties in the vicinity for an employment hub. While ad valorem taxes would be assessed to the compressor station, the tax yield diminishes over a 20-year period commensurate with the depreciation of the value of site

³ As outlined within *Certification of New Interstate Natural Gas Pipeline Facilities* (88 FERC, 1999).

⁴ December 2012 Order Issuing Certificate, at ¶¶20, 103, 104, 106.

improvements per the Maryland Department of Assessments and Taxation policy on pipeline transmission-related assessments.

Furthermore, the application that was considered by the Town was an amendment to the existing Site Master Plan and is incompatible with the approved plan since it removes the proposed commercial and office park component and integrated development components of the plan. The proposed compressor station would consume a plurality of developable area within the property and decrease the proposed employment opportunities for local residents as expressed within both the Comprehensive Plan goals and Intent of the Highway Employment district.

3. **Issue #3** - The Commission erred in relying upon the Environmental Assessment in evaluating the potential environmental impacts to town residents by only considering a ½ mile study radius and also inaccurately concluding that the “[Myersville] site would have environmental advantages,” over and above the other alternative sites considered⁵.

The inherent risks of the proposed use are not sufficiently addressed as an emergency event could prompt evacuation of people within proximity to the property far beyond the ½ mile study area contained with the FERC Application and Environmental Resource Reports. Based upon the 2010 United States Census, there are over 2,000 residents located within a one mile radius of the property and the Fire Hall at the Myersville Municipal Center serves as designated emergency evacuation center for the community and is located within this impact radius. Therefore, emergency response and evacuation efforts could be jeopardized by the proposed use. Furthermore, the impacted population within this radius far exceeds the number and density of the majority of the proposed alternative sites, including the Middletown site.

It should be noted that while the proposed Myersville site is near “light industrial” areas, the use is not permitted under Town zoning, whereas the proposed Marker Road site in Middletown is considered permissible by grant of special exception within the Agricultural zoning district under the applicable Frederick County zoning code. Therefore, there would be a disproportionate environmental and economic impact on these properties that would exceed impacts on the identified alternative sites,

⁵ December 2012 Order Issuing Certificate, at ¶¶54, 56, 130, 131.

including the Middletown and Jefferson alternatives, since construction of the compressor station would significantly hinder future proposed commercial development that would serve as not only an expanded tax base for the Town, but also provide opportunities for an increased job base.

4. **Issue #4** - The Commission did not completely consider potential negative impacts on Town infrastructure in installing pipelines across Grindstone Run⁶.

The Town is concerned that impacts associated with the proposed dry crossing for pipeline construction may have on Town's existing water and sewer trunk lines located in Grindstone Run. Should the rehearing request be denied, the Town would at least request that this issue be further addressed within the Conditions of Approval.

5. **Issue #5** - The Commission did not adequately evaluate Dominion's proposals to limit environmental impacts in or potential excessive noise levels within the Environmental Assessment⁷.

If sound noise levels exceed 55db at NSA, the Town is concerned with the mitigation proposal that is outline within the EA and Certificate, whereby the Commission will allow Dominion one year to mitigate noise impacts. The Town contends that The Certificate does not properly take into account required regular emergency "blow-downs" of the compressor station which would induce continuous sounds that would exceed the State of Maryland law nor does it address residual noise during normal operations. The preceding objections notwithstanding, any violation of applicable noise laws⁸ would not preclude the Town, County or State from issuing fines and requiring compliance for violations of local regulations within the normal procedures for ensuring immediate compliance.

⁶ December 2012 Order Issuing Certificate, at ¶136.

⁷ December 2012 Order Issuing Certificate, at ¶51, Appendix B, Environmental Conditions #8 and #12

⁸ State of Maryland, COMAR §26-03.A(1)

6. **Issue #6** - The Commission neglected to adequately consider the far-reaching implications raised by the Town's denial of Dominion's Site Master Plan amendment as it relates to other plan and permit approvals⁹.

The proposed Myersville compressor station would be within the Town's incorporated limits thus subject planning and zoning jurisdiction and development review process. The Town exercises independent planning and zoning jurisdiction under the provisions of Article 66B of the Annotated Code of the State of Maryland and considered a relevant review and approval authority for the project's location, site design, public improvements and forest conservation plans among other elements. Furthermore, the Town is also the responsible public water and sewerage utility for the proposed compressor station. In finding that the Site Master Plan amendment application (submitted by Dominion April 2012) was inconsistent with applicable Town regulations,¹⁰ other County and State approvals are contingent upon Town permit issuance, with at least one not being subject to federal preemption under the Natural Gas Act. The Town reiterates its August Findings and Decision and cannot approve the project under local and state law.

7. **Issue #7** - The Commission erred in its failure to deny issuing the Certificate where it is evident that Dominion cannot obtain a necessary State of Maryland Air Quality Permit which is a requirement of the Clean Air Act and for compliance with the Conditions set forth in the Commission's order¹¹.

The Town raises its objection to DTI's ability to comply with State air quality compliance regulations as implementation of the Federal Clean Air Act through its Environmental Protection Agency approved State Implementation Plan. Obtaining this permit is a condition that must be met for the compressor station to proceed under the Commission's Certificate, however the Town will not be issuing zoning or land use approval nor considering a resubmission of an application at this time. Therefore, in accordance with Section 2-404(b)(1) of the Environment Article under Maryland Code, a permit applicant is required to submit documentation with the application demonstrating that it has received local zoning approval or can meet all required zoning and land use

⁹ December 2012 Order Issuing Certificate, at ¶78.

¹⁰ Application #ZA-12-03, Dominion Transmission, Inc. – Town of Myersville Mayor & Council Findings and Decision (August 24, 2012).

¹¹ December 2012 Order Issuing Certificate, at ¶¶69, 71, 110.

laws. It is clear that Dominion will be unable to meet such requirements and fulfill its condition of Certificate approval and its compliance with the Federal Clean Air Act.

IV. CONCLUSION

THEREFORE, for the foregoing reasons, the Town of Myersville asks that the Commission GRANT this request for rehearing, DENY the issuing certificate approving the Allegheny Storage Project in CP12-72-000 or amend the certificate to remove the Myersville compressor station as a component. Furthermore, the Town requests that the Commission STAY the current order while considering and processing this request.

Respectfully submitted,
TOWN OF MYERSVILLE
MAYOR AND COUNCIL

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Document Content(s)

Town Rehearing Request to FERC 1-21-13.PDF.....1-7