

I. BACKGROUND

A. Order Authorizing Cove Point Expansion Project

3. On June 16, 2006, the Commission issued an order² authorizing Cove Point LNG's and Dominion's construction and operation of facilities which comprise the Cove Point Expansion Project. This project includes the expansion of Cove Point LNG's existing LNG import terminal to increase the volumes of LNG that can be imported, stored, regasified, and delivered (Docket Nos. CP05-130-000, 001 and 002); the expansion of Cove Point Pipeline's capacity (Docket Nos. CP05-132-000 and 001); and Dominion's construction of new downstream pipeline and storage facilities in Pennsylvania, New York, Virginia, and West Virginia to provide enhanced access to firm natural gas storage and to additional natural gas markets throughout the northeastern United States (Docket Nos. CP05-131-000 and 001).

4. In approving the Cove Point Expansion Project, the June 16, 2006 Order addressed a number of issues, including WGL's 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 Cove Point LNG's expansion application should not be approved until Cove Point LNG demonstrated 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.

5. The Commission concluded that WGL's contention that 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. In view of the facts that: (1) 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, and (2) Cove Point LNG would continue to deliver regasified LNG meeting the gas quality specifications of all interconnecting pipelines, the Commission determined in the June 16, 2006 Order that there was no basis to deny Cove Point LNG's expansion application.

² *Dominion Cove Point LNG, LP, et al.*, 115 FERC ¶ 61,337 (2006) (June 16, 2006 Order).

B. Order on Rehearing

6. On January 4, 2007, the Commission issued an order³ addressing requests for rehearing and/or clarification of the June 16, 2006 Order authorizing the Cove Point Expansion Project. Two issues raised in the rehearing requests were whether: (1) the Commission erred by failing to resolve, before approving the expansion project, the concerns that gas leaks on WGL's system would increase due to increased amounts of regasified LNG being delivered into WGL's system as a result of the expansion project; and (2) the Commission erred in finding that colder temperatures, the application of hot tar to coupling seals, and increased operating pressures on WGL's system, rather than regasified LNG, are the substantial causes of increased leaks on WGL's system in Prince George's County, Maryland.

7. The January 4, 2007 Order on Rehearing concluded that any increase in leaks on WGL's system as the result of the expansion project would be limited to that portion of WGL's system containing mechanical couplings with compromised seals. The January 4, 2007 Order on Rehearing also found there is no scientific evidence that regasified LNG presents safety issues in a properly maintained gas distribution system. The Commission found that while the Cove Point Expansion Project would result in an increased amount of regasified LNG in the gas received by WGL, the gas would 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 its LTD-1 Shippers.⁴ In the January 4, 2007 Order on Rehearing, the Commission also stated: "[T]he 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."⁵

³ *Dominion Cove Point LNG, LP, et al.*, 118 FERC ¶ 61,007 (2007) (January 4, 2007 Order on Rehearing).

⁴ Cove Point's January 31, 2001 application requesting authority to reactivate and expand its Cove Point, Maryland LNG terminal included a January 2001 settlement agreement between Cove Point and its three prospective LNG tanker discharge service (LTD-1) customers: El Paso Merchant Energy, L.P. (El Paso), BP Energy Company (BP), and Shell NA LNG, Inc. (Shell). Through transactions completed on December 3, 2002, Statoil North America Inc. (Statoil) acquired El Paso's FTS and LTD-1 capacity rights on the Cove Point facilities. Thus, Statoil replaced El Paso as one of the three LTD-1 shippers.

⁵ In this regard, the Commission noted that WGL had engaged in mitigation measures to control the increase in leaks and to address safety concerns associated with the Cove Point LNG terminal's existing capacity. Specifically, the Commission

(continued)

8. Additionally, after thoroughly reviewing the record evidence relating to the effect of reduced C5+ levels,⁶ the application of hot tar to the mechanical couplings, temperature changes, and increased operating pressures, the Commission restated in the January 4, 2007 Order on Rehearing its belief that the application of hot tar to coupling seals, colder temperatures, and increased operating pressures on WGL's system 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 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 the sealing ability of the couplings had been compromised.

C. WGL v. FERC

9. In *Washington Gas Co. v. Federal Energy Regulatory Commission (WGL v. FERC)*,⁷ the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) affirmed in part and vacated in part the Commission's orders approving the Cove Point Expansion Project. The court affirmed the Commission's findings (1) that the existing leaks on WGL's system are due primarily to the condition of its pipeline couplings, not the introduction of regasified Cove Point LNG into its system, and (2) 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 the 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."⁸

explained that 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 distribution facilities in the affected area, estimated to be completed by the end of 2007, at a cost of \$140 million.

⁶ 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 plus (C9+). C5+ refers to the pentanes and heavier hydrocarbon components of the gas stream that are pentanes (C5) and heavier.

⁷ 532 F.3d 928 (D.C. Cir. 2008).

⁸ *Id.* at 933.

D. Cove Point's and Dominion's July 28, 2008 Motion

10. On July 28, 2008, Cove Point LNG and Dominion filed a motion requesting that the Commission affirm and reissue all Commission authorizations for the Cove Point Expansion Project by no later than by August 29, 2008, in advance of the issuance of the court's mandate in *WGL v. FERC*. Cove Point LNG and Dominion contended 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,⁹ as well as reissuance of the NGA section 3 authorizations for continued construction of the Cove Point terminal expansion in Docket No. CP05-130, "will not implicate any of the concerns expressed by the court in *WGL v. FERC*."

11. Cove Point LNG and Dominion claimed that any interruption in construction of any of the facilities would have major adverse consequences to Dominion, customers, and the public.¹⁰ Finally, Cove Point LNG and Dominion contended 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.

12. In support of their request for full authorization of the non-LNG terminal aspects of the Cove Point Expansion Project, i.e. Dominion's pipeline and storage facilities and Cove Point LNG's Cove Point Pipeline facilities, Cove Point LNG and Dominion claimed that neither the construction nor operation of these facilities would result in WGL's receipt of incremental regasified LNG. Furthermore, they stated, even without additional LNG from Cove Point, the facilities, on a stand-alone basis would create additional capability that will provide important benefits in delivering new, needed gas supplies in the Mid-Atlantic and northeastern United States.

13. Cove Point LNG and Dominion further contended that there was sufficient record evidence, as well as recent materials from WGL's public financial reports and relevant state commission proceedings, to support a conclusion that the full authorization of the

⁹ Cove Point LNG and Dominion claimed that these downstream facilities provide essential services independent of the Cove Point LNG import terminal.

¹⁰ Cove Point LNG and Dominion claimed 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 particular, they explain that if crews leave because construction is halted even briefly, it could take a long time to get the crews back. In the interim, consumers would be deprived of much-needed gas supplies.

Cove Point Expansion Project, including construction and operation of the expansion facilities at the LNG terminal, would not result in unsafe leaks. Cove Point LNG and Dominion stated that at a minimum, the Commission should reauthorize the continued construction of the Cove Point terminal expansion, conditioned such that the facilities may not be placed in service until the Commission so authorizes.

E. WGL's Answer

14. In its August 12, 2008 answer, WGL first asserted that the Commission was without authority to issue the orders requested by Cove Point LNG and Dominion before the issuance of the court's mandate. Second, WGL stated any order allowing the project to continue as previously authorized without first developing a more detailed and complete record on the question of unsafe leakage would ignore the court's directive in *WGL v. FERC*. WGL also claimed that the safety concerns to be addressed on remand include the vaporizers authorized in Docket No. CP05-395 (vaporizer orders),¹¹ which are capable of increasing the output of the Cove Point LNG terminal by 250,000 Dth/d. Third, based on changes in the international LNG market, WGL challenged the premise that the expansion project will increase supply, encourage LNG imports, and help maintain an affordable supply. Fourth, WGL asserted that the requests for authorization to construct and operate various facilities of the expansion project on a stand-alone basis sought to make substantial modifications to the initial applications in a motion that falls far short of an amended application. Granting such a request, WGL claimed, would not comport with Commission policy and precedent governing certificate applications.¹²

15. As for the record regarding safety issues, WGL stated that it "has devoted substantial time and effort to the safety issue, but remains unconvinced that it can timely address the leakage problem that the expansion is likely to cause on the remaining 86% of its system."¹³ According to WGL, an affidavit of Douglas A. Staebler, WGL's Vice President of Engineering, Marketing and Construction, makes clear that despite positive effects that WGL has experienced from hexane injection, the introduction of unblended

¹¹ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,336 (2006).

¹² WGL cites *Transcontinental Gas Pipe Line Corporation*, 103 FERC ¶ 61,033 (2003) (Proposal to downsize an authorized expansion project required reexamination for continued consistency with the Commission's Certificate Policy Statement.).

¹³ WGL's Answer at p. 12. Md. OPC also filed an answer to Cove Point LNG's and Dominion's July 28 motion in which Md. OPC also claimed that Cove Point LNG and Dominion had taken various WGL comments out of context, and stated that WGL's recent report to the Maryland Public Service Commission indicated that hexane injection appears to be only partially effective, at best.

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. Additionally, WGL's Corporate Financial Report states that WGL has not gathered enough evidence yet to conclude that hexane alone will solve the leak problem, contrary to Cove Point LNG's and Dominion's suggestion that hexane treatment is a complete remedy. WGL also referred to its second quarter Financial Report and SEC Form 10-Q, which stressed 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."¹⁴

16. Similarly, WGL stated that its latest report to the Maryland Public Service Commission (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, WGL stated that in fact one-third of the leaks in Prince George's County between 2000 and 2008 were Grade One leaks,¹⁵ and that, in any event, Grade Two leaks can vary as to degree of potential hazard and need for immediate repair.

17. Finally, WGL claimed that the Commission should not allow construction to continue until the remanded safety issue has been resolved because modifications to the proposed expansion, including operational solutions such as blending of LNG with domestic gas, may be needed to address concerns with unsafe leakage.

