

125 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Dominion Cove Point LNG, LP	Docket Nos. CP05-130-000,001 002 and 003 CP05-132-000,001 and 002
Dominion Transmission, Inc.	Docket Nos. CP05-131-000,001 and 002 (Not Consolidated)

ORDER ON REMAND

(Issued October 7, 2008)

1. On July 18, 2008, the United States Court of Appeals for the District of Columbia Circuit issued its decision in *Washington Gas Light Company v. FERC (WGL v. FERC)*¹ vacating the orders approving the Cove Point Expansion Project,² and remanding the case to the Commission so that it could more fully address whether the expansion project can go forward without causing unsafe leakage on WGL's system.
2. On July 28, 2008, Dominion Cove Point, LNG, LP (Cove Point LNG) and Dominion Transmission, Inc. (Dominion) (collectively, movants) filed a motion for expedited action to affirm and reissue all Commission authorizations for the Cove Point Expansion Project prior to the issuance of the mandate implementing the decision in *WGL v. FERC*. Movants seek Commission action by no later than August 29, 2008,

¹ 532 F. 3d 928 (D.C. Cir. 2008).

² As explained in this order, the orders being vacated by the court are *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006), *order on rehearing*, 118 FERC ¶ 61,007 (2007).

immediately before requests for rehearing of the court's July 18 decision are due, and before the mandate issues on September 9, 2008.

3. As discussed below, on remand the Commission is reissuing authorizations for Cove Point LNG's and Dominion's construction of all the facilities that comprise the Cove Point Expansion Project. In addition, we are reissuing authorization for the operation of all project facilities, provided that operation of the expanded liquefied natural gas (LNG) import terminal facilities which are the subject of Docket No. CP05-130 shall be specifically conditioned upon deliveries from the Cove Point Pipeline into its interconnection with Columbia Gas Transmission Corporation's (Columbia Gas) system at Loudoun, Virginia not exceeding the 530,000 Dth/d, which is the level of existing firm primary delivery rights at that point. This will allow timely completion of project construction while at the same time ensuring that no additional volumes of LNG associated with the expansion project are delivered to Washington Gas Light Company's (WGL) system, thus ameliorating concerns about the safety of WGL's system.

I. Background

A. The Certificate Order

4. On June 16, 2006, the Commission issued an order (June 16 Order)³ approving the applications filed by Cove Point LNG and by Dominion on April 15, 2005, to construct and operate facilities which comprise the Cove Point Expansion Project. This project includes the expansion of Cove Point LNG's existing LNG import terminal (Docket No. CP05-130-000, 001 and 002) and pipeline (Docket No. CP05-132-000 and 001) and Dominion's construction of new downstream pipeline and storage facilities (CP05-131-000 and 001).

5. Specifically, Cove Point LNG filed, in Docket No. CP05-130-000, an application under section 3 of the Natural Gas Act (NGA) requesting authority to expand its facilities at its LNG import terminal at Cove Point, Maryland. In Docket No. CP05-132-000, Cove Point LNG filed an application under NGA section 7(c) and Part 157 of the Commission's regulations for authorization to expand its Cove Point Pipeline facilities by constructing and operating approximately 47.8 miles of 36-inch diameter loop pipeline in Calvert, Prince George's and Charles Counties, Maryland.

6. In Docket No. CP05-131-000, Dominion filed an application under NGA section 7(c) and Part 157 of the Commission's regulations, requesting a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline

³ *Dominion Cove Point LNG, LP, et al.*, 115 FERC ¶ 61,337 (2006).

and storage facilities in Pennsylvania, New York, Virginia, and West Virginia to increase Dominion's pipeline and storage capacity.

7. The Cove Point Expansion Project is designed to: (a) expand the existing Cove Point LNG terminal to increase the volumes of LNG that can be imported, stored, regasified, and delivered; (b) expand the capacity of the Cove Point Pipeline; and (c) construct new downstream pipeline and storage facilities to provide enhanced access to firm natural gas storage and to additional natural gas markets throughout the northeastern United States.

8. In approving the Cove Point Expansion Project, the June 16 Order addressed a number of issues. The issue pertinent to the court's remand involves Washington Gas Light Company's (WGL) claim that the unusually high number of gas leaks on a portion of its system that receives primarily regasified LNG from the Cove Point LNG terminal is attributable to the "dry" regasified LNG's effects on the seals in its pipeline couplings. WGL asserted that the Commission should deny Cove Point LNG's expansion application until such time as Cove Point LNG demonstrates that it has minimized the potential adverse impacts to WGL's infrastructure that would result from the proposed expansion's increased deliveries of regasified LNG.

9. The June 16 Order provides a detailed account of our staff's analysis of the substantial record in this proceeding, consisting of WGL's November 2, 2005 filing that raised the leak issue and responsive filings by Cove Point LNG and the LTD-1 Shippers, oral and written presentations at a February 22, 2006 conference, comments filed in response to the conference, and responses to staff data requests. The Commission concluded that WGL's contention that the introduction of regasified LNG caused the increased leaks on its system was based on a flawed analysis, and that other factors, namely the application of hot tar to the coupling seals as a means of corrosion control, the increase in operating pressures on WGL's system, and colder temperatures, were primarily responsible for the leaks of which WGL complains.

10. The Commission determined in the June 16 Order that there was no basis to deny Cove Point LNG's expansion application until such time as Cove Point LNG demonstrates that it has minimized the potential adverse impacts to WGL's infrastructure that would result from the proposed expansion's increased deliveries of regasified LNG. First, the Commission found, as noted above, that the application of hot tar to the coupling seals and the increase in operating pressures on WGL's distribution system were the principal causative factors of the leaks experienced by WGL in Prince George's County, Maryland since the reactivation of the Cove Point LNG terminal. Second, the Commission found that, as proposed, Cove Point LNG will deliver regasified LNG meeting the gas quality specifications of all interconnecting pipelines.

B. Order on Rehearing

11. On January 4, 2007, the Commission issued an order (January 4 Order) addressing seven requests for rehearing and/or clarification of the June 16 Order.⁴ The two issues raised in the rehearing requests relevant to the court's remand order involve: (1) the safety concerns arising from the increased gas leaks on WGL's system that allegedly would arise from the increased amounts of regasified LNG that will be delivered into WGL's system as a result of the expansion project; and (2) the Commission's conclusion that temperature, hot tar, and pressure, rather than LNG, are the substantial causes of increased leaks in Prince George's County, Maryland.

Safety Issues

12. In their requests for rehearing of the June 16 Order, WGL and the Public Service Commission of the State of Maryland (MdPSC) argued that the Commission should not have authorized the Cove Point Expansion Project without first resolving the safety concerns arising from the increased gas leaks on WGL's system that WGL alleged would arise from the increased amounts of regasified LNG that will be delivered into WGL's system as a result of the expansion project, pointing out that the June 16 Order did not exclude unblended LNG as a causative factor for the leaks experienced on WGL's system.⁵ WGL claimed that the Commission failed to meet its statutory obligation under sections 3 and 7 of the NGA to explain how the public interest will be served by approving the Cove Point LNG Expansion Project without first ensuring against increased leaks to WGL's system occurring as a result.

