

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

Virginia Electric Power Company)
) Docket No. CP23-____-000
)

**PETITION FOR DECLARATORY ORDER
AND REQUEST FOR EXPEDITED ACTION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A
DOMINION ENERGY VIRGINIA**

Pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”),¹ Virginia Electric and Power Company d/b/a Dominion Energy Virginia (“DEV”) files this petition for a declaratory order (“Petition”) seeking a determination that if built and operated as described in this Petition, a planned liquefied natural gas (“LNG”) production, storage, and regasification facility (“Back-up Fuel Project,” or “Project”) will not be subject to the Commission’s jurisdiction under the Natural Gas Act (“NGA”).² The Project will be located in Virginia and will be used solely to provide back-up fuel for two of DEV’s nearby combined-cycle natural gas-fired electric generation stations—also located in Virginia—in the event of severe weather, cyberattacks, natural disasters, or other interruptions that disrupt DEV’s primary natural gas supply. The Project will not provide fuel for any entities other than DEV and will enhance the reliability of electric service by ensuring that an alternate supply of fuel is available.

The Back-up Fuel Project will supply fuel to two DEV power plants—the Greensville and Brunswick County Power Stations. The Project will be located on

¹ 18 C.F.R. § 385.207(a)(2) (2022). Pursuant to Rule 381.302(a), DEV is electronically submitting the amount of \$35,980.00 for the filing fee. 18 C.F.R. § 381.302(a).

² 15 U.S.C. §§ 717, *et seq.*

DEV-owned property adjacent to the Greensville County Power Station and the Brunswick County line. The Brunswick County Power Station is located six miles from the Project. Regasified fuel will flow from the Project to the Greensville County Power Station directly via yard piping built, owned, and operated by DEV and wholly located on DEV property. When necessary, regasified LNG will flow from the Project to the Brunswick County Power Station on two existing laterals operated by Transcontinental Gas Pipe Line Company LLC (“Transco”). DEV will ask Transco to install and control an isolation valve on the lateral along which gas will flow from the Project to the Brunswick County Power Station to ensure that while the isolation valve is closed no such gas will enter interstate commerce after leaving the Project.³ DEV’s use of its transportation agreements on the Transco laterals to supply the Brunswick County Power Station does not render the Project jurisdictional under NGA Section 1(b) or 1(c) because while the isolation valve is closed all fuel flowing out of the Project on Transco’s laterals will be consumed within Virginia at the Brunswick County Power Station.

The Back-up Fuel Project is non-jurisdictional either under Section 1(b) or Section 1(c) of the NGA. Because the Project will not store gas for use in interstate commerce, it is not subject to NGA Section 1(b), nor does operation of the Project render DEV a “natural-gas company” under NGA Section 2(6). Rather, the Project is subject to the longstanding so-called “plant line exception” to the Commission’s jurisdiction under NGA Section 1(b) because it is being built in a “single state by a plant owner solely for the purpose of moving natural gas for use in its own plant.”⁴ Alternatively, the Project is

³ At this time, Transco and DEV have not entered into any commercial agreements related to the installation and control of the proposed isolation valve on Transco’s system and accordingly nothing herein shall be construed as an obligation by Transco to construct any facilities.

⁴ See generally *Keys Energy Ctr., LLC*, 145 FERC ¶ 61,184, at P 5 (2013) (citing cases); *Pub. Serv. Elec. &*

non-jurisdictional under the “Hinshaw Amendment” in NGA Section 1(c) because all of the gas used on the Project will be received and consumed in Virginia, and the Project will be subject to the regulation of the Virginia State Corporation Commission (“VSCC”).

Accordingly, DEV requests a declaratory order affirming that, if built and operated as described in this Petition, the Project will not be subject to the Commission’s jurisdiction under the NGA.

DEV respectfully requests the Commission act on this Petition no later than July 31, 2023. Expedited action will remove legal uncertainty concerning the Project in a timely manner, allowing DEV to reach a decision on the substantial investment required for the Project facilities, and to plan, permit, construct, and place the Project into operation by Q4 2026, in order to enhance the reliability of electric service by ensuring that an safeguarded supply of fuel is available prior to winter 2026.

In support hereof, DEV states as follows:

I. COMMUNICATIONS

Pursuant to Rule 2010 of the Commission’s Rules of Practice and Procedure, the names and mailing addresses of the persons designated to receive service and to whom communications concerning this proceeding should be addressed are as follows:⁵

Gas Co. v. FPC, 371 F.2d 1, 5 (3d Cir. 1967) (affirming Federal Power Commission (“FPC”) disclaimer of jurisdiction over four-mile pipeline receiving gas from interstate pipeline for delivery to refinery, finding the pipeline “an integral part of [the] plant facility”).

⁵ DEV respectfully requests that the Commission waive Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), to allow DEV to include each of the listed representatives on the official service list for this proceeding, pursuant to 18 C.F.R. § 385.2010.

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II. BACKGROUND

A. About DEV

Dominion Energy is one of the nation's largest producers and distributors of energy. About seven million customers in 15 states energize their homes and businesses with electricity or natural gas from Dominion Energy, headquartered in Richmond, Virginia. The company is committed to safely providing reliable, affordable, and sustainable energy and to achieving net zero emissions by 2050.

Dominion Energy's operations are conducted through various subsidiaries, including DEV, which is a public utility company regulated by the VSCC. DEV owns and operates regulated electric transmission, distribution, and generation operations which serve approximately 2.7 million residential, commercial, industrial, and governmental customers in Virginia and North Carolina. Revenue provided by DEV's electric distribution and generation operations is based primarily on rates established by the VSCC and the North Carolina Utilities Commission. Base rates for the Virginia jurisdiction are set using a modified cost-of-service model and are generally designed to allow the opportunity to recover costs of providing service and a reasonable return on investment. DEV is a public utility under the Federal Power Act.