F. Technical Conference

18. Commission staff convened a technical conference on August 14, 2008, for the purpose of allowing Commission staff to discuss with the parties the issues raised in *WGL v. FERC*. All participants were advised 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. At the end of the 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. Commission staff provided a schedule for filing initial and reply comments in

¹⁴ Attachment 4 to WGL's Answer, WGL's Form 10 Q, for second quarter, 2008 at p. 39.

¹⁵ Affidavit of Douglas A. Staebler, Attachment 1 to WGL's August 12 Answer.

response to the discussion at the technical conference. In addition to the initial and reply comments filed,¹⁶ Commission staff issued a number of data requests, resulting in the filing of numerous data responses.¹⁷

G. Order on Remand

19. In the October 7, 2008 Order on Remand, the Commission reissued its prior authorizations for the Cove Point Expansion Project with the new condition that operation of the expanded import terminal facilities “shall be specifically conditioned upon deliveries from the Cove Point Pipeline into its interconnection with Columbia system at Loudoun, Virginia, not to exceed the 530,000 Dth/d, which is the level of existing firm primary delivery rights at the point.” The Commission concluded that this new condition would “ensure that no additional volumes of LNG associated with the expansion project are delivered to WGL’s system, thus ameliorating concerns about the safety of WGL’s system.” The Commission stated that “[w]e do not believe that in remanding the case to us the court expected, much less required, that we process anew Cove Point LNG’s and Dominion’s applications.” It therefore adopted by reference its prior orders in all respects other than its 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.”

20. Preliminarily, the Commission concluded in the October 7, 2008 Order on Remand that its June 16, 2006 Order and January 4, 2007 Order on Rehearing in Docket No. CP05-395 authorizing Cove Point LNG to refurbish and reactivate two waste heat vaporizers at its terminal was not vacated by the court.¹⁸ The Commission noted that the

¹⁶ Initial comments were filed by Statoil, WGL, Cove Point LNG and Dominion, and Md. 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 filed comments in support of Shell NA LNG LLC’s August 25, 2008 filing.

¹⁷ These data responses include August 8, 2008 responses from Columbia Gas, Cove Point LNG, and Transco; August 19, 2008 responses from Cove Point LNG, Statoil, and Transco; Columbia Gas’s August 20, 2008 response; Cove Point LNG’s and Dominion’s August 21, 2008 response, and WGL’s August 22, 2008 supplemental response

¹⁸ *Dominion Cove Point LNG, LP*, 115 FERC ¶61,337 (2006) (order issuing NGA section 3 authorization), *reh’g denied*, 118 FERC ¶61,006 (2007), and 118 FERC ¶61,146 (2007) (notice rejecting rehearing request).

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, and that they had already been placed in service, whereas, the orders identified by the court as being under review and addressed by its decision were the Commission's June 16, 2006 Order and January 4 Order on Rehearing in Docket Nos. CP05-130, CP05-131 and 132-000 approving the Cove Point Expansion Project.¹⁹ The court also identified the facilities at issue as the expansion facilities approved in those orders and "[s]lated for completion in November 2008."²⁰

21. The Commission then discussed the extent of the deliberative process required in considering whether to grant the relief requested in Cove Point LNG's and Dominion's motion once the court's mandate issues. On one hand, the court vacated the orders "to the extent they approve the Expansion"²¹ and remanded the case so that the Commission "can more fully address whether the Expansion can go forward without causing unsafe leakage."²² However, the court found that substantial evidence supported our findings that the existing leaks on WGL's system are due primarily to the condition of WGL's pipeline couplings²³ and that the responsibility to prevent or repair future leaks belongs to WGL.²⁴ In addition, the court found WGL's other challenges to the orders, other than the Commission's treatment of the safety concerns, to be without merit. Consequently, the Commission adopted by reference the prior orders in all respects other than the 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."

22. The Commission found in the October 7, 2008 Order on Remand that allowing Cove Point LNG and Dominion to complete the construction of all project facilities, and to operate them as conditioned, met the criteria of the Commission's Certificate Policy Statement,²⁵ as well as the public interest requirements of section 3 of the NGA. The

¹⁹ See *WGL v. FERC*, 532 F.3d at 930. The court identified the Commission orders under review as the "Certificate Order" published at 115 FERC ¶ 61,337 (2006) and the "Rehearing Order" published at 118 FERC ¶ 61,007 (2007).

²⁰ *Id.* at 929.

²¹ *Id.* at 933.

²² *Id.*

²³ *Id.* at 932.

²⁴ *Id.* at n.4.

²⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC

Commission then considered the implications of reauthorizing the operation of the facilities, consistent with the court's mandate to "more fully address whether the Expansion can go forward without causing unsafe leakage."²⁶

23. The October 7, 2008 Order on Remand recognized that due to the current state of WGL's system, introducing additional volumes of LNG associated with the expansion project through that part of WGL's system containing mechanical couplings with compromised seals, would result in some additional incidence of leakage. However, the Commission reasoned that if no additional volumes of LNG associated with the terminal expansion flowed through the WGL system, the Cove Point Expansion Project poses no additional risk of unsafe leakage.

24. The Commission then assessed the possibility of isolating WGL's system from direct deliveries of regasified LNG from the expanded Cove Point facilities, a potential solution suggested by WGL at the technical conference and in its comments. Such deliveries could occur at WGL's gate stations and associated receipt and delivery points on four pipelines that can flow Cove Point gas, namely, Cove Point LNG's Cove Point Pipeline, Dominion, Transcontinental Gas Pipe Line Corporation (Transco), and Columbia Gas.

25. The Commission found that with respect to Cove Point Pipeline, WGL has not regularly used the gate stations connecting WGL and Cove Point Pipeline at Centerville, Virginia, and White Plains, Maryland since it began experiencing the increased leaks in Prince George's County. Further, the Commission stated that WGL did not present any evidence indicating intent to use these two gate stations in the future. Based on the foregoing, the Commission concluded that "these receipt points are capable of effective

¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement). In its October 7, 2008 Order on Remand, the Commission reconfirmed that there would be no subsidization from existing customers, and also found that reauthorizing the Cove Point Expansion Project so that Cove Point LNG and Dominion can complete the construction of the Cove Point Expansion facilities will result in far less adverse impact and upheaval to affected landowners and the environment than requiring construction activities to stop until the safety issues associated with the expansion project are resolved. Reissuing authorization to permit completion of construction was also in the public interest to avoid the risk of substantial delay in project completion, and to ensure that Dominion would be able to continue providing existing certificated services.

²⁶ 532 F.3d at 933.

isolation from WGL so that LNG volumes as a result of the expansion will not impact WGL's system.²⁷

26. With respect to Dominion, the Commission stated that WGL's repairs to its system downstream of its interconnections with Dominion at Leesburg, Virginia, and Jefferson, Maryland "will allow this portion of WGL's system to receive additional volumes of LNG without increased incidents of leakage,"²⁸ and further, that such repairs should be completed by the fall of 2008. Thus, "any LNG volumes received off Dominion as a result of the expansion will have no adverse impact on WGL's system."²⁹

27. With respect to Transco, the Commission found that the 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."³⁰

28. Finally, with respect to Columbia Gas, the Commission noted that Columbia Gas has three pipelines that serve the heart of WGL's service territory, including WGL's Dranesville, Virginia, and Rockville, Maryland gate stations. These are WGL's largest gate stations on the Columbia Gas's system, which serve significant areas of WGL's distribution system that contain mechanically coupled pipe. The Commission noted that these two WGL gate stations are downstream of the interconnection between Cove Point LNG's Cove Point Pipeline and Columbia Gas's system at Loudoun, Virginia (Columbia-Loudoun), and "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 these points."³¹ For this reason, the Commission concluded that the flow of additional volumes of LNG associated with the Cove Point Expansion Project into WGL's system from Columbia Gas can be prevented by restricting deliveries of dryer regasified LNG from the Cove Point Pipeline to

²⁷ October 7, 2008 Order on Remand, 125 FERC ¶ 61,018 at P 65.

²⁸ *Id.* P 66.

²⁹ *Id.*

³⁰ *Id.* P 67, citing Affidavit of Adrian P. Chapman, Attachment 2 to WGL's August 12, 2008 Answer, at p. 9.

³¹ *Id.* P 68.

Columbia Gas at Columbia-Loudoun to no more than 530,000 Dth/d, which represents the total primary delivery rights to this point of the three existing firm shippers (BP, Shell and Statoil) under their respective service agreements.³²

29. The Commission stated in the October 7, 2008 Order on Remand that by restricting future deliveries to this interconnect to no more than pre-expansion volumes, i.e., 530,000 Dth/d, it “can ensure that WGL’s system will not receive more regasified LNG as a result of the Cove Point Expansion Project.”³³ Thus, the Commission concluded, this condition will isolate WGL from any volumes of dryer Cove Point LNG in excess of that it could already receive under existing service agreements. Therefore, the October 7 Order on Remand conditioned reissuance of authorization to operate the LNG terminal expansion facilities such that no additional volumes of regasified LNG associated with the terminal expansion would flow through WGL’s system. In this way the expansion project could go forward without causing any additional unsafe leakage on WGL’s system. The Commission also stated that it expected to be able to remove this restriction at some point in the future, noting that WGL had taken the remedial steps necessary to resolve the leakage problem in Prince George’s County by replacing damaged couplings and reducing operating pressure, and that while WGL claims it could take up to a decade to replace all damaged couplings on the rest of its system, other solutions may be discovered that can be implemented in less time.

II. REHEARING REQUESTS AND ANSWERS

30. As stated above, requests for rehearing and/or clarification of the October 7, 2008 Order on Remand were filed by WGL, Columbia Gas, Md. OPC, and Cove Point LNG jointly with Dominion. Motions for leave to file answers and answers to rehearing

³² The Commission noted that regasified LNG has never been delivered to Columbia-Loudoun at the maximum contracted level of 530,000 Dth/d, that the largest amount ever delivered was approximately 290,000 Dth/d in the winter of 2006/2007, and that for the last three years, the average summer and winter flow at this point was only about 30,000 Dth/d. Thus, if there were a sustained call on LNG supplies in the future that caused sustained deliveries that exceeded the flows that have been received at that point, the Commission acknowledged in the October 7, 2008 Order on Remand that, even with the remedy of a 530,000 Dth/d cap on deliveries to this point, WGL may experience some gas leaks on the portion of its system that receives gas that flows through Columbia-Loudoun to WGL’s Dranesville and Rockville gate stations, but that “that situation would occur even in the absence of this expansion, and thus cannot be said to be attributable to the expansion.” October 7, 2008 Order on Remand, 125 FERC ¶ 61,018 at P 70.