⁴ *Dominion Cove Point LNG, LP, et al.*, 118 FERC ¶ 61,007 (2007). The parties who sought rehearing of the June 16 Order include WGL, Statoil Natural Gas, LLC (Statoil), Public Service Commission of the State of Maryland (MdPSC), Public Service Company of North Carolina, Inc., KeySpan Delivery Companies (KeySpan), Cove Point LNG, and Dominion. The issues raised in the rehearing requests included: (i) WGL's claim of denial of due process based on the Commission's failure to provide for an evidentiary hearing and on its reliance on certain evidence; (ii) the June 16 Order's analysis and treatment of the claimed adverse effects of the revaporized LNG (WGL); (iii) the Commission's approval of the proposals without regard to the safety implications (MdPSC, WGL, KeySpan,); (iv) the reporting requirements imposed in the June 16 Order (Statoil, Cove Point LNG); (v) Cove Point LNG's rate-of-return (Cove Point LNG); (vi) Dominion's fuel tracking requirement (Dominion); and (vii) certain environmental conditions (Cove Point LNG, Dominion).

⁵ See 115 FERC ¶ 61,337 at P 56.

13. In response, the Commission stated in the January 4 Order that there is no scientific evidence that regasified LNG presents safety issues in a properly maintained gas distribution system. The Commission determined that the only safety concerns in this proceeding involve the hazards posed by introducing regasified LNG into that portion of WGL's system containing mechanical couplings with compromised seals. However, the Commission found that while the Cove Point LNG Expansion Project will result in an increased amount of regasified LNG in the gas received by WGL, the gas will continue to meet the gas quality standards of Cove Point LNG's tariff provisions implemented pursuant to its October 2002 settlement agreement with WGL and the LTD-1 Shippers. The Commission also stated that "the projected in service date for Cove Point LNG's expansion facilities is not until the fall of 2008. Thus, if WGL believes that corrective measures to repair or replace defective couplings are needed, there is time for WGL to complete this work."⁶

Technical Gas Leak Issues

14. WGL asserted that the Commission selectively analyzed the record evidence to reach its conclusion that temperature, hot tar, and pressure, rather than LNG, are the substantial causes of increased leaks in Prince George's County, Maryland. According to WGL, the most salient point, ignored by the Commission in the June 16 Order, is that revaporized LNG was the only one of these factors that is unique to the region and to the time period with the increase in leak rates. On this basis, WGL claimed that the low C5+⁷ LNG is the more significant, if not the primary, cause of the leaks in Prince George's County.

15. After a thorough review of the record evidence relating to the effect of reduced C5+ levels, the application of hot tar to the mechanical couplings, temperature changes, and increased operating pressures, the Commission restated in the January 4 Order its

⁶ In this regard, the Commission noted that WGL had engaged in mitigation measures to control the increase in leaks and address safety concerns associated with the Cove Point LNG terminal's existing capacity. WGL had reduced operating pressures in Prince George's County, requested construction of a new tap on a Transcontinental Gas Pipe Line Corporation (Transco) line to minimize deliveries of unblended LNG, and had begun to replace the facilities in the affected area, estimated to be completed by the end of 2007, at a cost of \$140 million.

⁷ The hydrocarbon gases that can be found in natural gas are: methane (C1), ethane (C2), propane (C3), butanes (C4), pentanes (C5), hexanes (C6), heptanes (C7), octanes (C8), and nonanes (C9+). In this proceeding, heavy hydrocarbons, or HHC, refers to the hydrocarbon components of the gas that are pentanes (C5) and heavier, or (C5+).

belief that hot tar, temperature, and pressure played a more prominent role leading to the increase in leak rates than did the reduced C5+ levels resulting from the introduction of LNG. Specifically, the Commission stood by its determination that hot tar, and other contributing factors (such as age, temperature and pressure), had compromised a subset of couplings on WGL's system to the point of only sealing "marginally," and that WGL's system would not have had an increase in leak rates after the introduction of re-vaporized LNG into the system but for the fact that sealing ability of the couplings had been compromised.

C. WGL v. FERC

16. In *WGL v. FERC*, the D.C Circuit Court affirmed in part and vacated in part the Commission's orders approving the Cove Point Expansion Project. The court affirmed Commission findings (1) that the existing leaks on WGL's system that WGL complained of are due primarily to the condition of WGL's pipeline couplings, not the introduction of regasified Cove Point LNG into the WGL system, and (2) that the responsibility to prevent or repair future leaks belongs to WGL, not to Cove Point LNG and Dominion.

17. On review, the court stated that "this case boils down to the validity of two of FERC's ultimate findings: (A) the LNG "would not have adversely affected WGL's system [in Prince George's County] if a subset of compression couplings had not been compromised during the installation process" and (B) "there is time for WGL to complete any remaining corrective measures that are needed on its system so that it can safely accommodate regasified LNG."⁸

18. As noted, the court affirmed the validity of our finding that the existing leaks on WGL's system are due primarily to the condition of WGL's pipeline couplings, not the introduction of regasified Cove Point LNG into the WGL system, and that the responsibility to prevent or repair future leaks belongs to WGL, not to Cove Point LNG and Dominion. However, with regard to the post-expansion leakage, the court found that the Commission had not provided substantial evidence to support the proposition that WGL could repair its system prior to proposed in-service date of the Cove Point Expansion Project. Accordingly, the court vacated the orders "to the extent they approve the Expansion" and remanded the case so that the Commission "can more fully address whether the Expansion can go forward without causing unsafe leakage."⁹

⁸ *WGL v. FERC* 532 F.3d at 929.

⁹ *Id.* at 933.

D. Cove Point LNG's and Dominion's July 28 motion

19. On July 28, 2008, Cove Point LNG and Dominion filed a motion asking the Commission to affirm and reissue all Commission authorizations for the Cove Point Expansion Project by no later than August 29, 2008. Specifically, Cove Point LNG and Dominion contend that reissuance of the section 7 certificates issued to Dominion in Docket No. CP05-131, authorizing the construction and operation of new pipeline and storage facilities, and to Cove Point LNG in Docket No. CP05-132, authorizing the construction of pipeline facilities “will not implicate any of the concerns expressed by the court in *WGL v. FERC*.” Moreover, Cove Point LNG and Dominion claim that these downstream facilities provide essential services independent of the Cove Point LNG import terminal.

20. Cove Point LNG and Dominion state that reissuance of the NGA section 3 authorizations for continued construction of the Cove Point terminal expansion in Docket No. CP05-130 also will not implicate any of the concerns expressed by the court in *WGL v. FERC*. On the other hand, Cove Point LNG and Dominion assert that any interruption in construction of any of these facilities would have major adverse consequences. Finally, Cove Point LNG and Dominion contend that it is in the public interest to authorize the Cove Point Expansion to be placed into service when completed because, based on existing record evidence, WGL's public pronouncements, and actions by state regulatory commissions, operation of the terminal expansion project can commence without causing unsafe gas leaks.