B. The Greenville and Brunswick County Power Stations

As relevant to this Petition, DEV owns and operates the Greenville and Brunswick County Power Stations, which together generate enough electricity to power over 700,000 homes. The Greenville County Power Station is a 1,588 megawatt (“MW”) natural gas-fired combined-cycle electric generating facility located in Greenville County, Virginia. The VSCC issued a certificate of public convenience and necessity approving the facility in 2016.⁶ DEV also owns and operates the Brunswick County Power Station, a 1,358 MW natural gas-fired combined-cycle electric generating facility in Brunswick County, Virginia, and received a certificate from the VSCC approving the facility in 2013.⁷ DEV’s recovery of costs related to the construction, operation, and maintenance of the Greenville and Brunswick County Power Stations must be approved by the VSCC.

Transco operates the pipeline system that delivers natural gas to the Greenville and Brunswick County Power Stations. The Commission authorized Transco to construct and operate the approximately 7.3-mile Brunswick Lateral to serve the Brunswick County Power Station as part of the Virginia Southside Expansion Project in 2013.⁸ The Brunswick Lateral extends from Transco’s South Virginia Lateral in Brunswick County, Virginia. Three years later, the Commission authorized Transco to construct and operate the approximately 4.3-mile Greenville Lateral as part of the Virginia Southside Expansion Project II.⁹ The Greenville Lateral extends from milepost 5.2 on Transco’s Brunswick Lateral in Brunswick County, Virginia, to Greenville County Power Station in Greenville

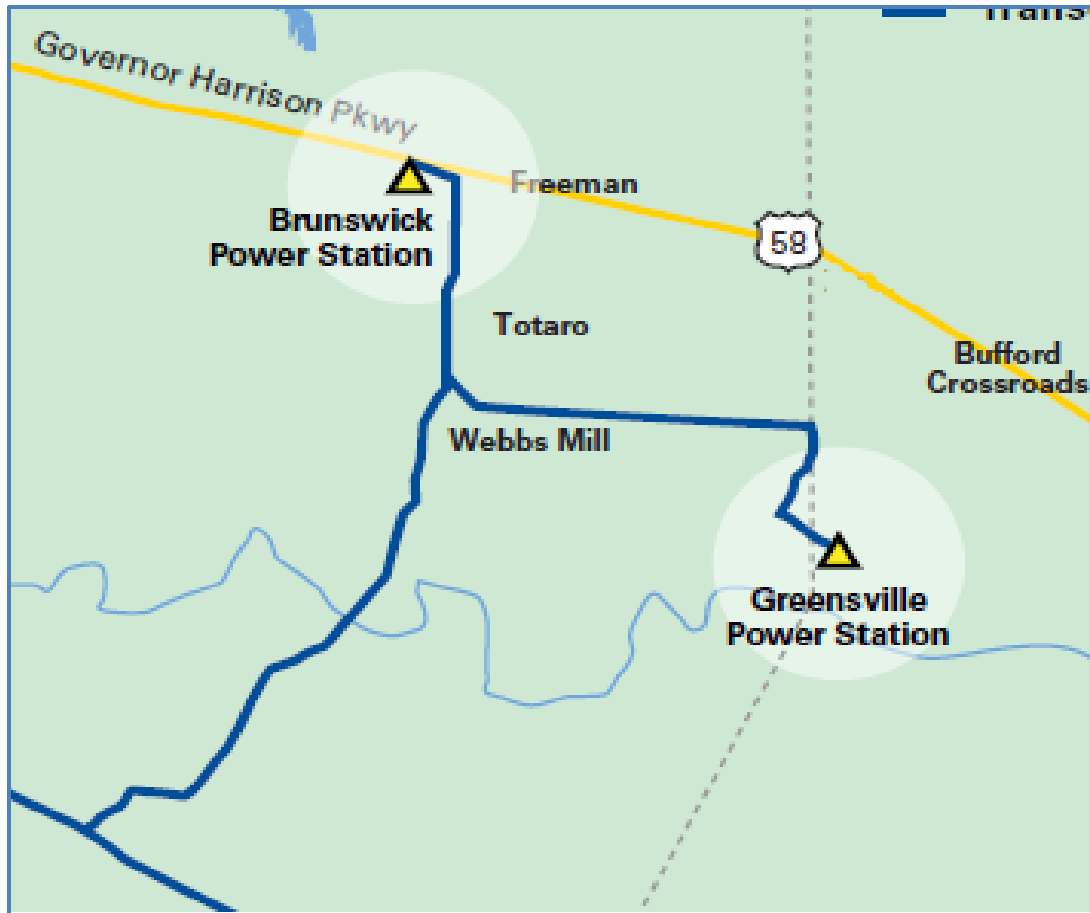
⁶ Virginia State Corporation Commission, Final Order, Case No. PUE-2015-00075 (Mar. 29, 2016) (“Greenville County Power Plant Certificate”), <https://scc.virginia.gov/docketsearch#caseDocs/134728>.

⁷ Virginia State Corporation Commission, Final Order, Case No. PUE-2012-00128 (Aug. 2, 2013) (“Brunswick County Power Plant Certificate”), <https://scc.virginia.gov/docketsearch#caseDocs/131595>.

⁸ *Transcon. Gas Pipe Line Co.*, 145 FERC ¶ 61,152 (2013).

⁹ *Transcon. Gas Pipe Line Co.*, 156 FERC ¶ 61,022 (2016).

County, Virginia. As shown on the map below, natural gas flows from the South Virginia Lateral first onto the Brunswick Lateral and then at the connection with the Greenville Lateral some gas continues to the Brunswick County Power Station and the rest of the gas goes to the Greenville County Power Station.