³³ *Id.* P 69.

requests were filed by Cove Point LNG and Dominion, Shell LNG, and Columbia Gas, and Md. OPC filed an answer opposing Cove Point LNG's and Dominion's answer to the rehearing request. While Md. OPC is correct that our rules do not permit answers to request for rehearing,³⁴ we may, for good cause shown, waive a rule.³⁵ We find good cause to do so in this instance. The answers provide information that assists us in the decision-making process.³⁶ Accordingly, we will accept Cove Point LNG and Dominion's, Shell LNG's, and Columbia Gas's answers to the rehearing requests.

Columbia Gas

31. Columbia Gas argues that the October 7, 2008 Order on Remand's requirement that Cove Point's deliveries of regasified LNG to Columbia at Loudoun, Virginia be limited to 530,000 Dth/d, with the right of Dominion to petition to remove this restriction when it believes WGL's system can safely receive additional volumes of regasified LNG, should be enhanced by requiring WGL to file regular reports on the status of its system's rehabilitation and ability to safely receive such additional volumes. The premise of Columbia Gas's request is that since WGL's safety concerns are at the heart of the controversy in this case, it is only fair that WGL, being the party with first hand knowledge of its system, should be required to participate in this manner, taking some of the burden of persuasion off of Dominion.

Commission Response

32. This Commission lacks jurisdiction over WGL, so we do not have the authority to require that WGL make periodic submissions regarding the status of its system, make repairs, or undertake other remedial steps to resolve the safety issues it has raised in this proceeding. However, that does not mean that we have created a process that may likely fail. To the extent that WGL does undertake remedial steps, it will have to justify those measures in submissions before the Md. PSC, and those submissions should provide Cove Point LNG and Dominion with information to assist them in determining whether and when it would be appropriate to seek removal of the restriction on deliveries at Columbia-Loudoun. Further, while WGL will have the right to challenge any petition requesting such restriction removal, it will be incumbent upon WGL to support its opposition with information adequate to explain why the petition should not be granted.

³⁴ See 18 C.F.R. §§ 385.213(a)(2), 385.713(d)(1).

³⁵ See 18 C.F.R. § 385.101(e).

³⁶ See, e.g., *KeySpan LNG, L.P.*, 114 FERC ¶ 61,065, at P 7 (2006); *PSEG Power Connecticut, LLC*, 113 FERC ¶ 61,210, at P 17 (2005).

Dominion

33. Dominion requests that the Commission eliminate Ordering Paragraph (G) from the October 7, 2008 Order on Remand. That ordering paragraph requires Dominion to separately track fuel costs for the incremental service associated with the Cove Point Expansion Project. The original certificate order contained that requirement, but it was removed on rehearing at Dominion's request,³⁷ and Dominion asserts that the requirement should be removed from the October 7, 2008 Order on Remand. Dominion states that consistent with the fact that the court's decision in *WGL v. FERC* did not implicate the treatment of fuel costs in any way, no party raised the subject in any filings made in this proceeding subsequent to that decision. Dominion states that the elimination of the Ordering Paragraph (G)'s requirement that Dominion separately track the fuel costs associated with the expansion would be consistent with the Commission's prior order in these proceedings and would correct what appears to have been an inadvertent repetition in the October 7, 2008 Order on Remand of a previously eliminated requirement.

Commission Response

34. In the January 4, 2007 Order on Rehearing, we stated that while we preferred that Dominion separately track the fuel for incremental service to Statoil to ensure that the existing customers are not adversely affected, Dominion would bear the burden of showing any fuel cost adjustment to be reasonable when Dominion files a section 4 rate proceeding, at the earliest in 2010.³⁸ Recognizing that Dominion has a reticulated web-like system which makes it difficult to track molecules of gas to fully comply with the requirement that Dominion track the fuel used at each of the compressor stations to provide service for Statoil, our January 4, 2007 Order on Rehearing granted Dominion's rehearing request for modification of our June 16, 2006 Order to eliminate the fuel tracking requirement in Ordering Paragraph (G) of the June 16, 2006 Order. As Dominion noted, our reinsertion of the fuel gas tracking requirement was inadvertent, and we will grant Dominion's rehearing request. However, we restate the January 4, 2007 Order on Rehearing's requirement that Dominion, during any proceeding to adjust its fuel retention rate, fully support any change in the system rate to ensure that the existing customers are not subsidizing the incremental service to Statoil.

³⁷ See 118 FERC ¶ 61,007 at P 125.

³⁸ See *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005).

Md. OPC

35. Md. OPC claims that the October 7, 2008 Order on Remand’s “stopgap relief” approach is not consistent with the public interest. Md. OPC states that before the Commission reauthorizes the construction and operation of the Cove Point expansion facilities, there must be a resolution of the problem of unsafe leakage on WGL’s system resulting from regasified LNG. First, Md. OPC faults the Commission for what it describes as an ad hoc, arbitrary approach resulting in a temporary solution that failed to fully explore the options available. Md. OPC claims that the October 7, 2008 Order on Remand’s solution – restricting deliveries to Columbia-Loudoun to currently approved levels – is novel, untested, and lacks sufficient evidentiary support, all the result of the technical conference format and limited time for review. Md. OPC asserts that the Commission should establish procedures, including a full evidentiary hearing and further technical analysis, to determine a long-term and lasting solution to the problem of unsafe leakage on WGL’s system. Short of that, Md. OPC requests clarification from the Commission that it will not grant clearance for operation of the Cove Point expansion facilities until it is assured that the isolation of WGL’s system has been effectively implemented, and that the restrictions that isolate WGL from any expansion flows will not be lifted until appropriate procedures are followed. Md. OPC adds that the October 7, 2008 Order on Remand is not supported by a reasonable analysis of the legal standard to be employed in balancing the conflicting public interest concerns, in that Commission failed to make safety a priority.

36. Although Md. OPC recognizes isolation to be a potential option to eliminate negative impacts related to delivery of the volumes of additional LNG, it states that the Commission failed to meet its regulatory mandate to ensure the safe operation of natural gas facilities by adopting that solution without fully exploring other options to resolve the safety issue. Md. OPC notes that the record shows that WGL is still unable to accurately determine the cause of the elevated gas leaks on its system. Moreover, states Md. OPC, even without exposure to additional expansion volumes, areas of WGL’s system are leaking at significant rates notwithstanding hexane injections. Md. OPC also takes issue with the Commission’s observation that, because deliveries to Columbia-Loudoun have never been as high as authorized, WGL may continue to experience some leaks on that portion of its system served by Columbia Gas even in the absence of this expansion and that any such leaks “thus cannot be said to be attributable to the expansion.” According to Md. OPC, this existing potential merely heightens the need for the Commission to resolve any safety threats associated with LNG from Cove Point.

37. According to Md. OPC, the Certificate Policy Statement’s focus on economic consequences in balancing a proposal’s public benefits against its potential for adverse consequences fails to directly assess the safety concerns raised by the court, and the Commission should have placed safety as a priority over economic interests. Instead, states Md. OPC, the Commission merely assumed that the parties will “explore other

options” to resolve the issue of unsafe leakage on WGL’s system. Md. OPC asserts that because of the Commission’s duty under the NGA to protect the safe operation of gas facilities, as well as the court’s directive in remanding the proceeding, the Commission must ensure that the public interest in safety is adequately protected before authorizing the expansion facilities under the NGA sections 3 and 7.

38. In the event the Commission denies its rehearing request, Md. OPC alternatively requests that the Commission (1) clarify that it will not grant clearance for operation of the Cove Point expansion facilities until it is assured that the isolation of WGL’s system has been effectively implemented, and (2) articulate appropriate procedures to be followed before removing any restrictions that are acting to isolate WGL from expansion flows. In addition, Md. OPC states the Commission should provide detailed guidelines on the operations and procedures to be followed by the various parties in implementing the isolation solution, including timelines and record keeping requirements. Md. OPC states that such direction is needed in order to ensure compliance with the Commission’s directive to isolate WGL’s system from regasified LNG associated with the expansion.

39. Cove Point LNG and Dominion argue that to the extent Md. OPC urges the Commission to order Dominion or others to pay the costs of fixing WGL’s system, that argument has already been rejected by the court.

40. In response to Cove Point and Dominion’s emphasis on the fact that the court rejected the argument that the Commission should order them to pay for the costs of fixing WGL’s system, Md. OPC states that its sole concern is with the remanded safety issues, and that it is simply seeking a resolution which would support the expansion without increasing unsafe leakage on WGL’s system. Md. OPC contends that by authorizing the Cove Point expansion to move forward, without explicitly conditioning such expansion on WGL’s ability to safely accept increased amounts of regasified LNG, the October 7, 2008 Order on Remand creates a regulatory gap unless the Commission satisfies the NGA’s mandate to ensure the safe operation of natural gas pipelines. Md. OPC states that while the MdPSC has primary jurisdiction over WGL, that agency needs adequate time and opportunity to develop and implement a real solution to the unsafe leakage problem on WGL’s system.

Commission Response

41. Md. OPC’s request for rehearing appears to misunderstand the intent of our action. The purpose of our October 7, 2008 Order on Remand was to allow Cove Point and Dominion to go forward and complete the nearly finished construction of their expansion facilities and to operate those expansion facilities, which the Commission had found to be in the public interest, while ensuring that WGL would not experience additional leakage on its system as a consequence of the operation of those expansion facilities.