21. Cove Point LNG and Dominion state that construction of the expansion facilities began August 19, 2006, and encompasses five states (Maryland, West Virginia, Pennsylvania, New York, and Virginia). Cove Point LNG and Dominion state that they have engaged five general contractors and 1,400 employees, and have already spent approximately \$700 million to meet the fourth quarter in-service date. Cove Point LNG and Dominion claim that as the completion date nears, the work force will increase. According to Cove Point LNG and Dominion, any suspension or stoppage of work would cause significant damage to Dominion, customers and the public. Cove Point LNG and Dominion assert that due to the current construction environment, even a brief suspension of construction could translate to a year or more delay in project completion. In the interim, consumers would be deprived of much-needed gas supplies.

22. Cove Point LNG and Dominion claim in support of their request for full authorization of the non-LNG aspects of the Cove Point Expansion Project, namely Dominion's pipeline and storage facilities in Docket No. CP05-131 and Cove Point LNG's Cove Point Pipeline facilities in Docket No. CP05-132, that neither the construction of, nor actual operation of, these facilities will result in WGL's receipt of incremental regasified LNG.

23. Cove Point LNG and Dominion contend that aside from their role in transporting regasified LNG from the Cove Point terminal, the facilities are useful on a stand-alone basis and create additional capability that will provide important benefits even without additional LNG sendout from the Cove Point terminal.

24. Cove Point LNG and Dominion describe the Cove Point Expansion Project as more than simply an expansion of the Cove Point terminal and downstream facilities designed to transport regasified LNG. They claim that the project includes a comprehensive set of incremental services designed to make available incremental gas supplies, provide shippers enhanced access to storage and to new markets, and deliver new, needed gas supplies in the Mid-Atlantic and northeastern U.S.

25. Specifically, Cove Point LNG and Dominion state that Dominion's pipeline and storage facilities in Docket No. CP05-131, although designed to provide 700,000 Dth/d firm transportation services, contracted by Statoil, from Perulack in Juniata County, Pennsylvania to the Leidy Hub in Clinton County, Pennsylvania, provide a number of additional benefits and can be used for other purposes on a temporary basis. They state that the facilities will connect Dominion's existing PL-1 system to Dominion's reticulated system, adding incremental capability and providing additional flexibility and reliability for Dominion's entire system operations, regardless of the source of gas supply.

26. As for the Cove Point Pipeline expansion in Docket No. CP05-132, designed to deliver an additional 800,000 Dth/d of regasified LNG to interconnections with Dominion and Transco, Cove Point LNG and Dominion state that because the Cove Point Pipeline is bi-directional, it can receive and deliver gas from the three pipeline interconnections on its western end and is not dependent upon the incremental expansion LNG volumes from the terminal. Therefore, like Dominion's pipeline and storage facilities, the expanded Cove Point Pipeline facilities could be used temporarily for other than transporting sendout from the LNG terminal.

27. Cove Point LNG and Dominion also assert that prior to the issuance of the court's mandate, the Commission, at a minimum, should reauthorize the continued construction of the Cove Point terminal expansion in Docket No. CP05-130. The construction authorization could be conditioned such that the facilities may not be placed in service until the Commission so authorizes.

28. Cove Point LNG and Dominion further contend that there is sufficient record evidence to support the full authorization of the Cove Point Expansion Project as being in the public interest. According to Cove Point LNG and Dominion, on the one hand, the Cove Point Expansion Project is a "major project vital to bringing needed gas supplies to Maryland, the Mid-Atlantic and northeastern US." On the other hand, state Cove Point LNG and Dominion, there will be no increased leaks because LNG was at most an insignificant cause of WGL's leaks. Cove Point LNG and Dominion claim that, in any

event, the leaks experienced by WGL were only non-hazardous Grade Two leaks which do not raise safety concerns, particularly in view of the safety measures WGL has implemented to ensure that the expansion will not result in unsafe leaks.

29. Cove Point LNG and Dominion assert that existing record evidence, as well as recent materials from WGL's public financial reports and relevant State Commission proceedings, leaves no doubt that the operation of the expansion facilities will not result in unsafe leaks. According to Cove Point LNG and Dominion, there are numerous statements by WGL, in this proceeding and elsewhere, that the leaks on its system are non-hazardous, Grade Two leaks that were repaired well within the time required by industry standards.¹⁰ Moreover, Cove Point LNG and Dominion assert that WGL has represented to its investors that it has taken timely and adequate steps to safely receive additional quantities of LNG when the Cove Point Expansion is placed into service through pipeline replacement programs and the construction of gas treatment facilities to inject hexane into the gas distribution system,¹¹ and that if these steps are not successful, WGL has adequate financial resources available to implement additional measures. Cove Point LNG and Dominion also point to WGL's testimony and filings before the MdPSC in which WGL stated that it "expects to avoid any increase in leaks in other parts of its system by injecting hexane at strategic points on its system," and that it also will conduct leak surveys and repair all discovered leaks, and, if necessary, reinitiate its replacement program.¹²

E. WGL's Answer

30. WGL filed an answer to Cove Point LNG's and Dominion's motion on August 12, 2008. First, WGL asserts that the Commission is without authority to issue the orders requested by Cove Point LNG and Dominion before the court's mandate issues on September 9, 2008. WGL cites the D.C Circuit Court's decision in *Alabama Power Co.*

¹⁰ Cove Point LNG and Dominion refer to the Gas Piping Technology Committee Gas Leakage Guidelines for Natural Gas Systems, which at section 5.2, grades leaks based on an evaluation of the location or magnitude of a leak or both. Under these guidelines, Grade Two leaks are "recognized as being non-hazardous at the time of detection, but requiring scheduled repair based on probable future hazard" and should be repaired or cleared within one calendar year, but no later than 15 months from the date the leak was reported.

¹¹ Injection of hexane into the gas stream alleviates, to an extent, the low C5+ content of regasified LNG.

¹²WGL's June 2007 Report to MdPSC.

*v. FPC*¹³ for the proposition that the Commission may not issue final determinations on remanded questions before the issuance of the court's mandate. According to WGL, this is consistent with the Commission's view that its *ex parte* rules do not apply before the court issues its mandate because until the mandate issues, there is no pending proceeding before the Commission. It follows, states WGL, that the Commission cannot issue a substantive order addressing remanded questions before that time.

31. Second, WGL states that Dominion's assumption that the Commission will promptly issue an order allowing the project to continue as previously authorized ignores the court's directive in *WGL v. FERC* that the Commission must "more fully address whether the Expansion can go forward without causing unsafe leakage."¹⁴ As WGL understands this directive, the Commission is expected to develop a more detailed and complete record on the question of unsafe leakage. WGL also claims that Cove Point LNG and Dominion incorrectly assert that the vaporizers authorized in Docket No. CP05-395 are not affected by *WGL v. FERC*. WGL states that the vaporizers are capable of increasing the output of the Cove Point terminal by 250,000 Dth/d and that increased output of gas may flow on WGL, hence implicating the safety concerns to be addressed on remand.

