

**BEFORE THE UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Dominion Transmission Inc.)
) **Docket No. CP12-72**
Allegheny Storage Project)

**MYERSVILLE CITIZENS FOR A RURAL COMMUNITY (MCRC)
REPLY TO DTI ANSWER TO MCRC'S MOTION TO DISMISS**

I. OVERVIEW

The Myersville Citizens for a Rural Community (MCRC), intervenors in the above-captioned proceeding, hereby file this short reply to DTI's Answer to MCRC's Motion to Dismiss the certificate application filed October 1, 2012. As described in the Motion to Dismiss, having been denied a zoning variance by the Town of Myersville, DTI cannot obtain the necessary air quality permits under state and federal law to operate the project and thus, there is no point in the Commission moving forward with the application.

Given the complexity of the air quality issues in this case, MCRC seeks leave to respond to DTI's Answer. Although the Commission's regulations do not authorize a reply, the Commission has discretion to accept responsive pleadings such as this one that will assist the Commission in understanding the issues raised.¹ In the event that the Commission does not accept this filing as a reply, MCRC asks the Commission to treat this reply as comments and include it as part of the

¹ *C.f., e.g.* PJM Interconnection, L.L.C., 104 FERC ¶ 61,031, at P 10 (2003) (accepting answer when it will not delay the proceeding and will assist the Commission's understanding of the issues).

decisional record.

II. ARGUMENT

This reply corrects two inaccurate and potentially misleading arguments raised by DTI in its answer. First, DTI inaccurately asserts that MD Env. 2-404 (requiring zoning approval as a prerequisite to applying for various state and federal emissions permits) is not part of Maryland's federally approved state implementation plan. DTI Answer at 5. It is. COMAR 26.11.02(7) (a) (which DTI concedes *is* part of Maryland's federally approved SIP, DTI at 5) identifies MD Environmental Article Title 2 as an applicable requirement of law, and as listed on EPA's website, this provision is included in the SIP (see Attachment 1 to Reply, COMAR 26.11.02 referencing portions that are part of SIP).

Second, DTI argues that its project is not subject to a Part 70 permit because the 6000 hour operational cap *is* federally enforceable because that limit will be included in a permit that DTI has applied for pursuant to a program incorporated in Maryland's SIP. DTI at 8. Maybe so, but the trouble is that without zoning approval, DTI is disqualified from applying for the very permit that would establish a federally enforceable 6000 hour cap. Absent this permit, DTI itself concedes that the 6000-hour cap would *not* be federally enforceable; thereby triggering the Part 70 approvals other permit requirements discussed in MCRC's Motion to Dismiss 12-14.

A. MD Env. 2-404 is part of Maryland's SIP

As MCRC discussed in its Motion to Dismiss and DTI did not

dispute, any state laws and regulations that are part of a federally enforceable SIP are not preempted by the Natural Gas Act. Contrary to DTI's assertions, MD Env. 2-404, which requires zoning approval as a prerequisite to applying for various emissions permits under COMAR 26.11.02, is part of Maryland's SIP and therefore, is not preempted.

COMAR 26.11.02(7)(a) expressly states that Title 2 of Maryland's Environmental Code and the COMAR regulations are applicable requirements of state air pollution law. Moreover, COMAR 26.11.02(7)(a) is included in the federally approved SIP listed at the EPA website. For convenience, a copy of the regulation from the EPA website is attached to this reply – and it clearly identifies those provisions of COMAR, including COMAR 26.11.02(7) that are part of the SIP and those which are not.

Engaging in damage control, DTI proffers that Environmental 2-404 (b)(the provision that makes zoning approval a prerequisite to applying for a permit) is “self-implementing” and therefore, is not really applicable to COMAR. But DTI's rationalizations are no match for the plain language of COMAR which as just described, expressly incorporate by reference *all* of Title 2 of the Environmental Code whether self-implementing or not.

Because MD 2-404, which requires DTI to obtain local zoning approval prior to applying for a permit, is incorporated by reference in a federally approved SIP, it is not preempted and may not be disregarded. So long as MD 2-404 applies, it stands as an absolute bar to DTI's ability to obtain federally-required permits that are necessary to enable the

Commission to make consistency findings under the CAA. For that reason, the Commission should simply dismiss the application at this juncture.

B. DTI's project is a major emissions source because the 6000 hour operational cap is not federally enforceable, and the EA must be revised to reflect DTI's status as a major source

As MCRC argued in its motion to dismiss at 12-14, the EA erroneously concluded that the Myersville Compressor station is a minor source of emissions (and therefore, exempt from more extensive federal permits such as Part 70 operating permits and KKK and YYY regulations). The EA's conclusion was based on the assumption that DTI would operate its compressor station less than 6000 hours/year. However as MCRC explained, classification of a project as a major or minor source is based on its potential to emit under its physical and operational design unless subject to a federally enforceable operational limit. Without the 6000-hour cap, it is likely that DTI's emissions levels would be much higher; in line with the 31.25 tons per year emitted by an identical compressor station operated by El Paso than the 23.76 tons per year that DTI claims. MCRC Motion to Dismiss at 14.