C. Planned Construction and Operations of the Back-up Fuel Project

1. Back-up Fuel Project Planned Facilities

The purpose of the Back-Up Fuel Project is to provide DEV with an alternate fuel supply serving as a reliability asset for the power stations in the event of severe weather, cyberattacks, natural disasters or other interruptions that disrupt DEV's primary natural gas supply. The Project is planned to be located on 20-acres owned by DEV adjacent to the

boundary of DEV's existing Greenville County Power Station and will provide approximately 2 billion cubic feet ("Bcf") of LNG storage capacity, approximately 15 million standard cubic feet per day ("mmscfd") of liquefaction capacity, and approximately 500 mmscfd of regasification capacity. The Project will include construction of pretreatment, liquefaction, storage, and vaporization facilities, and station yard pipeline facilities to receive the gas at the Project and re-deliver the regasified LNG.¹⁰

The Project will be constructed in full compliance with the Pipeline and Hazardous Materials Safety Administration's ("PHMSA") applicable regulations.¹¹ Construction and operation of the Project will also require amendments of the VSCC's certificates authorizing the Greenville and Brunswick County Power Stations. The VSCC's approval also will be required for DEV to recover costs associated with the Project.

2. Changes to Transco's Facilities and Operations

In connection with the Project, DEV will ask Transco to construct a new 24-inch mainline isolation valve on the Brunswick Lateral, a new receipt meter station on the Greenville Lateral, and appurtenant facilities.¹² The proposed isolation valve would be located just upstream of the connection with the Greenville Lateral. In the event of a severe weather, cyberattacks, natural disasters, or other interruptions that disrupt DEV's primary natural gas supply, DEV, or its agent, would ask Transco to close the new isolation valve, allowing DEV to send the regasified fuel from the Project located at the Greenville County Power Station through the isolated portions of the Greenville Lateral and the

¹⁰ Note that boil-off gas produced by the Project will be consumed onsite at the Greenville County Power Station or reliquefied and returned the storage tank.

¹¹ See generally 49 C.F.R. Part 193.

¹² DEV understands that Transco would need to seek any necessary authority from the Commission to construct its facilities.

Brunswick Lateral. Transco would receive regasified fuel at the proposed new receipt meter at the outlet of the Back-up Fuel Project facilities and deliver that gas at the existing Brunswick Meter Station at the Brunswick County Power Station.

3. Operation of the Back-up Fuel Project

The Greenville and Brunswick County Power Stations will be the sole end-use consumers of the natural gas from the Back-up Fuel Project. The Project will receive its feed supply of natural gas from Transco's interstate natural gas transmission system. Natural gas supplied for liquefaction on the Project will be received downstream of a connection with Transco's existing meter station on the Greenville Lateral at the Greenville County Power Station.

The Project has three main modes of operation: liquefaction, regasification, and standby. Under current design scenarios, which may change before final design, during the liquefaction operations the LNG storage tank will be filled at a maximum rate of approximately 15 mmscfd. At that rate, it would take approximately 138 days to completely fill the approximately 25-million-gallon LNG storage tank, allowing DEV to fill the tank two-and-a-half times and completely empty the tank two to three times in a 12-month rolling period.

Regasification operations would provide a maximum regasification rate of approximately 500 mmscfd of regasified fuel for the power stations. When called upon, a full tank would be able to provide up to approximately four days of storage for both stations operating at full load or approximately eight days for one station at full load. Lower load configurations would prolong storage duration availability.

When both power stations receive 100 percent of their fuel from the Project, DEV can deliver gas through DEV-owned and operated station yard piping to the Greenville County Power Station and transport gas on Transco to the Brunswick County Power Station. When the Project is sending fuel to the Brunswick County Power Station and the proposed isolation valve is closed, as Transco's system is currently designed, Transco's pipeline will be isolated such that only regasified fuel is moved through the Transco laterals, separated from the remaining Transco pipeline system.

There may be certain instances where the primary natural gas supply from Transco to the Greenville County Power Station—where the Project will be located—is supplemented or comingled at the Greenville County Power Station with the regasified fuel from the Project. During those times, DEV will not use the proposed receipt meter at the outlet of the Back-up Fuel Project on Transco's system to move regasified fuel on Transco's system and the Brunswick County Power Station will not receive fuel from the Project.¹³

When the Project is not in liquefaction or regasification mode, the Project will be in standby operation. During this time, the facility stays operationally ready for use.

4. Need for the Back-up Fuel Project

Construction of the Back-up Fuel Project is planned to help ensure that DEV can reliably continue to provide electric generation services in the case of severe weather, natural disasters, cyberattacks, or other interruptions that disrupt DEV's primary natural gas service. Several such events have occurred in recent years that support the need for

¹³ Supplementing the natural gas delivered by Transco with regasified fuel will only occur at the Greenville County Power Station. DEV will not mix or comingled natural gas delivered to Brunswick with any regasified fuel from the Project. As explained, regasified fuel from the Project will only be delivered to the Brunswick County Power Station when the proposed isolation valve on the Brunswick Lateral is closed.

enhanced back-up fuel sources. As the Commission is well-aware, in February 2021, Winter Storm Uri brought snow, freezing rain, and cold temperatures that caused numerous outages, derates, or failures to start at electric generating plants scattered across Texas and the South Central United States.¹⁴ In its report on the storm, the Commission found that 27.3 percent of the outages, derates, and failures to start during the storm were caused by natural gas fuel supply issues.¹⁵ The report notes that “having firm supply or transportation contracts did not guarantee a generating unit remained online.”¹⁶ Other recent incidents further highlight the need for enhanced reliability of electric generation facilities.¹⁷

The Back-up Fuel Project will provide backup fuel for the simultaneous operation of the Greenville and Brunswick County Power Stations to enhance reliability and resiliency in the event of a fuel supply disruption to these facilities. The Atlantic Coast Pipeline was originally intended, in part, as a back-up fuel source for these power stations. Since that project was cancelled, DEV initiated a comprehensive alternatives analysis to determine the best way to secure safeguarded back-up fuel for the Greenville and Brunswick County Power Stations. The study concluded that the Back-Up Fuel Project was the best alternative for this unique application. In addition, the severe weather events over the course of Christmas 2022, further underscores the need for the back-up fuel the

¹⁴ See generally FERC - NERC - Regional Entity Staff Report: The February 2021 Cold Weather Outages in Texas and the South Central United States (Nov. 16, 2021), <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and>.