42. We disagree with Md. OPC's claim that we should have established procedures, including a full evidentiary hearing and further technical analysis, to determine a long-term solution to the problem of unsafe leakage on WGL's system. Beyond the fact that finding a long-term solution to WGL's leakage problems is beyond our jurisdiction under the NGA, the procedures we followed in examining whether the Cove Point Expansion Project could go forward without increasing unsafe leakage on WGL's system were identical to those employed to resolve the highly technical, factual issue regarding the role of the regasified LNG from the Cove Point facilities in causing gas leaks on WGL's system in Prince George's County, Maryland, which was addressed in our June 16, 2006 Order authorizing the project. These procedures are consistent with the Commission's practice in other cases in which the Commission has been confronted with highly technical safety and engineering issues that could be resolved based on expert analysis of written data and a reasoned judgment as to what the data show, without the necessity of an evidentiary hearing.³⁹ The courts have approved this practice, recognizing that the Commission need not conduct formal evidentiary hearings to resolve contested technical issues of this sort.⁴⁰ Indeed, the court in *WGL v. FERC* specifically found that the approach we undertook in determining the cause of the gas leaks – allowing the parties to make written submissions and holding a conference – was adequate. Again, we are satisfied that the procedures we undertook, and the record in this proceeding contains sufficient information, without resort to a formal, in-person, trial-type evidentiary hearing, to make the reasoned decision that WGL's at-risk facilities can be isolated from receiving additional regasified LNG as a consequence of the expansion of the Cove Point facilities.

³⁹ *NE Hub Partners, L.P.*, 90 FERC ¶ 61,142, at 61,438 (2000), relying on *Louisiana Ass'n, supra*. See also *Iroquois Gas Transmission System*, 54 FERC ¶ 61,103 (1991), *aff'd*, *Louisiana Ass'n, supra* (“a dispute over an issue of material fact which can be resolved through the presentation of additional documentary evidence, including affidavits, letters, contract and technical data will not necessitate the convening of a trial-type hearing.” 54 FERC at 61,346; *Enron Power Marketing, Inc.*, 103 FERC ¶ 61,343, at P 33 (2003); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091, at 61,368 (1990), *aff'd on reh'g*, 53 FERC ¶ 61,194, at 61,688 (1990); *El Paso Natural Gas Co.*, 47 FERC ¶ 61,139, at 61,405 (1989).

⁴⁰ See *Louisiana Ass'n*, 958 F.2d at 1113, *Exxon Co., USA v. FERC*, 182 F.2d 30, 47 (D.C. Cir.1999). In *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 128 (D.C. Cir. 1982), the court acknowledged that the Commission also has broad discretion to decide whether to hold an evidentiary hearing to address alleged factual allegations raised by the parties (“we consider first the Commission's refusal to conduct a formal evidentiary hearing on the issues At the outset we note that the Commission's decision on such matters is generally discretionary.”)

In this way, we have fully complied with the court's direction to "more fully address whether the Expansion can go forward without causing unsafe leakage."⁴¹

43. Additionally, we did not, as Md. OPC claims, fail to make safety a high priority in balancing conflicting public interest concerns. While the Commission's jurisdiction is limited to interstate pipelines, and thus the interstate pipeline system is the primary focus of our safety concerns, the Commission specifically considered the implications of reauthorizing the operation of the facilities, consistent with the court's mandate to "more fully address whether the Expansion can go forward without causing unsafe leakage" on WGL's system. Although we acknowledged that WGL might experience some leaks on that portion of its system served by Columbia Gas, we concluded that such leaks could occur even in the absence of this expansion, and were, therefore, not attributable to the expansion. As we have previously stated, our inquiry here is limited to the safety implications of exposing WGL's at-risk facilities to additional volumes of regasified LNG as a consequence of our approval of the Cove Point Expansion Project. Issues arising from Cove Point LNG's operation of its existing terminal capacity, are not before us in this proceeding.⁴² The D.C. Circuit Court remanded the case so that this Commission could "more fully address whether the Expansion can go forward without causing unsafe leakage."⁴³ Issues related to the operation of Cove Point LNG's existing facilities are not before us on remand.

⁴¹ 532 F.3d at 933.

⁴² On February 27, 2003, the Commission approved two related, uncontested settlement agreements filed on October 24, 2002 (2002 settlement). *Cove Point LNG Limited Partnership*, 102 FERC ¶ 61,227 (2003). The 2002 settlement resolved the dispute between WGL and the other parties regarding the issue of LNG interchangeability and heat content, as well as rate and service issues in the proceeding in which the Commission authorized reactivation of Cove Point LNG's terminal. *Id.* P 11. Paragraph 6 of Article II of the 2002 settlement preserved WGL's right to raise gas quality concerns in the event that the quality of any regasified LNG from Cove Point caused unsafe conditions on WGL's system. *Id.* P 18. The Commission's order approving the 2002 settlement noted that WGL would retain the ability to petition should unsafe conditions develop. *Id.* P 31. However, this proceeding on the Cove Point Expansion Project is not the appropriate forum for WGL to raise safety issues relating to the operation of Cove Point's previously authorized, existing facilities or to deliveries of regasified LNG from the existing facilities in accordance with the terms and conditions of currently-effective service agreements that rely on the existing capacity.

⁴³ 532 F.3d at 933.

44. Md. OPC requests that we clarify that we will not grant clearance for operation of the Cove Point expansion facilities until we are assured that the isolation of WGL's system has been effectively implemented and that we provide detailed guidelines for such implementation. We note that some of the isolation measures discussed in the October 7, 2008 Order on Remand are self-help efforts initiated by WGL (WGL has closed certain city gate stations and installed hexane injection at other city gate stations in the path of imported LNG-sourced natural gas). Other measures depend upon the continued operational practices of other interconnecting interstate pipelines, most notably Transco. Finally, there is the isolation requirement of the order on remand which limits deliveries of natural gas sourced from imported LNG from Cove Point LNG to Columbia-Loudoun to 530,000 Dth/d, the volumes originally approved when Cove Point LNG's terminal was reactivated. The measures necessary to isolate WGL's at-risk facilities are essentially already in place, and the various parties responsible for ensuring their effectiveness are best informed as to what operations, procedures, and record-keeping practices are required to ensure that their system is managed to fulfill their responsibilities to ensure that no expansion volumes reach WGL's at-risk facilities. We see no need for further guidelines or clarification.

45. Additionally, we do not believe it is necessary to establish specific procedures to be followed in the event WGL, Cove Point LNG, Dominion or any other parties believe that the restrictions on deliveries of regasified LNG associated with the Cove Point expansion can be lifted. As noted in the October 7, 2008 Order on Remand⁴⁴ Cove Point LNG may petition the Commission to remove this condition at any appropriate time. Should Cove Point LNG (or any other interested party) make such a filing, WGL and other interested parties will have ample opportunity to participate in any Commission proceeding arising from such a petition.

46. The Commission does not believe it is necessary to monitor the daily operations of Cove Point LNG and all of its daily deliveries of natural gas to WGL and the interconnecting interstate pipelines, especially given the current market for LNG imports and the reduced use of Cove Point's LNG terminal and pipeline. However, to ensure compliance with our condition restricting deliveries from the Cove Point Pipeline to Columbia Gas at Columbia-Loudoun, we will require that Cove Point LNG report to the Commission in a public filing any delivery of regasified LNG at Columbia-Loudoun that exceeds 530,000 Dth/d within three days of such occurrence. Such report shall include a detailed explanation of the cause of exceeding the 530,000 Dth/d restriction.

47. While we have responded to the court's explicit directive to "address whether the Expansion can go forward without causing unsafe leakage," by conditioning operation of the Cove Point Expansion Project to prevent additional volumes of regasified LNG

⁴⁴ 125 FERC ¶ 61,018 at P 71.

associated with the expansion from reaching portions of WGL's system where they could increase leakage problems, we add that it is beyond the Commission's jurisdiction and ability to ensure that non-jurisdictional entities (e.g., local distribution companies) downstream of jurisdictional pipelines can safely accommodate gas volumes that will be transported by jurisdictional facilities authorized by the Commission. We can neither effectively monitor the physical and/or operational conditions for such entities, nor compel repairs or improvements when such are warranted, even for safety purposes.

48. Thus, when we stated in the January 4, 2007, 2008 Order on Rehearing in this proceeding that there was time for WGL to take any corrective measures to repair or replace defective couplings before the projected in-service date of the Cove Point Expansion Project, we did not mean to suggest that we believed that the public interest required that we indefinitely postpone granting clearance for the new facilities to be placed in service until WGL could implement such corrective measures.

49. While the Commission will always consider the concerns of local distribution companies and electric generators that use gas as fuel, we have no regulatory authority under the NGA that would allow us to monitor or require upgrades to local distribution systems or electric generating plants. Therefore, regardless of whether companies' concerns are based on genuine safety issues or economic considerations, we cannot allow those entities with GQI needs more restrictive than those we have generally found to be just and reasonable to control the specifications in interstate pipelines' tariffs and thus dictate the supplies that will be transported on the interstate grid. Such a standard would potentially shut out not only imported LNG supplies, but also domestic supplies such as Rockies gas (which is nearly pure methane) and gas from the recently developed and soon-to-be developed shale plays, such as the Barnett and Marcellus areas, which have different GQI profiles from historic Gulf-area production.

50. Our position here is fully consistent with our June 15, 2006 Policy Statement on Provisions Governing Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs (Policy Statement).⁴⁵ While the policy statement encourages interstate pipelines and their customers to work together to resolve disputes over gas quality and interchangeability,⁴⁶ the Policy Statement does not contemplate that the Commission will require an interstate pipeline making deliveries of gas meeting the GQI specifications in its tariff to make additional concessions based on the GQI needs of a

⁴⁵ 115 FERC ¶ 61,325 (2006).

