



Midwestern Gas Transmission Company

A Northern Border Partners, L.P. Company

November 18, 2005

Ms. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Midwestern Gas Transmission Company
Docket No. CP05-372-000
Comments on the Environmental Assessment
for the MGT Eastern Extension Project

Dear Ms. Salas:

Midwestern Gas Transmission Company (MGT) herein is filing, with the Federal Energy Regulatory Commission (Commission) in Docket No. CP05-372-000, its comments addressing the Commission's Environmental Assessment (EA) for the proposed MGT Eastern Extension Project.

On June 6, 2005, MGT filed an application for a certificate of public convenience and necessity, in the above-referenced docket, pursuant to Section 7(c) of the Natural Gas Act. Such application involves the proposed construction and operation of approximately 30.9 miles of 16-inch diameter pipeline commencing at the MGT Portland Station located in Sumner County, Tennessee and traversing southeasterly to proposed interconnects with Columbia Gulf Transmission Company and East Tennessee Natural Gas Company located in Trousdale County, Tennessee. The proposed pipeline would deliver up to 120,000 dekatherms per day on behalf of Piedmont Natural Gas Company. On October 20, 2005, the Commission issued a Notice of Availability of the EA for the MGT Eastern Extension Project and requested comments be submitted on or before November 21, 2005. The comments submitted herewith are in response to such notice.

If you have any questions regarding these comments, please contact Jay Muschenheim with MGT at (402) 490-7464.

Sincerely,

Bambi Heckerman
Director, Regulatory Affairs
Northern Plains Natural Gas Company, LLC
Operator

Attachment

cc: Mr. David Gallo-OEP, Room 61-44

Clarifications to the Environmental Assessment
for the
Midwestern Gas Transmission Company Eastern Extension Project
Docket No. CP05-372-000

A. PROPOSED ACTION

4. Construction, Operation, and Maintenance Procedures

Special Construction Techniques

Page 7, 4th paragraph “Unpaved roads would be crossed by open cutting.”

Discussion:

Table 1.6-2 of Resource Report No. 1 – General Project Description indicates that unpaved roads at Mileposts 1.7, 7.0, and 30.6 are proposed to be crossed by open cutting. The unpaved road at Milepost 10.1 is proposed to be crossed by boring.

Clarification:

“Unpaved roads may be crossed by open cutting.”

B. ENVIRONMENTAL ANALYSIS

2. a. Groundwater

Page 21, last sentence “The trench excavation would be 5 to 7 feet deep and would intersect the water table only in low-lying areas.”

Discussion:

Resource Report No. 2 – Water Use and Quality, Section 2.3 Groundwater Resources, Subsection 2.3.3 Construction Impacts and Mitigation, first sentence states “Construction activities associated with the Eastern Extension Project will involve shallow excavation (4 to 7 feet deep).”

Clarification:

“The trench excavation would be 4 to 7 feet deep and would intersect the water table only in low-lying areas.”

4. a. Land Use, Recreation, and Visual Resources

Page 44 (bottom), 45 (top) “MGT may use the right of eminent domain granted to it under Section 7(h) of the NGA [Natural Gas Act] and the Rules of Civil Procedure to obtain a right-of-way. MGT would still be required to compensate the

landowner for the right-of-way and any damages incurred during construction. However, the level of compensation would be determined by a court according to state laws that set forth the procedures for the use of eminent domain once the FERC issues a Certificate.”

Discussion:

MGT’s goal is to negotiate the pipeline easements necessary for the Eastern Extension Project with each individual landowner. MGT will compensate the landowner for the right-of-way and any damages incurred during construction. If FERC approves the Eastern Extension Project, the Natural Gas Act of 1938 provides MGT with the right to acquire the right-of-way through the use of eminent domain. FERC has stated that the level of compensation would be determined by a court according to state laws. State law would govern only in very limited situations where there is no federal standard. Rule of Civil Procedure 71A was enacted in 1951 by the U.S. Congress. Rule 71A(a) provides: "The Rules of Civil Procedure for the United States District Courts govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this rule." The Advisory Committee Notes to Rule 71A state: "Rule 71A affords a uniform procedure for all cases of condemnation invoking the national power of eminent domain, and . . . supplants all statutes prescribing a different procedure." See *Kirby Forest Indus. v. United States*, 467 U.S. 1, 104 S. Ct. 2187, 2191 n.2, 81 L. Ed. 2d 1 (1984) ("The adoption in 1951 of Rule 71A capped an effort to establish a uniform set of procedures governing all federal condemnation actions."). The United States Supreme Court has held on several occasions that statutes with language very similar to that found in the Natural Gas Act requiring conformity with state practice and procedure were "clearly repealed" by Rule 71A. *United States v. 93.970 Acres of Land*, 360 U.S. 328, 79 S. Ct. 1193, 1196 n.7, 3 L. Ed. 2d 1275 (1959); see also, *Kirby Forest*, 104 S. Ct. at 2191 & n.2 (holding that Rule 71A supersedes requirement of conformity with state practice and procedure contained in 40 U.S.C. @ 257). The Eleventh Circuit Court of Appeals in holding that Rule 71A superseded the language of 15 U.S.C. §717f(h) stated that "[i]t is clear to us that Rule 71A was promulgated to override a number of confusing federal eminent domain practice and procedure provisions . . . and to provide a unified and coherent set of rules and procedures to be used in deciding federal eminent domain actions." *Southern Natural Gas Co. v. 2.0 Acres of Land*, 197 F.3d 1368, 1375 (11th Cir. 1999); see also, *USG Pipeline Co. v. 1.74 Acres of Land in Marion County, Tennessee*, 1 F. Supp. 2d 816, 826 (E.D. Tenn. 1998).

Clarification:

“MGT may use the right of eminent domain granted to it under Section 7(h) of the NGA [Natural Gas Act] and the Rules of Civil Procedure to obtain a right-of-way. MGT would still be required to compensate the landowner for the right-of-way and any damages incurred during construction. However, the level of compensation would be determined by a court once the FERC issues a Certificate.”

8. a. Safety Standards

Page 60, 4th paragraph

“Although the majority of the route crosses Class 1 with a small portion crossing Class 2, MGT has stated that its pipeline would be built to meet Class 3 requirements.”

Discussion:

MGT will design, construct and operate the Eastern Extension in accordance with all applicable DOT regulations, including those regarding class location. Even though the pipeline route traverses DOT Class 1 and Class 2 locations only, MGT will build its pipeline to meet a 0.5 design factor consistent with Class 3 requirements.

Clarification:

“Although the majority of the route crosses Class 1 locations with a small portion crossing Class 2 locations, MGT will build its pipeline to meet a 0.5 design factor consistent with Class 3 requirements.”