¹⁵ *Id.* at 16.

¹⁶ *Id.* at 173.

¹⁷ On December 3, 2022, gunmen attacked two electric substations in North Carolina, resulting in power outages for 45,000 homes and businesses. Five electric substations in Washington and Oregon were attacked in November 2022. See New York Times, “North Carolina Power Outages Caused by Gunfire at Substations, Officials Say” (Dec. 5, 2022), <https://www.nytimes.com/2022/12/04/us/power-outages-north-carolina.html>; Seattle Times, “PSE substations among five attacked in Pacific Northwest in November” (Dec. 7, 2022), <https://www.seattletimes.com/seattle-news/law-justice/pse-substations-among-five-attacked-in-pacific-northwest-in-november/>.

Project will secure.¹⁸ As stated above, amendments to the power stations' state certificates and cost recovery of the Project must be approved by the VSCC.

III. PETITION FOR DECLARATORY ORDER

A. Appropriateness of Declaratory Relief

DEV requests that the Commission issue a declaratory order to affirm that the Back-up Fuel Project is not subject to its jurisdiction under the NGA. The Commission has discretion to issue a declaratory order to “remove uncertainty.”¹⁹ It has exercised this discretion in the past to address whether an entity is subject to the Commission's jurisdiction under the NGA.²⁰ Furthermore, the Commission has issued several declaratory orders determining that planned projects and transactions would be excluded from its jurisdiction under the Hinshaw Amendment.²¹

A declaratory ruling is necessary in this case to provide DEV with certainty as to whether the Commission would exercise jurisdiction over the planned Back-up Fuel Project. Resolution of this question will materially affect DEV's ability to plan, permit, and commence construction in time for the Project to be operational by Q4 2026. Any

¹⁸ Press Release, NERC, “FERC, NERC to Open Joint Inquiry into Winter Storm Elliott” (Dec. 28, 2022), <https://www.nerc.com/news/Pages/FERC,-NERC-to-Open-Joint-Inquiry-into-Winter-Storm-Elliott.aspx>.

¹⁹ 5 U.S.C. § 554(e); 18 C.F.R. § 385.207(a)(2).

²⁰ See, e.g., *Limetree Bay Terminals, LLC*, 181 FERC ¶ 61,041 (2022) (granting petition for declaratory order affirming that planned transportation would not subject petitioners to Commission jurisdiction under the NGA). See also *New Fortress Energy LLC*, 174 FERC ¶ 61,207, at P 39 (“Although not required by the NGA, we urge project developers to seek the Commission's formal guidance through a petition for declaratory order regarding novel questions of jurisdiction prior to constructing their facilities. Such a process will ensure that the public, federal and state agencies, and other stakeholders understand the Commission's role, if any, in authorizing such facilities.”), *order on reh'g*, 176 FERC ¶ 61,031 (2021), *aff'd*, 36 F.4th 1172 (D.C. Cir. 2022)

²¹ See, e.g., *Mich. Gas Storage Co.*, 98 FERC ¶ 61,223 (2002); *Ohio Valley Hub, L.L.C.*, 96 FERC ¶ 61,152 (2001); *Intermountain Mun. Gas Ass'n*, 74 FERC ¶ 61,254 (1996); *N. Ill. Gas Co.*, 20 FERC ¶ 61,267 (1982); *N.Y. State Elec. & Gas Corp.*, 13 FPC 1362 (1954).

delay in the Commission’s consideration of this Petition could postpone implementation of the Project, driving up costs and impacting reliability.

B. Specific Declarations Requested

DEV requests that the Commission issue a declaratory order that if DEV builds and operates the Back-up Fuel Project as described in this Petition, DEV:

1. will not be providing “transportation of natural gas in interstate commerce” under Section 1(b) of the NGA;
2. will not become a “natural-gas company” under Section 2(6) of the NGA; and;
3. will not be required to provide open-access LNG liquefaction, storage, and regasification services on the Project.

In the alternative, if the Commission declines to grant the declarations requested above, the Commission should determine that the Back-up Fuel Project will be a “Hinshaw” facility that is exempt from Commission jurisdiction under Section 1(c) of the NGA. Specifically, DEV requests that the Commission declare:

1. If built and operated as described in this Petition, DEV’s planned Back-up Fuel Project will be a “Hinshaw” pipeline excluded from Commission jurisdiction pursuant to Section 1(c) of the NGA;
2. DEV’s construction and operation of the Back-up Fuel Project will not render it a “natural-gas company” under NGA Section 2(6); and
3. DEV will not be required to provide open-access liquefaction, storage, and regasification services on the Project.

C. Legal Bases for Declaratory Relief

1. The Project Is Non-Jurisdictional Because It Will Not Be Used for the Interstate Transportation of Natural Gas.

- a. The Project Fits Squarely Within the “Plant Line Exception” to Commission Jurisdiction Under Section 1(b) of the NGA.*

DEV requests that the Commission issue a declaratory order stating that the Back-up Fuel Project is not subject to its jurisdiction under the NGA because it will not provide

transportation of gas in interstate commerce.²² The Project will be used solely to provide back-up fuel for DEV’s Greenville and Brunswick County Power Stations, and as such, it will not be used to provide “transportation of natural gas in interstate commerce” pursuant to NGA Section 1(b), nor will it render DEV a “natural-gas company” within the meaning of NGA Section 2(6).²³

The Commission has explained that under the “plant line exception” to the NGA, “[i]t is well settled in Commission precedent that pipeline facilities constructed within a single state by a plant owner solely for the purpose of moving natural gas for use in its own plant are an integral part of the plant and are therefore nonjurisdictional under the NGA.”²⁴