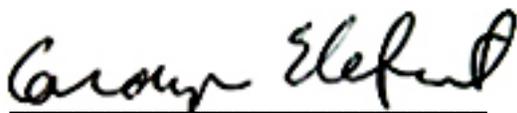
DTI argues that the 6000-hour cap is federally enforceable because the limitations will be included in a state permit issued pursuant to a program incorporated in the SIP. (DTI Answer at 8-9) DTI adds that it applied for a permit under Maryland's SIP that would limit DTI's operations to 6000 hours, thus making the limit federally enforceable. But applying for a permit is a far cry from actually receiving one (and DTI conveniently omits mentioning that it has not received an emissions

permit). As discussed, DTI cannot receive *any* state permits because it was denied zoning approval, which is a prerequisite to Maryland's acceptance of an application.

DTI effectively concedes that without a federally enforceable 6000-hour limit, the Myersville Compressor would be treated as a major source triggering Part 70 permit requirements as well as others (MCRC Answer at 10, noting MDE is authorized to include limits on permits so that a project's potential to emit remains below major source thresholds). Thus, in the absence of obtaining a permit that enforces the 6000-hour operational requirement (which again, DTI cannot obtain because it does not have zoning approval), the EA must be corrected to specify that the proposed compressor station is a *major* emissions source subject to Part 70, KKK and YYY air quality regulations.

III. CONCLUSION

Wherefore, for the foregoing reason, MCRC respectfully requests that the Commission DISMISS DTI's application and grant all other relief requested in the Motion to Dismiss.



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Found online at EPA SIP site, link
<http://yosemite.epa.gov/r3/r3sipsnsf/9eeb842c677f8f5d85256cfd004c3498/88253132fd5dd6cc85256d1e00673564!OpenDocument>

TITLE 26 - DEPARTMENT OF THE ENVIRONMENT

SUBTITLE 11 - AIR QUALITY

CHAPTER 02 - PERMITS, APPROVALS, AND REGISTRATION

.01 - Definitions.

A. In this chapter and in COMAR 26.11.03, the following terms have the meanings indicated.

B. Terms Defined.

(1), (1-1) [not in SIP]

(2) "Affected source" means a source that includes one or more affected units.

(3) "Affected states" means all states including the District of Columbia:

(a) Whose air quality may be affected and that are contiguous to Maryland; or

(b) That are within 50 miles of the permitted source.

(4) – (6) [not in SIP]

(7) "Applicable requirement of State air pollution control law" means all of the following as they apply to a source:

(a) Environment Article, Title 2, Annotated Code of Maryland; and

(b) All regulations that the Department has adopted under the authority of Environment Article, Title 2, including COMAR 26.11.

(8) "Applicant" means a person who submits an application for a permit.

(9) "Application" means a written request for a permit required by this chapter or by COMAR 26.11.03.

(10) [not in SIP]

(11) "Approval" means a special category of permit from the Department for a PSD source or an NSR source.

(12) "Clean Air Act" means the federal Clean Air Act, as amended, 42 U.S.C. §7401 et seq.

(13) "Complete application" means an application that:

(a) Contains all the information required by the Department under Regulation .11, .12, or .14 of this chapter or COMAR 26.11.03.02 and .03 in sufficient detail that allows the Department to begin review of the application; and

(b) Includes additional information that the Department, in its final review of the application, may require to assure that emissions estimates are reasonably accurate and that all applicable requirements will be met.

(14) "Contested case hearing" means a hearing that meets the requirements of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(15), (16) [not in SIP]

(17) "EPA" means the Administrator of the U.S. Environmental Protection Agency or the Administrator's designee.

(18) Emissions Unit.

(a) "Emissions unit" means a part or activity of a stationary source, including an installation, that emits or has the potential to emit a regulated air pollutant or hazardous air pollutant listed under §112(b) of the Clean Air Act.

(b) "Emissions unit" does not alter or affect the definition of the term "unit" for purposes of Title IV of the Clean Air Act.

(19) "Federally enforceable requirements of a permit to construct or State permit to operate" means the provisions of a permit to construct or State permit to operate that meet the requirements of Regulation .03 of this chapter.

(20) "Final permit" means the version of a permit issued after the Department has completed all review procedures required, with respect to the permit, by this chapter and by COMAR 26.11.03.

(21) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(22) [not in SIP]

(23) "General permit" means a general Part 70 permit, a general permit to construct, or a general State permit to operate.

(24) "General permit to construct" means a permit that meets the requirements of Regulation .09D of this chapter.

(25) "General State permit to operate" means a permit that meets the requirements of Regulation .13H of this chapter.

(26) "Informational meeting" means a meeting that meets the requirements of Environment Article, §1-101(g), Annotated Code of Maryland.

(27) "Major source" has the meaning stated in §C of this regulation.

(28) "Maryland State Implementation Plan (SIP)" means the Maryland plan required by §110 of the Clean Air Act, as approved by EPA.

(29) through (33) [not in SIP]

(34) "Permit" means a written authorization from the Department issued pursuant to this chapter or COMAR 26.11.03, including a Part 70 permit, a State permit to operate, a permit to construct, a general permit, or an approval of a PSD or NSR source.

(35) Permit to Construct.

(a) "Permit to construct" means a permit to construct issued, renewed, or revised pursuant to this chapter.

(b) "Permit to construct" does not mean a Part 70 permit.

(36) "Permittee" means a person who has obtained a permit from the Department.

(37) [not in SIP]

(38) "Permit revision" means a revision to the terms and conditions of a permit or approval.

(39) [not in SIP]

(40) Portable Emission Unit.

(a) "Portable emission unit" means an emission unit that is designed to be moved from site to site, including portable asphalt plants, portable stone crushers and screens, and portable stills.

Document Content(s)

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