⁴⁶ *Id.* P 33. See also *Tennessee Gas Pipeline Company*, 121 FERC ¶ 61,151, at P 11 (2007).

particular downstream pipeline or other customer.⁴⁷ Since issuing the Policy Statement, the Commission has stated on several occasions that an interstate pipeline is responsible only for the operational integrity of its own system, not for the operational integrity of downstream systems.⁴⁸ Indeed, we have stated that, to the extent prior decisions could be read as establishing a policy that an upstream pipeline must establish gas quality standards that enable it to satisfy whatever gas quality standards any downstream entity may establish for its system, the Commission no longer believes such a policy is appropriate.⁴⁹

⁴⁷ Although the Policy Statement states that interstate pipelines' tariffs should be flexible enough to allow them to accommodate requests for the transportation of gas that does not meet particular gas quality or interchangeability specification in their tariffs, the Policy Statement emphasizes that interstate pipelines should accept out-of-spec gas only to the extent they have the ability to transport the gas without jeopardizing system operations. *Id.* P 30.

⁴⁸ See *Norstar Operating LLC v. Columbia Gas Transmission (Columbia)*, 125 FERC ¶ 61,289, at PP 18-19 (2008) (In *Columbia*, the Commission required that Columbia revise its tariff provisions pertaining to gas quality standards but emphasized that an interstate pipeline is only required to deliver gas in accordance with its tariff specifications; it is not responsible for the integrity of downstream systems); *Indicated Shippers v. Tennessee Gas Pipeline Company (Tennessee)*, 121 FERC ¶ 61,151, at P 108 (2007) (In *Tennessee*, the Commission approved a settlement which, inter alia, approved a cricondentherm hydrocarbon dewpoint (CHDP) safe harbor on Tennessee's system over the objection that Tennessee would be permitted to receive and deliver gas with higher CHDP than historical levels, increasing the economic risks of Btus delivered as liquids and the operational risks to downstream LDCs and end-users faced with no facilities to deal with higher CHDP level gas. *Tennessee*, 121 FERC ¶ 61,151 at P 103); and *ANR Pipeline Company (ANR)*, 116 FERC ¶ 61,002, at P 64 (2006) (In *ANR*, the Commission approved a CHDP safe harbor on ANR's system, notwithstanding LDCs' concerns that permitting ANR to deliver higher CHDP level gas could cause operational problems on LDCs' systems). In each of these proceedings, the Commission applied the Policy Statement. See *Columbia Gas Transmission*, 122 FERC ¶ 61,163, at P 41; *Tennessee*, 121 FERC ¶ 61,151 at P 63; and *ANR*, 116 FERC ¶ 61,002 at P 107.

⁴⁹ In *ANR*, the Commission acknowledged that in *Natural Gas Pipeline Company of America (Natural)*, 104 FERC ¶ 61,322, at P 50 (2003), it had stated an upstream pipeline not meeting downstream pipelines gas quality requirements is not in the public or national interest regardless of the downstream Btu restrictions and when the restrictions were put into place. However, the Commission stated that, to the extent *Natural* could be read as establishing a policy that an upstream pipeline must establish gas quality standards that enable it to satisfy whatever gas quality standards any

(continued)

WGL's Rehearing Request

51. WGL claims that the October 7, 2008 Order on Remand is replete with factual and legal errors, and inconsistent with substantial record evidence, Commission precedent and the court's directive to the Commission in *WGL v. FERC*. WGL lists a number of issues, including: (1) the Commission's failure to fully address the court's direction to determine whether the expansion can go forward without causing unsafe leakage; (2) the lack of substantial evidence to support the conclusion in the October 7, 2008 Order on Remand that the restriction on deliveries of regasified LNG at Columbia-Loudoun, would insure against additional unsafe leaks on WGL's system; (3) the lack of substantial evidence to support the conclusion in the October 7, 2008 Order on Remand that WGL is isolated from deliveries of regasified LNG from either Transco's or Cove Point's pipeline; (4) the Commission's conclusion that its contemporaneous orders authorizing the refurbishment and reactivation of two waste heat vaporizers at Cove Point LNG's terminal was not vacated by the court;⁵⁰ (5) the applicability of the Gas Quality Statement,⁵¹ and in particular, the relevance of costs that might be imposed on customers as a result of gas quality or interchangeability standards; (6) whether Commission precedent requires that deliveries at Columbia-Loudoun should be limited to the take-away capacity at that point, which is far below the existing level of firm primary delivery rights of 530,000 Dth/d; and (7) the validity of the October 7, 2008 Order on Remand, as it was issued one day prior to the issuance of the court's mandate.

1. Failure to comply with court's mandate

52. WGL claims that by vacating the orders authorizing the Cove Point Expansion Project in their entirety, the D.C. Circuit Court issued a broad mandate to the Commission to inquire into whether the Cove Point Expansion Project could go forward without causing unsafe leakage on WGL's system. According to WGL, that inquiry should have consisted of a formal fact-finding process regarding the technical safety issues, rather than the Commission's chosen approach of convening a technical conference and soliciting limited data responses from the principal parties. WGL contends that the consequence of

downstream entity may establish for its system, the Commission no longer believes such a policy is appropriate. *ANR*, 116 FERC ¶ 61,002 at P 64).

⁵⁰ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006) (order issuing NGA section 3 authorization to reactivate vaporizers), *reh'g denied*, 118 FERC ¶ 61,006 (2007), and 118 FERC ¶ 61,325 (2007) (notice rejecting rehearing request).

⁵¹ *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006) (Gas Quality Statement)

the Commission's abbreviated inquiry is that the Commission's solution to the safety problems associated with reauthorizing the Cove Point Expansion Project is unsupported by, and inconsistent with, the substantial record evidence in this proceeding. As such, WGL asserts the Commission's resolution of the remanded safety issues is arbitrary and capricious, in violation of the Administrative Procedure Act,⁵² and the standard for judicial review, as expressed by the courts.

53. Cove Point LNG and Dominion disagree with WGL's premise that the Court handed down a "broad mandate" that the Commission re-examine its previous orders "in their entirety." Cove Point LNG and Dominion emphasize that the court determined that all of WGL's challenges were "without merit,"⁵³ except that "having found WGL's system is defective, FERC had to explain why the Expansion could nevertheless proceed consistent with the public interest requirements of sections 3 and 7 of the NGA."⁵⁴ Thus, Cove Point and Dominion argue that in vacating the orders to the extent they approve the expansion, the sole issue on remand was whether the expansion can go forward without causing unsafe leakage.⁵⁵

Commission Response

54. We have discussed in response to Md. OPC's request for rehearing, above, the adequacy of the procedures we employed to determine whether the expansion project could go forward without causing unsafe leakage. That discussion is equally responsive to WGL's claim that we should have conducted a trial-type hearing. Thus, WGL's request for additional procedures is denied.

2. There is No Evidentiary Basis for the 530,000 Dth/d Condition

55. WGL states that as a result of the Cove Point terminal's and storage facilities' increased send out capacity, as well as the expanded maximum capacity of the Cove Point pipeline, additional regasified LNG is likely to flow to the Columbia-Loudoun point and then into the WGL system, and that as a result, more leaks on WGL's system are likely to occur. WGL states that the Commission discounts this risk by concluding that "[g]iven present world LNG market conditions, shipments of LNG to the Cover Point terminal are

⁵² 5 U.S.C. § 706(2)(A).

⁵³ 532 F.3d at n.5.

⁵⁴ *Id.*, at 933.

⁵⁵ *Id.*

likely to remain diminished.”⁵⁶ WGL states that not only is it a fact that deliveries at Columbia-Loudoun have never come close to a level of 530,000 Dth/d,⁵⁷ the only evidence addressing safe flow levels at Columbia-Loudoun states that the level of deliveries that can be safely delivered to WGL at Columbia-Loudoun is the average summer and winter deliveries over the last three years, a level of approximately 31,000 Dth/d.⁵⁸

56. Therefore, states WGL, simply limiting deliveries to 530,000 Dth/d at Columbia-Loudoun ignores the fact that the level and frequency of leakages, potentially jeopardizing the safety of WGL’s customers behind the Rockville, Maryland and Dranesville, Virginia gate stations, will increase by virtue of the authorizations granted in the October 7, 2008 Order on Remand, despite this “contrived solution.” Moreover, WGL asserts that the Commission’s assumption that any such increased risk of leaks is small, based on the current state of the market demand for LNG is “entirely speculative.”

57. In fact, WGL asserts, the Commission has the authority under sections 7 and 16 of the NGA, and its own blanket certificate rules, to establish a cap at 31,000 Dth/d in order to insure public safety, despite the Commission’s view, as stated in the October 7, 2008

⁵⁶ October 7, 2008 Order on Remand, 125 FERC ¶ 61,018 at P 70.

⁵⁷ The Columbia-Loudoun delivery point is the western end of the Cove Point Pipeline. WGL argues that consistent with “in the path” delivery priority rights and developing markets for LNG, it is not surprising that shippers would prefer to designate Columbia-Loudoun as a primary delivery point as such designation would permit them to deliver gas at the intermediary points with Dominion and Transco as take-away markets developed. WGL asserts, however, that such designation of Columbia-Loudoun as a primary delivery point does not indicate that shippers ever intended, prior to the expansion approved in this proceeding, that all of their transportation entitlement under their service agreements (totaling 530,000 Dth/d) would in fact be delivered to that point. WGL further argues that there is not sufficient take-away capacity downstream of the Columbia-Loudoun point to enable 530,000 Dth/d to be flowed through. WGL states that Columbia’s current Index of Shippers shows that firm contracts with Loudoun as a receipt point equal only approximately 97,000 Dth/d, far below 530,000 Dth/d but consistent with the average throughput statistics provided by Attachment 2 to the response of Columbia Gas to Commission data request, dated Aug. 4, 2008, submitted in this proceeding. Thus, the fact that the three contracts are “consistent with the original reactivation order” (P 69), provides the Commission with no guidance as to the level of Cove Point gas that can safely flow to the Columbia-Loudoun interconnect consistent with *WGL v. FERC*.

⁵⁸ WGL’s response to Data Request No. 1-8.