The Commission has further explained:

Jurisdiction under the NGA does not apply to plant line facilities that: (1) will be located entirely within one state; (2) will be constructed for the purpose of receiving supplies of natural gas solely for use by a plant owned by the same entity; and (3) will not be used by the owner to transport natural gas for, or sell natural gas to, any third party.²⁵

The Back-up Fuel Project meets the criteria for coverage under the plant line exception. The Back-up Fuel Project will be an integral part of the operations of the Greenville and Brunswick County Power Stations. The Project: (1) will be located entirely within the State of Virginia; (2) will be constructed by DEV solely for the purpose

²² 15 U.S.C. §717(b) (providing the Commission with jurisdiction over the “transportation of natural gas in interstate commerce”). The Commission defines “transportation” to include storage. 18 C.F.R. § 284.1(a).

²³ See *McCombs v. FERC*, 705 F.2d 1177, 1187 (10th Cir. 1980) (finding that where end-user purchased gas for use in its factories, and did not “transport gas in interstate commerce, nor [did] it sell gas in interstate commerce for resale,” the company “is not a ‘natural gas company’ within the meaning of § 1(b) of the [NGA] and is not subject to the provisions of the [NGA],” and concluding that “nothing in the [NGA] . . . authorizes the Commission to assert jurisdiction over [the end-user]”), *voluntarily vacated following settlement*, 710 F.2d 611 (10th Cir.1983).

²⁴ *Keys Energy Ctr.*, 145 FERC ¶ 61,184 at P 5 (citing cases). See also *Andalusian Energy, LLC*, 174 FERC ¶ 61,107, at P 13 and n.21 (2021) (disclaiming jurisdiction over compressed natural gas facilities and five-mile pipeline feeding those facilities, and citing cases); *Pub. Serv. Elec. & Gas*, 371 F.2d at 5 (affirming FPC disclaimer of jurisdiction over four-mile pipeline receiving gas from interstate pipeline for delivery to refinery, finding the pipeline “an integral part of [the] plant facility”).

²⁵ *Keys Energy Ctr.*, 145 FERC ¶ 61,184 at P 5.

of receiving and liquefying natural gas to fuel its electric generation facilities; and (3) will not be used to transport gas for, or sell natural gas to, any third party.²⁶ Furthermore, the proposed isolation valve on the Brunswick Lateral would ensure that the regasified fuel will only be delivered to DEV at Brunswick while the isolation valve is closed. As such, the Project fits squarely within the plant line exception to the NGA and is non-jurisdictional.

b. Redelivery of Fuel into Transco's Laterals to Supply the Brunswick County Power Station Does Not Make the Back-up Fuel Project Jurisdictional.

DEV's redelivery of regasified fuel into Transco's Greenville and Brunswick Laterals for transportation to reach DEV's Brunswick County Power Station will not place the Back-up Fuel Project within the ambit of interstate commerce. Injection of regasified fuel from an LNG storage facility into an interstate pipeline does not make the LNG facility jurisdictional under NGA Section 7 if the facility is not being used to facilitate interstate transportation. While the Commission has commonly supported findings that LNG facilities are non-jurisdictional based, in part, on the fact that the LNG produced or stored in those facilities would not be reinjected into the interstate pipeline grid,²⁷ this fact alone has not been dispositive.²⁸ Rather, the Commission asks whether the facility is being used to further the interstate transportation of gas.

²⁶ The Project will be fully used to provide back-up LNG storage for DEV's own power generation services. No liquefaction or storage capacity will be available for use by third parties.

²⁷ See, e.g., *Nopetro LNG, LLC*, 178 FERC ¶ 61,168, at P 16 (finding natural gas liquefaction and truck loading facility non-jurisdictional under Section 7 of the NGA because "[n]one of the LNG sent out from the facility would be regasified and introduced into a domestic downstream interstate pipeline"), *reh'g denied*, 180 FERC ¶ 61,057 (2022); *Shell U.S. Gas & Power, LLC*, 148 FERC ¶ 61,163, at PP 38-41 (2014) (finding two LNG facilities non-jurisdictional because they were not connected by pipeline to the larger interstate pipeline grid); *Pivotal LNG, LLC*, 137 FERC ¶ 62,108 (2011) (dismissing application for certificate of public convenience and necessity for LNG peaking facility because none of the gas leaving the LNG facility would "be introduced back into a pipeline system for further transportation").

²⁸ The Commission routinely explains that it "makes jurisdictional determinations concerning projects, including LNG projects, on a case-by-case basis." See, e.g., *Limetree Bay Terminals*, 181 FERC ¶ 61,041 at

Facilities are jurisdictional under NGA Section 7 only when they are “links in an interstate chain . . . interrupting what would otherwise be a continual flow of gas by pipeline from one state to another,”²⁹ or, alternatively stated, when they are “considered to be ‘an integral part of the interstate flow’ of the natural gas.”³⁰ In making this determination, the Commission considers “whether a circumvention of NGA jurisdiction over the interstate transportation of gas by pipeline could result ‘merely because liquefaction of the gas was interposed on what would otherwise have been a continuous flow of natural gas in an interstate pipeline system.’”³¹ For instance, in *Marathon Oil*, the Commission found that an LNG facility was jurisdictional under Section 7 where the facility received pipeline-quality gas from two transmission lines in Alaska for liquefaction and transportation via ocean tanker to Oregon, where it was revaporized and injected into a local distribution system.³² The Commission has explained that the LNG facilities in *Marathon* were “instrumental in facilitating the interstate transportation of the gas.”³³ The critical question, in considering whether reinjection of LNG into the interstate pipeline grid subjects an LNG facility to NGA Section 7 jurisdiction, is whether the facility is being used to facilitate interstate gas transportation.