32. Third, WGL claims that Cove Point LNG and Dominion base their motion on many erroneous, misleading, and unsupported statements. For instance, states WGL, the premise that the expansion will increase supply, encourage LNG imports and help maintain an affordable supply is belied by changes in the international LNG market. WGL states that little if any LNG is being imported, and Cove Point has only received six LNG shipments during the first six months of 2008. This undercuts the claim that time is of the essence, except to save Cove Point LNG and Dominion from financial harm due to construction delays.

33. WGL also claims that Cove Point LNG and Dominion quote selected excerpts of public statements made by WGL representatives completely out of context.¹⁵ WGL states that a full reading of the statements cited by Cove Point LNG and Dominion reveals that WGL "has devoted substantial time and effort to the safety issue, but remains

¹³ 511 F.2d 383 (D.C. Cir. 1974).

¹⁴ *Citing WGL v. FERC*, 532 F. 3d at 933.

¹⁵ Maryland Office of Peoples Counsel (OPC) also filed an answer to the July 28 motion in which OPC also claims that Cove Point LNG and Dominion have taken various WGL comments out of context, and states that WGL's recent report to the MdPSC indicate that hexane injection appears to be partially effective, at best.

unconvinced that it can timely address the leakage problem that the expansion is likely to cause on the remaining 86% of its system.”¹⁶

34. WGL appends to its answer an affidavit of Douglas A. Staebler, WGL’s Vice President of Engineering, Marketing and Construction which, according to WGL makes clear that despite positive effects that WGL has experienced from hexane injection, the introduction of unblended LNG to areas with mechanical couplings could cause an increase in leak rates so substantial that WGL may not be able to repair or remediate them should unblended LNG be delivered throughout its system by the proposed in-service date. While Cove Point LNG and Dominion suggest that hexane treatment is a complete remedy, WGL’s Corporate Financial Report, quoted by them, also states that WGL has not gathered enough evidence yet to conclude that hexane alone will solve the leak problem. In addition, WGL states that its second quarter Financial Report and SEC Form 10-Q stresses that if WGL’s various remediation efforts are not completed prior to the in-service date or are not fully effective at reducing leak rates, “the increased volumes of LNG . . . could result in leakage in mechanical couplings at a rate that could compromise the safety of our distribution system.”¹⁷

35. Similarly, WGL states that its latest report to the MdPSC explains that hexane reduces the number of leaks but does not eliminate them, and that WGL is concerned about its ability to timely repair leaks occurring throughout the remaining 86 percent of its system. Finally, with respect to Cove Point LNG’s and Dominion’s assertion that the leaks experienced by WGL were non-hazardous Grade Two leaks, WGL states that in fact Staebler’s affidavit shows that one-third of the leaks in Prince George’s County between 2000 and 2008 were Grade One leaks. In any event, WGL states that Grade Two leaks can vary as to degree of potential hazard and need for immediate repair.

36. Fourth, WGL maintains that Cove Point LNG’s and Dominion’s requests in their motion for authorization to construct and operate various facilities of the expansion project on a stand-alone basis do not comport with Commission policy and precedent governing certificate applications. According to WGL, the applications relating to the Cove Point Expansion Project described the various facilities as parts of an integrated, interrelated project, justified by the need for increased supplies of LNG, and it was on that basis that the Commission approved the proposals in each of the dockets. WGL contends that by asserting that construction and operation of various components of the expansion project on a stand-alone basis are in the public interest, Cove Point LNG and Dominion now seek to change the premise of their proposal: in the case of the Cove

¹⁶ WGL’s Answer at p. 12.

¹⁷ Attachment 4 to WGL’s Answer, WGL’s Form 10 Q, for second quarter, 2008 at p. 39.

Point Pipeline, merely by claiming the facilities could be deployed for other beneficial uses on a temporary basis, and in the case of Dominion's pipeline and storage facilities, by claiming the facilities will add incremental capacity, provide greater flexibility and increase reliability, and can be deployed for other beneficial uses.

37. WGL asserts that Cove Point LNG and Dominion are making substantial modifications to their initial applications in a motion that falls far short of an amended application,¹⁸ that Cove Point LNG and Dominion have not verified the public interest justifications contained in their motion, and that they have not explained how the revised expansion comports with the Certificate Policy Statement by providing information on cost recovery and how their existing customers will not subsidize the pipeline expansions as a result of newly asserted public interest benefits.

38. Finally, WGL claims that the Commission should not allow construction to continue until the remanded safety issue has been resolved because modifications to proposed expansion may address concerns with unsafe leakage. On this point, WGL contends that there are potential operational solutions to the safety issue, such as the blending of LNG with domestic gas as a result of operational changes by the interconnecting pipelines. In any event, WGL responds to Cove Point LNG's and Dominion's claim that they will suffer substantial hardship if construction is suspended by stating that they voluntarily assumed the risk of loss when they elected to proceed with construction while requests for rehearing and petitions for review were pending.

F. Technical Conference

39. On July 28, 2008, and August 1, 2008, the Commission issued notices convening a technical conference for the purpose of allowing Commission staff to discuss with the parties the issues raised in *WGL v. FERC*. Specifically, the notices advised all participants to be prepared to discuss the nature and progress of remedial measures taken to date, as well as the need and benefit of any other remedial measures that might be taken by WGL and Cove Point LNG so that WGL's system can safely accommodate the increased amounts of regasified LNG from Cove Point's LNG import terminal.

40. On July 30, 2008, WGL filed a response requesting that in lieu of a technical conference, the Commission schedule settlement conferences on August 14, 18 or 19 to discuss the issues identified in the notice. As support for its request for settlement

¹⁸ WGL cites *Transcontinental Gas Pipe Line Corporation*, 103 FERC ¶ 61,033 (2003) (Reexamination of proposal to downsize a proposed expansion project required reexamination for continued compliance with the Commission's Certificate Policy Statement.)

procedures, WGL cites *Petal Gas Storage, LLC (Petal)*,¹⁹ a recent case in which the Commission established procedures before a settlement judge to resolve remanded issues. WGL asserted that blending LNG with domestic gas might be one solution to address increased leaks, but assessing that possibility would involve “give and take,” as well as a sharing of information, by the parties that would occur during settlement rather than in a technical conference. Finally, WGL stated that the unsupported and erroneous assertions contained in the movants’ July 28 motion call for discovery and cross-examination.

41. WGL also observed that the caption of the July 29 notice did not include Docket No. CP05-395. WGL states that the reactivation of two waste heat vaporizers approved in that proceeding are a part of the proposed Expansion facilities because WGL sought review of the orders in that docket as well, and included those facilities as a part of the expansion in its briefs to the court.²⁰

42. On July 31, 2008, Cove Point LNG and Dominion answered WGL’s July 30 filing. In response to the claim that settlement procedures are more appropriate, Cove Point LNG and Dominion pointed out the court summarily rejected WGL’s complaint that the Commission’s procedures to date had been inadequate. Additionally, they distinguished the issue addressed in *Petal* – the selection of a proxy group for purposes of setting a rate of return on equity in a storage company’s rates – as a discrete issue susceptible to settlement, unlike the complex and serious issues involved here. Finally, Cove Point LNG and Dominion pointed out that from their vantage point, they see no purpose in negotiating with WGL on the subject of WGL’s safe operation of its own system.