Order on Remand, that it would be inappropriate to modify existing conditions in this expansion certificate proceeding.⁵⁹

58. WGL states, moreover, that the Commission earlier found that this proceeding was, in fact, the appropriate forum for WGL to contest pre-existing conditions, referring to the Commission's rejection of Cove Point LNG's and the LTD-1 Shippers' claim that the only appropriate course for resolving WGL's gas quality and safety allegations is a complaint under section 5 of the NGA, "since, in essence, it is seeking to modify the rates, terms and conditions of pre-existing service."⁶⁰ WGL states that by rejecting this claim, the Commission agreed that WGL's concerns regarding the impacts of the Cove Point gas flows, regardless of the legal status/vintage of the pipe through which the gas flows, could be fully addressed in this docket.

59. In response to WGL's assertion that the 530,000 Dth/d restriction exceeds historical averages, Cove Point LNG and Dominion state that, in any event, there would not be any increased deliveries at Columbia-Loudoun by reason of the expansion because, by design, the expansion is not intended to result in increased flows at Columbia-Loudoun. Rather, all expansion shippers' firm delivery point rights are to Dominion and Transco, exclusively. Cove Point LNG and Dominion also state that it is undisputed that Columbia Gas redirects Cove Point gas at Columbia-Loudoun to its 30" line, bypassing WGL, 95 percent of the time. Finally, Cove Point LNG and Dominion add that the hexane injection facilities at Rockville and Dranesville, to an extent, alleviate low C5+ content of regasified LNG, reducing the impact of change in gas quality, thus avoiding an increase in leaks.

60. In Columbia Gas's answer to WGL's request that the Commission decrease the maximum authorized deliveries from Cove Point to Columbia Gas at Loudoun from 530,000 Dth/d down to 31,000 Dth/d, Columbia Gas states that this would result in an involuntary abandonment of their services. Columbia Gas states that under its existing firm transportation agreements with its customers, it is obligated to receive a maximum of 97,414 Dth/d (plus Columbia Gas's system-wide retainage) at Columbia-Loudoun for transportation to various other points on Columbia Gas's system. Furthermore, Columbia Gas states that under its tariff, it must also make capacity available at Columbia-Loudoun to customers other than those holding firm capacity rights at the point, and at times of system difficulties, it uses Columbia-Loudoun to meet other service obligations.

61. Columbia Gas states that it has not sought to abandon its service obligations, nor is it aware of any precedent allowing a third party to impose an involuntary abandonment

⁵⁹ See 125 FERC ¶ 61,018 at P 69, n. 43.

⁶⁰ WGL's Rehearing Request, at p.20.

upon a certificate holder and its customers. Moreover, the pre-expansion certificate was not before the court, hence it was not vacated or otherwise within the scope of mandate.

62. Shell LNG filed an answer objecting to WGL's assertion that the Commission should impose a 31,000 Dth/d cap at Columbia-Loudoun. Shell LNG states that such action would reduce Shell LNG's primary firm delivery rights at Columbia-Loudoun, under a firm transportation agreement that was a foundational premise of the reactivation, by 94 percent. Additionally, Shell LNG asserts that WGL's arguments are not in accord with Commission precedent or controlling law.

63. In particular, Shell LNG states that the Commission's conditioning power under NGA sections 3 and 7 is not unlimited. According to Shell LNG, the Commission must comply with appropriate standards and procedures under NGA section 5 to adjust rates, terms and conditions; it cannot use NGA section 16's conditioning power to do something it is not otherwise authorized to do.

Commission Response

64. By limiting deliveries at Columbia-Loudoun to no more than 530,000 Dth/d, the level of existing firm primary delivery rights under the pre-expansion reactivation order, the October 7, 2008 Order on Remand made clear that "[t]his 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."⁶¹ This action by the Commission complied fully with the court's mandate in *WGL v. FERC*, as it was responsive to WGL's concern that the Commission should not approve the applications until such time as Cove Point LNG could show that it had minimized the risks of leaks on WGL's system that would result from the proposed expansion's increased deliveries of regasified LNG.

65. We disagree with WGL's assertion that the expansion of Cove Point terminal's and storage facilities' send-out capacity, as well as the expanded maximum capacity of the Cove Point Pipeline, will likely result in additional regasified LNG flows to Columbia-Loudoun and then onto WGL's system, resulting in more leaks. It is undisputed that the volumes of regasified LNG that have been delivered to Columbia-Loudoun under the current authorizations are far below the current 530,000 Dth/d maximum contracted level. Moreover, regardless of whether the Cove Point Expansion Project facilities are in operation, Cove Point LNG has the physical ability to deliver a full 530,000 Dth/d of unblended regasified LNG to Columbia-Loudoun. While the October 7, 2008 Order on Remand observed that present world LNG market conditions have resulted in reduced

⁶¹ 125 FERC ¶ 61,018 at P 3.

deliveries of LNG to Cove Point, it recognized that those conditions could change and if they did, significant and sustained increased deliveries of regasified LNG at Columbia-Loudoun could occur, as a result of which WGL might experience some leaks on that portion of its system served by Columbia Gas. However, the fact remains that that situation could occur even in the absence of the expansion facilities, and thus cannot be said to be attributable to our authorization of the expansion.

66. The issue of whether WGL can safely receive regasified LNG that finds its way into its system by virtue of Cove Point LNG's existing facilities has never been part of this proceeding. WGL has misinterpreted our rejection of Cove Point LNG's and the LTD-1 Shippers' claim that since WGL is seeking to modify the rates, terms and conditions of a pre-existing service, it should have sought to resolve its quality and safety allegations in an NGA section 5 complaint. As we explained in the June 16, 2006 Order, "[t]o the extent that WGL alleges that the introduction of additional quantities of regasified LNG [as a result of the proposed expansion] into its system will pose significant safety risks, it is incumbent on the Commission to ensure that Cove Point LNG's proposal will not result in unsafe or unreliable service adversely impacting other pipelines and their customers."⁶² We never intended to indicate that that the expansion proceedings were an appropriate forum in which to contest pre-existing conditions.

67. We do not agree that the Commission "has ample authority to impose a 31,000 Dth/d cap on deliveries from Cove Point to Columbia-Loudoun and such a cap is supported by the substantial evidence of record."⁶³

68. Reducing the cap at Columbia-Loudoun to 31,000 Dth/d would substantially reduce Shell LNG's primary firm delivery rights at Columbia-Loudoun under a contract that supported the certificate issued in the reactivation proceeding; and as also discussed herein, that proceeding is not before us here. Our conditioning authority under either NGA section 3 or 7(e) does not extend to issues not properly before us.⁶⁴ If we cannot impose such a condition under our section 3 or section 7 authority, we cannot fall back on our authority under section 16, which allows us to issue such orders as are necessary and

⁶² 115 FERC ¶ 61,337 at P 54.

⁶³ WGL's Rehearing Request at p. 21.

⁶⁴ See *Northern Natural Gas Co. v. FERC*, 827 F.2d 779, 792-93 (D.C. Cir. 1987); *Panhandle Eastern Pipe Line Co. v. FERC*, 613 F.2d 1120, 1129-33 (D.C. Cir. 1979) (Although, in both cases, the court was discussing the Commission's section 7 conditioning power, there is no basis for reading into section 3 the intent to give the Commission any expanded conditioning authority such that it could revise services authorized in other proceedings.)

appropriate in administering our jurisdictional responsibilities under the NGA. NGA Section 16 does bestow on us authority beyond that given to us under the substantive provisions of the act.⁶⁵

69. Moreover, a reduction of authorized delivery levels at Columbia-Loudoun would have an adverse impact on Columbia Gas, which is obligated under existing firm transportation agreements to receive a maximum of 97,414 Dth/d at Columbia-Loudoun and to make Columbia-Loudoun available to other customers as well. These service obligations are wholly outside the scope of the facilities and services approved in the orders vacated by the court in *WGL v. FERC* or reauthorized in the October 7, 2008 Order on Remand. There is nothing in the court's decision in *WGL v. FERC* that hints the court vacated any authorizations beyond those pertaining to the Cove Point Expansion Project. The pre-expansion certificate was not before the court, and it was not vacated or otherwise within the scope of the mandate.

70. Second, we do not believe that WGL's evidence is persuasive, as its response lacked technical detail and was conclusory. Specifically, WGL points to its response to our staff's data request of August 15, 2008, question no. 1-8, which inquired: "What levels of unblended or minimally blended LNG over and above current levels can WGL safely have delivered into its system via Columbia's system at the Dranesville and Rockville Gates assuming that hexane injection is taking place at these gates?" WGL's August 19, 2008 response, sponsored by Adrian Chapman, WGL's Vice President, Operations, Regulatory Affairs, and Energy Acquisition, was that "levels of unblended or minimally blended Cove Point LNG capped at the average summer and winter deliveries of Cove Point LNG through the Columbia-Loudoun interconnection ... over the last three years would be the maximum continuous volumes that could be safely delivered into the Washington Gas system based on our leak experience at this time." Under pre-expansion authorizations, WGL could potentially receive much higher levels than this three-year average. If WGL has concerns with increased safety risks associated with the receipt of any gas in excess of that level, up to the maximum pre-expansion levels, this is not the proceeding in which to address those concerns.⁶⁶

⁶⁵ See *Mobil Oil Corp. v. FPC*, 483 F.2d 1238, 1257 (D.C. Cir. 1973).

⁶⁶ WGL refers to the 2002 settlement approved by the Commission on February 27, 2003 in the reactivation proceeding in Docket No. CP01-76-000, *et al. Cove Point LNG, Limited Partnership*, 102 FERC ¶ 61,227 (2003). As discussed above, WGL's right to raise gas quality concerns in the event that regasified LNG from Cove Point caused unsafe conditions on its system was preserved by Paragraph 6 of Article II of the 2002 settlement (*id.* P 18), and the Commission's February 27, 2003 order approving the 2002 settlement acknowledged that WGL would retain this right to petition should unsafe conditions develop. *Id.* P 31. However, we have conditioned operation of

(continued)

3. The October 7, 2008 Order on Remand does not prevent Cove Point gas from flowing into WGL's at-risk facilities via the Cove Point or Transco pipelines

71. According to WGL, the Commission's stated goal is to isolate WGL's at-risk facilities from all Cove Point flows. WGL states that the Commission ignores unrebutted evidence that even with the remediation effort that it has undertaken, WGL will be facing each year 3,500 new leaks directly as a result of Cove Point gas flows.⁶⁷ Consequently, WGL states that the October 7, 2008 Order on Remand wrongly concludes that WGL's at-risk facilities have been isolated from receipt of any regasified LNG from Cove Point gas through its interconnects with Transco, Dominion, and Cove Point pipelines.