DEV’s Back-up Fuel Project is not a “link in an interstate chain” of commerce or an “integral part of the interstate flow” of natural gas. Unlike the facilities in *Marathon Oil* that were “instrumental in facilitating the interstate transportation of the gas” from

P 8 (citing *Gulf Oil L.P.*, 148 FERC ¶ 61,029, at P 8 (2014) and *Marathon Oil Co.*, Opinion No. 735, 53 FPC ¶ 2164 (1975), *reh’g denied*, Opinion No. 735-A, 54 FPC ¶ 660 (1975)).

²⁹ *Shell*, 148 FERC ¶ 61,163 at P 48.

³⁰ *Air Prods. & Chems., Inc.*, 58 FERC ¶ 61,199, at p. 61,618 (1992) (quoting *Marathon Oil*, 53 FPC ¶ 2164 at p. 2173 (declaring refrigerated liquid methane plants and operations non-jurisdictional under NGA Section 7 where the plants provided fuel for railroad engines).

³¹ *Pivotal LNG*, 148 FERC ¶ 61,164, at P 18 (2014) (citing *Air Prods.*, 58 FERC ¶ 61,199 at p. 61,619).

³² See *Marathon Oil*, 53 FPC ¶ 2164.

³³ *Air Prods.*, 58 FERC ¶ 61,199 at p. 61,618 (citing *Marathon Oil*, 53 FPC ¶ 2164 at p. 2173).

Alaska to Oregon, the Back-up Fuel Project does not advance interstate commerce. Natural gas already reaches DEV's power plants without the Back-up Fuel Project. Rather than a "link in an interstate chain," receipt of natural gas by the Back-up Fuel Project will mark the end of gas's journey in interstate transportation. At that point, DEV will liquefy the natural gas for storage as back-up fuel for its own power plants for consumption in Virginia. The Back-up Fuel Project will be part of DEV's own power plants—separate from the chain of interstate commerce—as DEV will not sell its stored fuel to any other parties or use it for any purpose beyond fueling its own electric generation facilities.

When DEV injects its regasified fuel into the Transco laterals, it does so as a shipper. DEV's use of its transportation agreements on six miles of the Transco laterals to move gas from one DEV-owned power plant to another does not transform DEV into a provider of interstate natural gas transportation service. This is especially true given that DEV, or its agent, will ask Transco to close the proposed isolation valve on the Brunswick Lateral, helping to ensure that while the valve is closed none of the regasified fuel will reenter interstate commerce. The Back-up Fuel Project will be used exclusively for DEV's own operational purposes, subject to the plant line exception. DEV's use of its transportation agreements on the Transco laterals to fuel its Brunswick County Power Station will not change the Project's non-jurisdictional status.

c. The Commission Should Not Assert Jurisdiction over the Back-up Fuel Project.

No objectives of the NGA would be advanced by Commission regulation of the Back-up Fuel Project, as it will not be used to serve any third-party customers, and will operate as part of DEV's VSCC-regulated electric generation facilities. The Supreme Court has instructed that, to the extent the Commission views a jurisdictional question as

“borderline,” it should only assert jurisdiction if a state cannot “practicably regulate,” such that there could be a regulatory gap.³⁴ The Commission has applied these concepts to find that it lacks jurisdiction under NGA Section 1(b) when there is no regulatory gap or other need for federal regulation. In *Sonat Marketing*, for instance, the Commission found that it lacked jurisdiction over a marketing company’s lease of capacity on an interstate storage facility to store gas “solely for its own benefit.”³⁵ The Commission found the lease non-jurisdictional under NGA Section 1(b) because the company’s use of the storage field was “incidental to its own sales and supply management,” and as such, “[did] not appear to require federal oversight.”³⁶ The Commission further noted that the lack of federal regulation would not create a regulatory gap “because transportation from the storage field will be regulated.”³⁷

Simply put, there is no Commission interest that would benefit by regulating the Back-up Fuel Project. The mere fact that regasified fuel will be moved from the Project to

³⁴ *FPC v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 19-20 (1961).

³⁵ *Sonat Mktg., Co.*, 68 FERC ¶ 61,334, at p. 62,341 (1994).

³⁶ *Id.* at p. 62,342.

³⁷ *Id.*; see also *Nat. Gas Pipeline Co. of Am.*, Opinion No. 480, 34 FPC ¶ 1258, 1262 (1965) (finding that use of a storage facility by an intrastate pipeline was not “transportation of gas within the meaning of the [NGA],” where Commission jurisdiction “would not further the objectives of [the NGA]”), *opinion and order on reh’g*, Opinion No. 480-A, 35 FPC ¶ 189 (1966), *order granting reh’g*, 44 FPC ¶ 1597 (1970), *order on reh’g*, 45 FPC ¶ 258 (1972). In *Mississippi Valley Gas Co. v. Gulf Fuels, Inc.*, 48 FERC ¶ 61,178 (1989), the Commission declined to exert jurisdiction over transportation facilities of a Mississippi gas company that received gas from an interstate pipeline for delivery and consumption in Mississippi, explaining that no valid purpose would be served by extending federal jurisdiction to its facilities. The Commission found that, in the absence of transportation by the interstate pipeline, the company could build “expensive and duplicative pipeline facilities” to link its supply source to its system and that “such facilities would be intrastate in character and not subject to NGA jurisdiction.” Instead, the company engaged the interstate pipeline to provide “intermediary transportation.” *Id.* at p. 61,656. The Commission explained that although the transportation provided by the interstate pipeline “is jurisdictional and subject to regulation by this Commission,” this intermediary transportation did not mean the entire transaction, which occurs wholly within the state, “loses its intrastate character and is swept into the ambit of federal jurisdiction. . . . [t]o the contrary, the transaction is primarily a matter of local interest.” *Id.* (internal citation omitted). See also *Utah Gas Serv. Co.*, 13 FERC ¶ 61,247, at p. 61,549 (1980) (finding that the commingling of a Utah distributor’s gas purchased from a Utah producer, produced in Utah and commingled with an interstate pipeline’s system supply does not, in itself, render jurisdictional the sale to the Utah distributor by the Utah producer).