43. On the issue of Docket No. CP05-395’s role in this matter, Cove Point LNG and Dominion asserted that the reactivation of two waste heat vaporizers in that proceeding has already occurred and they are already in service and did not increase Cove Point LNG’s output. Accordingly, they contended those facilities are not a part of the expansion facility authorization that the court identified and vacated, namely those facilities slated for completion in November 2008, that will significantly increase Cove Point LNG’s output.

44. Commission staff convened the technical conference on August 14, 2008. Conference participants were advised to file all information they deemed relevant regarding safety-related concerns and remedial measures taken or to be taken so that WGL’s system can safely accommodate regasified LNG. To that end, Commission staff

¹⁹ 123 FERC ¶ 61,059 (2008).

²⁰ The August 1 notice included Docket No. CP05-395 in its caption. The relationship of the vaporizers to the Cove Point Expansion is discussed *infra*.

provided a schedule for filing initial and reply comments in response to the discussion at the technical conference. In addition to the initial and reply comments filed,²¹ Commission staff issued a number of data requests, resulting in the filing of numerous data responses.²²

II. Interventions

45. CPV Power Development, Inc. (CPV) filed a motion to intervene out-of-time in these proceedings on July 29, 2008. A petitioner for late intervention bears a higher burden to show good cause for late intervention after issuance of a dispositive order because the prejudice to the other parties and burden upon the Commission of granting the late intervention may be substantial.²³ CPV states that it is now developing a 640-megawatt natural gas-fired combined-cycle generation facility to be connected to the new pipeline facilities in this proceeding. CPV states that it did not timely intervene in this proceeding because it did not start developing this project until after the June 16 and January 4 Orders had issued. CPV asserts that no party will be prejudiced by its late intervention because it agrees to accept the record and procedural posture of this proceeding as it stands. The Commission finds that CPV has shown good cause for its failure to timely intervene in these proceedings, since its interest in the proceeding arose after the issuance of the dispositive orders, and that granting the late-filed motion to intervene will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. The Commission also notes that CPV's motion was unopposed. Therefore, for good cause shown, we will grant the late-filed motion to intervene.²⁴

²¹ Initial comments were filed by Statoil, WGL, Cove Point LNG and Dominion, and OPC on August 19, 2008. Reply comments were filed by WGL, CPV Power Development, Inc., Cove Point LNG and Dominion, on August 22, 2008. On August 25, 2008, Shell NA LNG LLC (Shell) filed comments responding to WGL's reply comments. On August 26, 2008, Statoil filed an answer to WGL's reply comments and BP Energy Company (BP) filed comments in support of Shell's August 25, 2008 filing.

²² These data responses include August 8, 2008 responses from Columbia Gas Transmission Corporation (Columbia Gas), Cove Point LNG, and Transco; August 19, 2008 responses from Cove Point LNG, Statoil, and Transco; Columbia Gas' August 20, 2008 response; Cove Point LNG's and Dominion's August 21, 2008 response, and WGL's August 22, 2008 supplemental response.

²³ See, e.g., *Entegra Gas Pipeline Inc.*, 113 FERC ¶ 61,327 (2005); *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250 (2003).

²⁴ 18 C.F.R. § 385.214(d) (2008).

III. Discussion

46. As detailed above, in response to the court's decision in *WGL v. FERC*, Cove Point LNG and Dominion request in their July 28 motion that the Commission, no later than August 29, 2008: (1) reaffirm and reissue the NGA section 7 certificates authorizing Dominion's construction and operation of the pipeline and storage facilities described in its application in Docket No. CP05-131-000, and Cove Point LNG's construction and operation of the pipeline facilities described in its application in Docket No. CP05-132-000; and (2) reaffirm and reissue Cove Point LNG's NGA section 3 authorization to construct the Cove Point LNG import terminal facilities described in Docket No. CP05-130-000. These actions, according to Cove Point LNG and Dominion, would not trigger any of the potential safety hazards that were the subject of the Court's concern in *WGL v. FERC*. In fact, claim Cove Point LNG and Dominion, by adding various recent statements from WGL and state regulatory commission actions to the existing record evidence, the Commission now should be able to find that the expansion project can go forward as originally approved without causing unsafe leakage on WGL's system, thereby satisfying the court's instruction.

47. A preliminary matter involves the resolution of WGL's claim that the Commission's orders in Docket No. CP05-395 fall within the ambit of the court's remand. In Docket No. CP05-395-000, the Commission granted Cove Point LNG the authority to refurbish and reactivate two waste heat vaporizers on its LNG terminal.²⁵ This authorization enabled Cove Point LNG to provide an additional 250,000 Dth/d of firm send-out capacity to ensure that Cove Point LNG can deliver up to its current peak-day capability of 1.0 MMDth/d of send-out capacity on a year-round basis.²⁶

48. Although we included Docket No. CP05-395-000 in our August 1 notice rescheduling the technical conference, we did so to ensure its inclusion in these proceedings in the event we later agreed with WGL's assertion that the additional 250,000 Dth/d output of gas resulting from that reactivation project implicated the safety concerns to be addressed on remand. After reviewing the court's decision, we do not agree with WGL's claim.

49. It is true that WGL sought review of the orders in CP05-395, as well as the orders in Docket Nos. CP05-130, CP05-131, and CP05-132, and discussed the two waste heat vaporizers as a part of the expansion in its briefs to the court. However, the two waste

²⁵ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,336 (2006), *order denying rehearing and clarification*, 118 FERC ¶ 61,006 (2007).

²⁶ The LNG import terminal currently has a total storage capacity of 7.8 Bcf and 1.0 MMDth/day of peak send-out capacity.

heat vaporizers authorized in Docket No. CP05-395 only serve to ensure that Cove Point LNG can deliver up to its *current* peak-day capability of 1.0 MMDth/d of send-out capacity on a year-round basis. Moreover, these reactivated heat vaporizers have already been placed in service, on December 22, 2006. On the other hand, the several orders identified by the court as approving the expansion were the June 16 Order and January 4 Order,²⁷ and the facilities approved in those orders were the facilities “slated for completion in November 2008.”²⁸ Accordingly, we conclude that the orders issued in Docket No. CP05-395 are not vacated by the court, and the authorizations issued thereunder remain in effect.

50. The next matter to be resolved involves the extent of the process required of us in considering whether to grant the relief requested in Cove Point LNG’s and Dominion’s motion once the court’s mandate issues. As stated above, the court vacated the orders “to the extent they approve the Expansion”²⁹ and remanded the case so that the Commission “can more fully address whether the Expansion can go forward without causing unsafe leakage.”³⁰ However, in addition to affirming our findings that the existing leaks on WGL’s system are due primarily to the condition of WGL’s pipeline couplings, not the introduction of regasified Cove Point LNG into the WGL system, and that the responsibility to prevent or repair future leaks belongs to WGL, the court found all other challenges to the orders, other than the Commission’s treatment of the safety concerns, to be without merit.