72. WGL states that Cove Point regasified LNG can flow into WGL's distribution areas that include mechanically-coupled pipes via the Cove Point Pipeline through three gate stations, Centerville, Virginia (Centerville); White Plains, Maryland (White Plains); and Gardiner Road, Maryland (Gardiner Road).⁶⁸ WGL states that the Commission's determination that Centerville and White Plains are capable of effective isolation from WGL is based on the Commission's observation that WGL has not used Centerville or White Plains gate stations regularly since it experienced the increase in leaks in Prince George's County, and further, that WGL did not "present any evidence indicating an intent to resume using these gate stations."⁶⁹ However, WGL claims that these observations are based on affidavits that WGL offered for the purpose of encouraging discussion among the parties on how to solve the safety issue. They were not intended as "a definitive blueprint for an operational solution" to the remanded safety problems.

73. WGL states that while these observations are t

the Cove Point Expansion Project's facilities in this proceeding to ensure that WGL will not receive any expansion volumes. Thus, any safety concerns on WGL's part cannot be attributed to the authorizations granted in this proceeding.

⁶⁷ Affidavit of Mr. Douglas Staebler, Attachment 1 to WGL's August 12 Answer.

⁶⁸ Although not discussed in the order on remand, the distribution facilities behind the Gardiner Road gate station were the subject of WGL's extensive P.G. County rehabilitation effort. WGL has no operational alternative to serve its customers in that part of its system but to continue to receive LNG at that gate station. Leaks continue to remain elevated, but with the hexane injection, WGL has committed to manage the system served off Gardiner Road.

⁶⁹ October 7, 2008 Order on Remand, 125 FERC ¶ 61,018 at P 65.

74. True, there is no evidence that the Centerville or White Plains gate stations can or should be, permanently removed from service, as the Commission apparently contemplates. In fact, states WGL, the White Plains gate station is needed to meet design winter demands, and without it, WGL would have to expend additional capital on infrastructure if, in the future, WGL experiences growth in the market behind the White Plains gate station. Also, WGL states that if it is permanently unable to use the Centerville gate station, it will lose significant operational flexibility as well as the ability to dispatch gas on the most economical basis. WGL states that the Commission ignored these implications of permanently removing the White Plains and Centerville facilities from service.

75. WGL states that its operational isolation from all LNG-sourced supplies from Transco's delivery points is solely the result of an informal understanding between Transco and WGL, dependent on Transco's willingness to not modify the physical configuration of the Pleasant Valley interconnect in the future. WGL states that in order to insure that will not unilaterally modify this arrangement, Transco would need to be required to file an application to amend its Pleasant Valley certificate in the event it intends to modify this operational protocol in the future.

76. Cove Point LNG and Dominion state that based on undisputed facts in the record, as conditioned in the October 7, 2008 Order on Remand, none the four pipelines that serve the WGL system – Dominion, Cove Point, Transco, and Columbia Gas – would deliver to WGL any additional volumes of regasified LNG as a result of the expansion that would present safety concerns. Regarding Cove Point, Cove Point LNG and Dominion state that it is undisputed that the three gate stations that feed distribution areas having mechanically coupled mains and services, i.e. Centerville, Virginia; White Plains, Maryland, and Gardiner Road, Maryland, can be effectively isolated from WGL. Cove Point LNG and Dominion state that WGL's only dispute concerning the Commission's findings regarding Cove Point is its claim that the Commission is permanently removing them from service. Cove Point LNG and Dominion state that the isolation need not be permanent, but even if it were, WGL does not claim that the isolation would not be effective.

77. As for Transco, Cove Point LNG and Dominion states that again, there is no dispute that WGL can, and does, now exclude Cove Point gas that is transported through Transco from all four gate stations. Cove Point LNG and Dominion state, in response to WGL's claim that it is a voluntary arrangement, that if Dominion seeks to change this arrangement by expanding its interconnection with Transco at Pleasant Valley, it would require a certificate filing

78. As for Columbia Gas, Cove Point LNG and Dominion state that at the Loudoun-Columbia interconnect, where WGL receives regasified LNG from Cove Point, there are two lines – a 30" line, which is north of WGL and thus of no concern, and a 26" line, from which WGL potentially receives LNG through its Rockville, Maryland and Dranesville, Virginia gate stations. Cove Point LNG and Dominion state there is no dispute that up to

530,000 Dth/d of LNG may already be delivered to Columbia Gas, and that since the flow of additional volumes is the focus of this proceeding, the expansion will present no risk of additional leakage on WGL's system, provided these two stations are isolated from additional volumes of regasified LNG.

Commission Response

79. WGL claims that the October 7, 2008 Order on Remand's conclusion that WGL's at-risk facilities have been isolated from receipt of any expansion volumes of regasified LNG from Cove Point gas through its interconnects with Transco, Dominion, and Cove Point⁷⁰ pipelines is inconsistent with and ignores unrebutted evidence, and is otherwise contrary to substantial record evidence. However, WGL does not, and cannot, offer any evidence to dispute the fact that no additional volumes of regasified LNG associated with the authorizations in the October 7, 2008 Order on Remand will be delivered to WGL through interconnections with Dominion, Cove Point or Transco. Thus, to the extent WGL is correct that even with the remediation efforts it has undertaken it will be facing 3,500 new leaks each year as a direct result of Cove Point gas flows, any such leaks will be the result of current, pre-expansion exposure on facilities that have not been isolated from regasified LNG.

80. To be precise, WGL does not disagree with our conclusion that its at-risk facilities can be isolated physically from expansion volumes of regasified LNG at specified interconnections with Dominion, Cove Point and Transco. In fact, WGL seems to concede this to be the case.⁷¹ Instead, WGL asserts that the Commission apparently contemplates that its Centerville and White Plains gate stations interconnections with Cove Point will be permanently out of service, with consequential adverse impacts to WGL. However, we made clear in our October 7, 2008 Order on Remand that the isolation solution is not necessarily a permanent one, and that parties are free to explore other options that will allow WGL to receive additional regasified LNG safely. Whether, and to the extent isolation becomes a permanent solution depends, in part, on whether WGL decides to invest in repairs to its system to ensure against unsafe leakage or invest in new

⁷⁰ WGL receives regasified LNG through its interconnection with Cove Point Pipeline at Gardiner Road. However, that gas is received pursuant to authorizations in the pre-expansion reactivation orders, and WGL has repaired or replaced the defective mechanical couplings behind the Gardiner Road station.

⁷¹ We note that WGL seeks to understate the evidentiary significance of its own affidavits, claiming that they were offered for the purpose of encouraging discussion among the parties on how to solve the safety issue, rather than a "definitive blueprint for an operational solution" to the remanded safety problems.

infrastructure to compensate for taking these gate stations out of service. As noted above, we have no authority to compel WGL to make such investment.

81. Again, WGL's does not dispute the October 7, 2008 Order on Remand's factual assessment that its system can and has been isolated from regasified LNG being delivered through Transco. Rather, WGL's concern is that the present isolation relies on an informal understanding between Transco and WGL, and as such, depends on Transco's continued willingness to not modify the physical configuration of the Pleasant Valley interconnect in the future. However, even WGL recognizes that any intention to alter the physical configuration of the Pleasant Valley interconnect would necessitate the filing of an application by Transco for certificate authority. If Transco makes such a filing, all interested parties will have the opportunity to present their views and concerns in that proceeding.

4. Consideration of the safety and gas quality impacts of the vaporizer refurbishment project should be included in the remand order

82. WGL states that there has no basis for the Commission's determination that the orders granting Cove Point the authority to refurbish and reactivate two waste heat vaporizers, do not "fall within the ambit of the court's remand." WGL states that this conclusion is contrary to both the plain meaning of the D.C. Circuit Court's order and the Commission's prior findings.

83. WGL states that the vaporizer facilities irrefutably increase flows of Cove Point LNG, thereby increasing the safety risks to WGL, which were the focus of the D.C. Circuit remand. Moreover, states WGL, the Commission held that gas quality and safety issues associated with the reactivation of these waste heat vaporizers were to be addressed as part of the Cove Point Expansion Project.⁷² Also, states WGL, the vaporizer orders in the Docket No. CP05-395 proceedings were included in the *WGL v. FERC* appeal. WGL states that it is also irrelevant that the waste heat vaporizers are now in service, or that they do not provide additional incremental capacity, but rather convert peak-day capability to year-round capability. Therefore, WGL states that the Commission should reopen the vaporizer proceedings to consider the gas quality and safety impacts of these facilities.

⁷² See June 16, 2006 Order, 115 FERC ¶ 61,337 at P 19; January 4, 2007 Order on Rehearing, 118 FERC ¶ 61,007 at P 10 (noting that the Docket CP05-395-000 facilities are intended to "increase the existing terminal's send-out capacity available to LTD-1 service by 250,000 Dth/d" and enable the delivery to end use markets of "an additional 250,000 Dth/day of firm send-out capacity").

84. Cove Point LNG and Dominion also state that since the vaporizer orders only serve to ensure that Cove Point LNG can deliver up to its current peak-day capability of 1.0MMDth/d of send out capacity on a year round basis, they do not fall within the scope of the single remand issue of “whether the additional volumes of LNG attributable to the Expansion will cause unsafe leakage in WGL’s system.” Furthermore, Cove Point LNG and Dominion state that while WGL listed them in their petition, WGL did not argue them and the court ignored the vaporizer orders in its decision.