another power plant on interstate pipeline facilities does not change the Project's local nature.³⁸ DEV plans to use the facility solely for its own operational purposes of fueling its power plants, and regasified fuel from the Project will be unable to reach any other party while the proposed isolation valve on the Brunswick Lateral is closed. The Commission should not assert jurisdiction over the Project merely because it will rely on six miles of existing interstate pipeline to supply the Brunswick County Power Station, as to do so would create an unnecessary incentive for DEV to construct a duplicative six-mile pipeline simply to avoid subjecting its operations to the NGA.³⁹

No regulatory gap would be created absent Commission regulation. DEV is fully regulated by the VSCC, and construction and operation of the Back-up Fuel Project will require the VSCC's approval, including amendments of DEV's existing certificates for the Greenville and Brunswick County Power Stations. The Project will be used strictly to provide back-up fuel for these electric generation facilities. As such, Commission regulation of the Project "would not further the objectives of [the NGA],"⁴⁰ and accordingly, the Commission should find the Project non-jurisdictional.

³⁸ *Cf. Ohio Valley Hub*, 96 FERC ¶ 61,152 at p. 61,657 (disclaiming jurisdiction over Hinshaw pipeline despite its downstream connection to an interstate pipeline, explaining that regulation of the facility "would serve no regulatory or policy purpose").

³⁹ *Miss. Valley Gas*, 48 FERC ¶ 61,178 at p. 61,656 (noting that federal regulation jurisdiction could "produce results contrary to the public interest to the extent it established incentives for intrastate pipelines to build duplicative facilities merely to avoid federal regulation").

⁴⁰ *Nat. Gas Pipeline*, 34 FPC ¶ 1258 at p. 1262.

2. Alternatively, if the Commission Finds That the Back-up Fuel Project Will Be Part of Interstate Commerce, the Commission Should Declare It a Non-Jurisdictional Hinshaw Pipeline.

Even if the Commission were to find that the Back-up Fuel Project will be part of interstate commerce, it will be non-jurisdictional pursuant to the Hinshaw Amendment of the NGA.⁴¹ The Hinshaw Amendment provides that facilities are non-jurisdictional if:

- a. all of the gas received by the pipeline within or at the boundary of a state is consumed within the state; and
- b. the rates, services and facilities are subject to regulation by a state commission.⁴²

The Hinshaw Amendment was enacted because “Congress recognized that when a pipeline operating in one state sells and transports gas within that state for consumption within that state, that pipeline, its services, rates and facilities are more appropriately a matter of local concern.”⁴³ The Commission has recognized that in these circumstances, the public interest is protected by state regulation, the company’s facilities and services are “matters primarily of local concern,” and thus, the company and its facilities are appropriately exempt from the Commission’s regulation.⁴⁴

The Back-up Fuel Project satisfies both requirements for application of the Hinshaw Amendment, as explained below.

- a. *All of the Gas DEV Receives on the Back-up Fuel Project Will Be Consumed in Virginia.*

The Back-up Fuel Project will satisfy the first prong of the NGA’s test for qualification under the Hinshaw amendment because all of the gas used on the Project will

⁴¹ 15 U.S.C. § 717(c).

⁴² *Id.*; See generally *Nat. Gas Pipeline Co. of Am.*, 18 FERC ¶ 61,235, at p. 61,472 (1982).

⁴³ *Ohio Valley Hub*, 96 FERC ¶ 61,152 at p. 61,657 n.14 (noting that “Section 1(c) of the NGA states: ‘The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to the regulation by the several States.’”).

⁴⁴ *KN Wattenberg Transmission LLC*, 94 FERC ¶ 61,189, at p.61,669 n.7 (2001).

be received and consumed in Virginia. DEV will receive natural gas for the Project from Transco within the border of Virginia. That gas will be liquefied and stored on site at the Greenville County Power Station to be used in the event of severe weather, cyberattacks, natural disasters or other interruptions that disrupt DEV's primary natural gas supply. If that happens, the back-up fuel would be regasified. Some of the regasified fuel would be used at Greenville and the rest would be re-delivered to Transco's Greenville Lateral for conveyance to the Brunswick County Power Station. That regasified fuel will only be sent to Brunswick when the new isolation valve on Transco's system is closed.

The Hinshaw status of the Back-up Fuel Project and DEV's operations is not affected by the fact that a portion of DEV's revaporized LNG will be transported downstream on Transco's Brunswick Lateral, because that gas is intended to be entirely consumed by the Brunswick County Power Station in Virginia. The Commission has found in several instances that a Hinshaw facility may transport gas on an interstate pipeline for consumption within the same state. The Commission addressed similar circumstances in granting a petition for declaratory order affirming Hinshaw status in *Ohio Valley Hub*, in which a new pipeline was designed to transport gas into and out of storage in Indiana, and to transport some gas through another interstate pipeline for consumption within the state.⁴⁵ The Commission affirmed that "the fact that a portion of [Ohio Valley Hub, LLC's ("Ohio Valley")] gas would be transported within the state over an interstate pipeline should not affect Ohio Valley's qualification as a Hinshaw pipeline."⁴⁶ The Commission emphasized that "it would serve no regulatory or policy purpose for the Commission to regulate Ohio Valley simply because the pipeline will make use of . . .

⁴⁵ *Ohio Valley Hub*, 96 FERC ¶ 61,152.