51. We do not believe that in remanding the case to us the court expected, much less required, that we reprocess anew Cove Point LNG’s and Dominion’s applications. Based on the court’s affirmation of all challenged aspects of our prior orders, other than our earlier treatment of the question of whether the expansion project can go forward without causing unsafe leakage,³¹ we adopt by reference our prior orders in these proceedings in all respects other than our conclusion that “there is time for WGL to complete any remaining corrective measures that are needed on its system so that it can safely accommodate regasified LNG.”

²⁷ See *WGL v. FERC*, 532 F. 3d at 929.

²⁸ *Id.* at 929.

²⁹ *Id.* at 933.

³⁰ *Id.*

³¹ We note that WGL has repeatedly stated it does not oppose construction of the expansion, if it can be done safely.

52. WGL continues to maintain that, given the current state of its system, flowing additional volumes of LNG associated with the expansion project through its system will result in some additional incidence of leakage. However, it is not the completion and placement into service of the new facilities alone that could affect WGL's system. Rather, it is the introduction of additional volumes of LNG associated with the expansion of the LNG terminal through those facilities that WGL asserts could pose a safety risk. Therefore, because as discussed below, we find that public interest considerations support allowing the completion and limited use of the expansion facilities, we are authorizing their completion and use, but are conditioning that authorization to ensure that no additional volumes of regasified LNG will flow through WGL's system as a result of the terminal expansion. We anticipate that at some point in the future, we may be able to remove this restriction.³² However, in the meantime, the condition we impose will prevent unsafe leakage on WGL's system from occurring as a result of the terminal expansion.

53. We find, as explained below, that allowing Cove Point LNG and Dominion to complete the construction of all project facilities, and to operate them as conditioned herein, continues to meet the criteria of the Commission's Certificate Policy Statement, as well as the public interest requirements of section 3 of the NGA.

54. As recited in the June 16 Order, the Commission's Certificate Policy Statement, issued on September 15, 1999, provides guidance as to how proposals for certifying new construction will be evaluated.³³ Specifically, the Policy Statement explains that the Commission, in deciding whether to authorize the construction of new pipeline facilities, balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary

³² For example, the record is clear that WGL has been able to take the remedial steps necessary to resolve the unsafe leak problem in Prince George's County by replacing the damaged couplings and reducing operating pressure. *See* 118 FERC ¶ 61,007 at 61,023 – 24. WGL contends that it could take up to a decade to replace all damaged couplings throughout the rest of its system. Nevertheless, WGL does not claim that replacing all damaged couplings throughout its system is the only solution, nor does it claim that it is incapable of modifying its system to handle additional volumes of LNG more quickly than a decade.

³³ *Certification of New Interstate Natural Gas Pipeline Facilities* (Policy Statement), 88 FERC ¶ 61,227 (1999); *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 (2000); *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000).

disruptions of the environment and the unneeded exercise of eminent domain in evaluating new pipeline construction.

55. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of a new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

56. The June 16 Order issued the NGA section 7 certificate authorizations approving the Cove Point Pipeline expansion in Docket No. CP05-132 and Dominion's construction of new downstream pipeline and storage facilities in Docket No. CP05-131 after first determining that both Cove Point LNG and Dominion were proposing incremental rates designed to recover the costs of their respective expansion facilities. In conjunction with the incremental rate treatment, Cove Point LNG and Dominion were required to keep separate books and records, so the costs would be isolated and existing customers could review and verify the costs to insure that they did not pay for facilities that they did not use.³⁴ Consequently, we found that Cove Point LNG's and Dominion's proposal met the Certificate Policy Statement's requirement that the new construction will not be subsidized by existing shippers.

57. We also stated in the June 16 Order Cove Point LNG's proposal was a case of first impression in which an applicant proposed to provide LNG terminal expansion services on a non-open-access basis at non-tariffed market-based rates while continuing to provide open-access service at cost-of-service rates to customers utilizing the existing facilities. In order to ensure that Cove Point LNG's existing customers would not subsidize the Cove Point LNG terminal expansion, which was intended to provide service for one

³⁴ While we authorized incremental rates, thereby protecting the customers, the rate treatment was different depending on the facility. We authorized incremental cost-of-service rates for Cove Point LNG's looping pipeline and Dominion's pipeline and storage facilities. For its terminal expansion (tanks 6 and 7), Cove Point LNG received authority to provide non-open-access terminalling services at non-tariffed, market-based rates.

customer, and that service for the existing customers will not be degraded, nor will the existing customers be discriminated against, we similarly required Cove Point LNG to isolate and separately report the costs for the new service. This will allow the parties an opportunity to review these costs and allocations during any NGA section 4 or 5 proceeding to determine if the rates for the existing customers continue to be just and reasonable.

58. Cove Point LNG and Dominion state in their August 21, 2008 response to staff's August 18, 2008 data request that construction of the Cove Point Expansion Project began more than two years ago, and is within approximately 120 days of completion. They state that as of early August, the terminal expansion was approximately 93 percent complete, and most of the major construction milestones have been completed.³⁵ Cove Point LNG and Dominion also state that, based upon dollar expenditure to date, construction of the pipeline and compression portions of the expansion project is also far advanced, with approximately 65 percent of the work completed. According to Cove Point LNG and Dominion, all pipeline work and all eight compressor stations will be completed in the fourth quarter of 2008. As noted above, Cove Point LNG and Dominion state that five contractors and approximately 1,400 employees are engaged daily on the construction of the expansion project at locations in five states.

59. Based on the above, we find that any stoppage of construction work at this point in time would have substantial adverse impacts beyond financial implications to Cove Point LNG and Dominion. Cove Point LNG and Dominion explain in their August 21, 2008 data response that they would have to negotiate change orders with their contractors and, based on the current industry environment, it could be difficult to contract with the same or other qualified contractors to complete the relatively small amount of remaining work in a timely and coordinated manner. Even if Cove Point LNG and Dominion can secure the same or other qualified contractors, implementation plans would have to be modified to reflect any on-site changes resulting from a suspension in construction, and Cove Point LNG and Dominion would also have to obtain agency authorizations to resume work, all of which could lead to a significant delay in job completion.

60. In addition, numerous federal, state and local permitting agencies would have to be consulted regarding the requirements for stabilizing the construction work areas and rights-of-way in the event of a work stoppage. Cove Point LNG and Dominion state in their August 21, 2008 data response that as of August 1, 2008, 139 of the 162 miles of pipeline right-of-way have been disturbed; however, cleanup, seeding and mulching has occurred on only 42 miles and the temporary stabilization of the remaining right-of-way would have to be resolved. Moreover, Cove Point LNG and Dominion would need to

³⁵ Cove Point LNG and Dominion state that the 1st and 2nd stage LNG pumps are the only pieces of equipment that remain to be set.

take measures to secure and stabilize approximately 33 miles of pipe strung along the right-of-way, but not yet placed in the ditch and backfilled, as well as open pipe in the ground. All this would lengthen the disruption period for many landowners. In addition, Cove Point LNG and Dominion would have to secure extensions for use of temporary workspaces.

61. Cove Point LNG and Dominion state that in addition to general problems associated with preserving the equipment at compressor stations, the Mockingbird Hill Compressor Station and Quinlan Station present special problems. Cove Point LNG and Dominion state that Dominion would not be able to provide its previously-certificated capacity or performance levels at those stations because the existing units have been removed and the new units are still being installed. Thus, a cessation of construction activities (or failure to reauthorize the operation of the new facilities) would negatively impact existing firm transportation and firm storage services on Dominion.

62. Construction of the LNG facilities at the Cove Point terminal are also quite far along, and Cove Point LNG has presented several reasons for allowing their completion. Most compelling is that the continued safe operation of the existing LNG facilities relies upon the successful mechanical integration of the new and old facilities. This supports allowing Cove Point LNG to finish construction and testing.

63. Based on the foregoing, we find that authorizing Cove Point LNG and Dominion to complete the construction of the Cove Point Expansion Project facilities would result in less adverse impact and upheaval to affected landowners and the environment than requiring construction activities to stop, so long as the concerns regarding safety associated with the expansion project are appropriately addressed. Authorizing the completion of construction would also avoid the risk of substantial delay in project completion, and would ensure that Dominion would be able to continue providing existing certificated services.

64. Turning to the implications of reissuing authorizations for the operation of the facilities, we note the court remanded this case for the Commission to “more fully address whether the Expansion can go forward without causing unsafe leakage.”³⁶ At the

³⁶ 532 F.3d at 933. The court did not suggest that the Commission was wrong in assuming WGL has the ability to ultimately fix its leaks. Rather, the court emphasized that the Commission should give more consideration to how long it may take WGL to fix its system. As stated by the court, “[w]e conclude substantial evidence supports FERC’s finding that defects in WGL’s system caused the PG County leaks, but does not support its finding that WGL will be able to address safety concerns before the Expansion’s in-service date.” *Id.* at 931. The court also stated that “FERC attempted to carry this burden by concluding WGL will be able to fix its facilities before the Expansion’s in-service date, but did not support the finding with substantial evidence.” *Id.* at 932-33. The court

(continued...)

technical conference and in its comments, WGL suggested that one potential approach would be to isolate WGL's system from direct deliveries of regasified LNG from the expanded Cove Point facilities. WGL has gate stations and associated receipt and delivery points on four interstate pipelines: Cove Point Pipeline, Dominion, Transco and Columbia Gas.

65. Regarding the Cove Point Pipeline, WGL has not used the gate stations regularly at the interconnections between WGL and the Cove Point Pipeline at Centerville, Virginia, and White Plains, Maryland since it experienced the increased leaks in Prince George's County.³⁷ Nor did WGL present any evidence indicating an intent to resume using these gate stations. Thus, we find that these receipt points are capable of effective isolation from WGL so that LNG volumes as a result of the expansion will not impact WGL's system.

66. With respect to Dominion, WGL is expected to complete repairs³⁸ to its system behind the Leesburg, Virginia and Jefferson, Maryland delivery points off Dominion, which would receive the most LNG expansion volumes, by the fall of 2008.³⁹ Thus, we find that any LNG volumes received off Dominion as a result of the expansion will have no adverse impact on WGL's system.

67. With respect to Transco, delivery points on Transco's system that serve WGL have already been isolated from all LNG-sourced supplies by the installation of certain valves such that "WGL can now exclude Cove Point gas that is transported through the Transco pipeline from each of its four Transco gate stations."⁴⁰ Thus, we find that these

concluded that the evidence "does not even begin to suggest when WGL will be able to fix the other 86% of its system before the Expansion begins operations in a couple of months." *Id.* at 932.

³⁷ WGL's August 12, 2008 Answer, Attachment 2, Affidavit of Adrian P. Chapman, at paragraph no. 4.

³⁸ These repairs, including replacement of pipe and couplings, will allow this portion of WGL's system to receive additional volumes of LNG without increased incidents of leakage.

³⁹ WGL's August 12, 2008 Answer, Attachment 2, Affidavit of Adrian P. Chapman at paragraph no. 7. WGL does not buy LNG-sourced volumes at these points, but due to the configuration of the various regional pipelines that serve WGL, LNG-sourced volumes are typically delivered at those points.

⁴⁰ *Id.* at paragraph no. 9.

receipt points are capable of effective isolation from WGL so that LNG volumes as a result of the expansion have no impact on WGL's system.

68. Concerning Columbia Gas, it has three pipelines that serve the heart of WGL's service territory, as well as including WGL's Dranesville, Virginia, and Rockville, Maryland, gate stations. These are WGL's largest gate stations on the Columbia Gas system and they serve significant areas of WGL's distribution system that contain mechanically-coupled pipe.⁴¹ The Dranesville and Rockville gate stations are downstream of Columbia-Loudoun; thus, limiting the flow of LNG at Columbia-Loudoun would similarly limit the flow of LNG that could be taken at Dranesville and Rockville. Isolating these points from the receipt of additional volumes of regasified LNG associated with expansion of the Cove Point terminal would eliminate the risk of leakage associated with the expansion on WGL's system behind the points.⁴² We thus find that the flow of additional volumes of LNG associated with the expansion into WGL's system from Columbia Gas can be prevented by restricting deliveries of natural gas into Columbia Gas' pipeline at its interconnection with the Cove Point Pipeline at the Loudoun, Virginia delivery point (Columbia-Loudoun) to 530,000 Dth per day.

69. Consistent with Cove Point's reactivation certificate (Docket No. CP01-76), up to 530,000 Dth per day of LNG may already be delivered to Columbia Gas by the Cove Point Pipeline. Cove Point LNG has confirmed that its existing firm shippers, BP, Statoil, and Shell, which source their gas primarily at the existing Cove Point LNG terminal, have primary delivery rights (totaling 530,000 Dth per day) at Columbia-Loudoun under their respective service agreements.⁴³ By restricting future deliveries at

⁴¹ *Id.* at paragraph no. 11.

⁴² WGL was unsure whether the gates on Columbia Gas that serve its Shenandoah system would be exposed to LNG on a sustained basis post expansion; however, Columbia Gas' August 20, 2008 data response shows that this will not occur. *See* Columbia Gas' August 20, 2008 response to data request no. 4. Moreover, as discussed *infra*, this order prohibits deliveries of expansion volumes into Columbia Gas' system.