⁴⁶ *Id.* at p. 61,656.

interstate facilities in Indiana to transport gas to [a local distribution company] for distribution and consumption within Indiana.”⁴⁷

Similarly, in *Columbia Gas Transmission Corp.*, the Commission approved abandonment of 217 miles of pipeline and three compressor stations to the newly formed Cobra Pipeline Company (“Cobra”) for operation as Hinshaw facilities, when the facilities would deliver gas to in-state customers through Columbia’s interstate transmission system.⁴⁸ The Commission explained that “[t]he fact that a portion of Cobra’s gas will be transported within the state over an interstate pipeline for consumption in-state does not affect Cobra’s qualification as a Hinshaw pipeline.”⁴⁹

For DEV’s Back-up Fuel Project, the only movement of regasified fuel that will occur will be on Transco’s existing Greenville Lateral and a portion of its Brunswick Lateral to the Brunswick County Power Station. All of the fuel that is delivered from the Project to the Brunswick plant will be consumed in Virginia.⁵⁰ Transco’s addition of the proposed isolation valve on the Brunswick Lateral will help ensure that all of the gas stored on the Project will be consumed in Virginia. Consistent with Commission precedent, the

⁴⁷ *Id.* at p. 61,657.

⁴⁸ *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,080 (2007).

⁴⁹ *Id.* at PP 34-35. To the extent the facilities delivered gas to customers outside the state, the transportation was authorized under Cobra’s blanket certificate, under Section 284.224 of the Commission’s regulations. *Id.* See also *Mo. Interstate Gas, LLC*, 122 FERC ¶ 61,136, at P 39 (2010), *rev’d on other grounds, Mo. Pub. Serv. Comm’n v. FERC*, 601 F.3d 581 (D.C. Cir. 2010) (recognizing that the Commission has “provided declarations of exemption under NGA section 1(c) where there already was a physical connection with a downstream pipeline that could move gas out of state, but where the pipeline’s proposed operations, as evidenced by its contracts, did not contemplate flowing gas out of state”); In *Empire State Pipeline*, 61 FERC ¶ 61,091 (1991), the Commission found that when Empire State Pipeline would deliver gas to existing interstate pipeline and the gas would not physically leave the state under “normal operations,” Empire State Pipeline would be a Hinshaw pipeline. The Commission concluded that it should base its application of the Hinshaw amendment “on the manner in which the parties, in fact, intend to conduct the transaction, rather than on a hypothetical possibility that the gas could flow, under circumstances unlikely to occur, out of the [state].” *Id.* at p. 61,371.

⁵⁰ Installation of the isolation valve on the Brunswick Lateral will further ensure that all of the regasified fuel is consumed in state.

fact that a portion of the gas used to supply the Brunswick County Power Station will be transported over an interstate pipeline does not affect the Project's status as a Hinshaw facility because all the gas on the Project will be consumed in Virginia.

b. The Project's Rates, Services, and Facilities Are Subject to Regulation by the VSCC.

Because the Project is fully regulated by the VSCC, it satisfies the Hinshaw Amendment's second prong, which requires that "the rates, services and facilities are subject to regulation by a state commission."⁵¹ Under similar circumstances, the Commission has recognized that VSCC regulation satisfies the Hinshaw Amendment's requirement that a facility be "subject to regulation by a state commission."⁵²

The Greenville and Brunswick County Power Stations are regulated by the VSCC and operate pursuant to certificates of public convenience and necessity issued by the VSCC.⁵³ To add the emergency back-up fuel capacity to these facilities, DEV will need to obtain amendments to the certificates authorizing the power stations. The VSCC also regulates the Greenville and Brunswick County Power Stations' rates and services, and the addition of the Project to these power stations will be reflected in the rates for services using these facilities as well as in DEV's fuel proceedings. Thus, the Project satisfies the second prong of the Hinshaw Amendment.

The purpose of the Hinshaw Amendment is to eliminate the "unnecessary duplication of State and Federal jurisdiction,"⁵⁴ by exempting "matters primarily of local

⁵¹ 15 U.S.C. § 717(c).

⁵² See, e.g., *Va. Gas Pipeline Co.*, 77 FERC ¶ 61,199, at p. 61,799 (1996) (issuing certificate of limited jurisdiction to Hinshaw pipeline operating in Virginia, and recognizing qualification for Hinshaw amendment where its "facilities are subject to regulation by the VSCC"); *Columbia Gas Transmission Corp.*, 47 FERC ¶ 61,329, at p. 62,144 (1989) (recognizing Hinshaw status of Commonwealth Gas Pipeline Corp., operating in Virginia).

⁵³ Greenville County Power Plant Certificate and Brunswick County Power Plant Certificate.

⁵⁴ H.R. Rep. No. 899, 83d Cong., 1st Sess. at 2 (1953).

concern so that federal regulation would end where only one state is affected.”⁵⁵ Because the VSCC will regulate the Project, there is no regulatory gap that warrants Commission intervention. No purpose would be served by imposing federal regulation on top of that already provided by the VSCC. Indeed, the Project will only be used to support emergency operations at DEV’s own power plants located wholly within Virginia and will not provide service to any third parties. Accordingly, if the Commission does not find the Project non-jurisdictional under NGA Section 1(b), it should declare that the Project is exempt from the Commission jurisdiction pursuant to the NGA Section 1(c).

IV. REQUEST FOR EXPEDITED ACTION

DEV requests that the Commission take expedited action on this petition and issue a declaratory order granted DEV’s requested declarations by July 31, 2023. Such expedited action will give DEV the regulatory certainty needed to secure financing for the Project, and to construct the Project and place it into operation by Q4 2026.

⁵⁵ *San Diego Gas & Elec. Co.*, 64 FERC ¶ 61,221, at p. 62,653, *reh’g denied*, 65 FERC ¶ 61,299 (1993), *pet. for review denied sub nom., El Paso Nat. Gas Co. v. FERC*, 50 F.3d 23 (D.C. Cir. 1995).

V.
CONCLUSION

WHEREFORE, for the foregoing reasons, DEV respectfully requests that the Commission grant this Petition and the declarations requested herein.

Respectfully submitted,

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