⁴³ BP and Shell each have firm delivery rights at Columbia-Loudoun of 200,000 Dth/day, and Statoil has rights at Columbia-Loudoun of 130,000 Dth/day. These rights have been in effect since an agreement was reached among the parties regarding the reactivation of the Cove Point LNG facility in 2001. WGL was a party to that settlement and has not, since that time, filed any complaint challenging the *status quo*, i.e., suggesting that the interchangeability standards that they agreed to have proven inadequate. Rather, WGL filed a protest to the proposal in these proceedings to *expand* the existing terminal facilities, which would result in the flow of additional volumes of regasified LNG. The flow of those *additional* volumes is the focus of this proceeding; this proceeding is not the appropriate forum to contest existing conditions.

this point to pre-expansion volumes, we can ensure that WGL's system will not receive more regasified LNG as a result of the Cove Point Expansion Project. WGL will be isolated from any volumes of LNG in excess of those that it could already receive under agreements entered into pursuant to the existing authorizations issued by the Commission in the Cove Point LNG reactivation proceeding. By imposing this restriction, we will ensure that no additional LNG can be delivered into WGL's system as a result of the expansion project.⁴⁴

70. While WGL may, in fact, receive specific molecules of gas which emanate from a terminal expansion facility, it will be protected from receiving any greater volume of regasified LNG than it could have received had the expansion not been authorized and constructed. We note that regasified LNG volumes have never been delivered to the Columbia-Loudoun point at the maximum contracted level. To date, the largest volume of regasified LNG delivered at this interconnection was about 290,000 Dth per day in the winter of 2006/2007. For the last three years the average flow at the Columbia-Loudoun point for both summer and winter was about 30,000 Dth per day. Information provided in comments shows that shipments of LNG to the Cove Point terminal have been much less than expected in the first half of 2008. Given present world LNG market conditions, shipments of LNG to the Cove Point terminal are likely to remain diminished. In the event that prior to WGL's making additional repairs to its system, the U.S. market does make a sustained call on the world LNG supply such that deliveries of LNG-sourced supplies at Columbia-Loudoun increase greatly and are sustained, WGL may experience some leaks on that portion of its system served by Columbia Gas. However, that situation would occur even in the absence of this expansion, and thus cannot be said to be attributable to the expansion.

71. We recognize that restricting deliveries at the Columbia-Loudoun delivery point to those already permitted may not satisfy all the participants in this proceeding. While it does ensure that there will be no leaks on WGL's system attributable to flow of increased volumes of regasified LNG associated with the authorization of the expansion of Cove Point LNG's terminal facility, it also precludes WGL and others from fully benefiting from this new supply option for natural gas. Moreover, it potentially deprives gas

⁴⁴ We note that the LNG expansion volumes have been planned to be moved on routes to Pennsylvania and West Virginia primarily through Dominion; except for the Leesburg, Virginia and Jefferson, Maryland points discussed above, the primary route of the LNG expansion volumes does not affect WGL. Statoil is the sole importer and shipper of the LNG expansion volumes. It requested the transportation routes to Pennsylvania and West Virginia primarily on Dominion at the start of this proceeding. Thus, restriction on deliveries at the Columbia-Loudoun delivery point should not alter Statoil's planned primary delivery point rights.

suppliers/marketers of opportunities to deliver incremental volumes on a secondary or interruptible basis at the Columbia-Loudoun point.⁴⁵ However, our action here in no way precludes WGL, Cove Point LNG, Dominion, and others from continuing to explore other options which would enable WGL's system to accommodate safely additional volumes of regasified LNG. Cove Point LNG may petition the Commission to remove this condition when it believes that Columbia Gas's acceptance of more than 530,000 Dth per day from Cove Point LNG will not result in unsafe leakage on WGL's system.

72. Based on the foregoing, we conclude that Cove Point LNG's and Dominion's proposals to construct and operate all the facilities that constitute the Cove Point Expansion Project, subject to the conditions set forth herein, would continue to comply with the Certificate Policy Statement and would not adversely affect the safety of WGL's system.⁴⁶ Under the circumstances, it is in the public interest to reissue the certificates authorizing Cove Point LNG's and Dominion's proposals to construct and operate all the facilities that constitute the Cove Point Expansion Project, as conditioned herein.

73. Accordingly, the authorizations contained in the June 16 Order and the January 4 Order are vacated and superseded by conforming authorizations contained in the Ordering Paragraphs of this order. In reauthorizing the Cove Point Expansion Project, as conditioned herein, Cove Point LNG and Dominion will be authorized to continue with the construction and operation of all project facilities, provided Cove Point LNG's deliveries of regasified LNG into Columbia Gas' system at the Loudoun, Virginia delivery point shall not exceed 530,000 Dth/d.

The Commission orders:

(A) In Docket No. CP05-130-000, Cove Point LNG is authorized under section 3 of the Natural Gas Act to site and construct and operate, its proposed incremental

⁴⁵ The current capacity of the Cove Point pipeline delivery point to Columbia Gas in Loudoun County, Virginia is shown on Dominion Cove Point's EBB as 675,000 Dth per day, which is 145,000 Dth per day more than the 530,000 Dth per day of LNG that can be delivered under existing authority.

⁴⁶ We note that even if we were unable to find at this time that the entire expansion project could go forward without causing unsafe leakage on WGL's system, we believe the construction of all facilities, and the operation of all facilities excluding the expanded LNG import terminal facilities, would also be in the public interest. There would be no immediate increase in costs to existing customers and Cove Point LNG and Dominion would not be able to roll the costs of the project into system rates in a future section 4 rate case unless they could demonstrate that there would be no subsidization by existing shippers.

facilities at its LNG terminal at Cove Point, Maryland, as more fully described in the June 16 Order and the January 4 Order and in the application, subject to the condition that Cove Point LNG's deliveries of regasified LNG into its interconnection with Columbia Gas' system at Loudoun, Virginia shall not exceed 530,000 Dth/d.

(B) In Docket No. CP05-132-000, a certificate of public convenience and necessity is issued to Cove Point LNG under section 7(c) of the Natural Gas Act authorizing it to construct and operate its proposed incremental pipeline facilities, as more fully described in the June 16 Order, the January 4 Order, and in the application, subject to the condition that Cove Point LNG's deliveries of regasified LNG into its interconnection with Columbia Gas' system at Loudoun, Virginia shall not exceed 530,000 Dth/d.

(C) In Docket No. CP05-131-000, a certificate of public convenience and necessity is issued to Dominion under section 7(c) of the Natural Gas Act authorizing it to construct and operate its proposed incremental pipeline facilities, as more fully described in the June 16 Order, the January 4 Order, and in the application.

(D) The authorizations in the above paragraphs are conditioned on Cove Point LNG's and Dominion's compliance with Part 154 and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations.

(E) Cove Point LNG and Dominion shall submit revised actual tariff sheets that comply with the requirements contained in the bodies of the June 16 and January 4 Orders between 60 and 30 days prior to the proposed services going into effect.

(F) Cove Point LNG is required to revise its recourse rates in accordance with the discussion in the bodies of the June 16 and January 4 Orders, filing the revised recourse rate and work papers supporting the rate within 30 to 60 days prior to the service going into effect.

(G) Dominion is required to track the fuel costs separately for the proposed incremental service.

(H) Construction of the facilities authorized herein shall be completed within one year from the date of a final order in this proceeding in accordance with section 157.20(b) of the Commission's regulations.

(I) Cove Point LNG and Dominion shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental non-compliance identified by other federal, state or local agencies on the same day that such agency

notifies Cove Point or Dominion. Cove Point LNG and Dominion shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(J) Cove Point LNG and Dominion shall comply with the environmental conditions contained in Appendix B to the June 16 Order, as modified by the January 4 Order.

(K) CPV's motion to intervene out-of-time is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.