Commission Response

85. WGL has raised nothing new in its request for rehearing of the October 7, 2008 Order on Remand that was not addressed by the Commission in that order. The dispute here is simply one of interpretation. As we read the court’s decision in *WGL v. FERC*, the orders in Docket No. CP05-395 do not fall within scope of the issue remanded to us of “whether the additional volumes of LNG attributable to the Expansion will cause unsafe leakage in WGL’s system,” because the facilities there only serve to ensure that Cove Point LNG is capable of delivering up to its current peak-day send out capacity on year round basis. Moreover, we stated in the October 7, 2008 Order on Remand that the several orders identified by the court as approving the expansion were the June 16, 2006 Order and January 4, 2007 Order on Rehearing, and the facilities approved in those order were the facilities “slated for completion in November 2008,”⁷³ while the reactivated heat vaporizers were in service as of December 22, 2006. WGL has not convinced us to change our view.

5. The application of the Commission’s Gas Quality Policy Statement to the October 7 order on remand

86. WGL states that while the Commission’s Gas Quality Policy Statement applies to these section 7 proceedings, the Commission failed to assess whether the Cove Point Expansion Project complies with the requirements of that policy. WGL states that the Gas Quality Policy Statement requires that a pipeline tariff’s gas quality and interchangeability specifications must be based on historical data and technical requirements, and also must be consistent with five specific principles, including a requirement to balance supply and reliability concerns with the importance of maximizing safety.⁷⁴ In addition, WGL states that under the Gas Quality Policy Statement, the costs imposed on a pipeline’s customers by any proposed gas quality or interchangeability standards are relevant to determining the justness and reasonableness of the proposed standards under the NGA.

⁷³ October 7, 2008 Order on Remand, 125 FERC ¶ 61,018 at P 43.

⁷⁴ Policy Statement, 115 FERC ¶ 61,325 at P 38.

87. WGL contends that in view of the undisputed facts that Cove Point gas, which differs in chemical composition from traditional domestic supplies, has caused leaks on WGL's system, and that more such leaks are likely to occur in the future, it has not been shown that Cove Point gas is "interchangeable" with WGL's historic, domestic gas supplies,⁷⁵ or that the Commission's proposed 530,000 Dth/d cap on deliveries will mitigate these impacts; nor has the Commission addressed the financial impact to WGL, which WGL claims will exceed \$500 million over 13.5 years to remediate its system so that it can safely receive the expansion volumes of regasified LNG.

88. Cove Point LNG and Dominion states that the court has already rejected WGL's arguments that the Commission had to ensure that "Cove Point gas is 'interchangeable' with WGL's historic domestic gas supplies. Moreover, since the Gas Quality Policy Statement provides that the only natural gas quality and interchangeability specifications that can be enforced are those contained in a Commission-approved tariff, the only standard that the Commission can enforce here are those adopted in the 2002 Settlement."

Commission Response

89. We noted in the June 16, 2006 Order that consistent with the Gas Quality Policy Statement, the gas that Cove Point LNG delivers to the Cove Point Pipeline meets the gas quality and interchangeability standards of the Cove Point Pipeline and WGL.⁷⁶ We also stated that because the Gas Quality Policy Statement and Commission precedent recognized that potential adverse impacts and mitigation should also be addressed in proceedings for applications for authorization to construct facilities to store LNG and transport regasified LNG, we would examine the safety risks associated with the introduction of additional quantities of regasified LNG to ensure that other pipelines and their customers would not be adversely impacted by unsafe or unreliable service.⁷⁷ In this regard, the court concluded in *WGL v. FERC* that we failed to carry out our obligation of insuring that the Cove Point Expansion Project could go forward consistent with the public interest, i.e., without causing unsafe leakage. As discussed herein, we fulfilled that obligation in the October 7, 2008 Order on Remand by ensuring that WGL will receive no regasified LNG from Cove Point LNG that it would not have received under the pre-expansion authorizations. Moreover, the October 7, 2008 Order on Remand does not

⁷⁵ The Commission adopts the NGC+ Report's definition of interchangeability as follows: "The ability to substitute one gaseous fuel for another in a combustion application without materially changing operational safety, efficiency, performance or materially increasing air pollutant emissions." *Id.* P 16.

⁷⁶ 115 FERC ¶ 61,337 at P 53.

⁷⁷ *Id.* P 54.

compel WGL to incur \$500 million over 13.5 years to remediate its system so that it can safely receive the expansion volumes of regasified LNG since WGL will not receive any additional volumes of regasified LNG under the authorizations granted by that order.

90. In any event, in its request for rehearing of the June 16, 2006 Order, WGL claimed that by failing to impose conditions that would ensure that WGL would be able safely to serve its customers, WGL is forced unfairly to bear a disproportionate share of the remedial costs to its system. The Commission rejected that claim, stating that WGL had not shown that the expansion would result in gas quality any different than that agreed upon as acceptable, nor did WGL show why Cove Point LNG should be responsible for WGL's system upgrades needed so that it could receive gas meeting existing tariff standards.⁷⁸ On this point, the court stated that the Commission reasonably concluded that WGL should be responsible for paying to adapt its system to fulfill its commitments.

6. A delivery cap at Columbia-Loudoun cannot exceed Columbia's firm take-away capacity at that point

91. In the event the Commission is correct in concluding that under the mandate of the court in *WGL v. FERC*, it is required to consider only the safety concerns associated with WGL's receipt of regasified LNG volumes that exceeded the levels it might receive under pre-expansion authorizations, WGL raises an alternative argument that the cap on deliveries at Columbia-Loudoun cannot exceed Columbia's take-away capacity at that point. WGL states that the Commission's 530,000 Dth/d cap on Cove Point's deliveries at the Columbia-Loudoun interconnect was based on information provided by Cove Point indicating that BP, Shell, and Statoil have, in total, 530,000 Dth/d firm delivery rights at Columbia-Loudoun.⁷⁹ However, WGL states that the same Cove Point data reveals that Columbia "has experienced constraints on the amount of gas it can accept from DCP," and that Columbia can only take delivery on a firm basis at this point of approximately 100,000 Dth/d of the 530,000 Dth/d.⁸⁰

⁷⁸ January 4, 2007 Order on Rehearing, 118 FERC ¶ 61,007 at P 21.

⁷⁹ Dominion Cove Point Response of Dominion Cove Point LNG, LP to Staff's August 15, 2008 Data Requests, Response No. 1 (dated Aug. 19, 2008) (appended hereto as Exhibit B).

⁸⁰ *Id.*

92. Citing *Amoco Trading Company v. El Paso Natural Gas Co. (El Paso)*,⁸¹ and section 284.7(a)(3) of the Commission's regulations,⁸² WGL states that firm primary delivery rights at Columbia-Loudoun cannot lawfully exceed the available firm take-away capacity on Columbia, which, based on a review of Columbia's Index of Shippers, equals approximately 97,000 Dth/d. WGL states that in *El Paso*, the Commission found that contractual arrangements granting shippers delivery point rights that, in the aggregate, exceeded the take-away capacity of the delivery point violated section 284.7(a)(3) of its regulations because shippers could not receive the firm service they had contracted for. WGL claims that in *El Paso*, the Commission ordered El Paso to equitably reduce all existing firm shippers' contract rights so that the total firm rights to this delivery point equals the total available take-away capacity. WGL contends that the Commission should similarly order here that Cove Point LNG reduce the import shippers' TSAs so that delivery point rights to Columbia-Loudoun do not exceed the available take-away capacity, which is 97,000 Dth/d.

93. Cove Point LNG and Dominion contend that since WGL does not have rights to delivery to Columbia, it has no standing to argue that delivery cap at Columbia-Loudoun cannot exceed Columbia's firm take-away capacity. In any event, on the merits, Cove Point LNG and Dominion argue that the Commission has distinguished *El Paso* from cases analogous to this proceeding. Cove Point LNG and Dominion contend that in *Kern River Gas Transmission Co. (Kern River)*,⁸³ the Commission rejected an argument by customers with existing rights that under *El Paso* there must be new intrastate downstream take-away capacity, emphasizing that its narrow concern in *El Paso* was that El Paso could not deliver all its contracted firm capacity to the specific point, and Cove Point LNG and Dominion contend that this concern is absent in both *Kern River* and in this proceeding. Cove Point LNG and Dominion state that situations often arise where firm delivery right from one pipeline to another does not always match receiving pipeline's take-away capacity.

Commission Response

94. As discussed above, WGL's assertion that the Commission should lower the cap on deliveries to Columbia-Loudoun to 31,000 Dth/d, is based on claimed safety concerns,

⁸¹ 93 FERC ¶ 61,060 (2000), *order on clarification*, 93 FERC ¶ 61,222 (2000), *order on reh'g*, 94 FERC ¶ 61,225 (2001).

⁸² 18 C.F.R. § 284.7(a)(3), which states that "service on a firm basis" means that "the service is not subject to a prior claim by another customer or class of service and receives the same priority as any other class of firm service."

⁸³ 95 FERC ¶ 61,022 *reh'g*, 97 FERC ¶ 61,083 (2001).

specifically, that 31,000 Dth/d is the most that WGL can safely receive at Columbia-Loudoun. WGL's claim here is that the Commission should reduce the deliveries at Columbia-Loudoun from the existing 530,000 Dth/d firm delivery rights under the reactivation authorization to 97,000 Dth/d, based on the notion that a delivery cap at Columbia-Loudoun cannot exceed Columbia's take-away capacity at that point.

95. We need not even consider whether our policy, as discussed in *El Paso*, warrants such action.⁸⁴ We find that WGL's request is not one we can grant in this proceeding since it relates to the propriety of terms and conditions of existing services provided in a wholly different proceeding pursuant to a final certificate order. WGL never raised this objection in the NGA section 7 reactivation proceeding, nor did it file a complaint in that proceeding under section 5 of the NGA. Just as importantly, WGL never raised this argument before in this proceeding either.

7. The Commission improperly issued the October 7, 2008 Order on Remand before the issuance of the court's mandate

96. Finally, WGL argues that the Commission should vacate its October 7, 2008 Order on Remand because it issued one day prior to the October 8 issuance of the D.C. Circuit's mandate for its July 18 decision. WGL states that the Court's mandate is only "effective when issued," rendering the Commission's remand order *ultra vires*. In support of its contention that the October 7, 2008 Order on Remand should be vacated, WGL relies on *Alabama Power Co. v. FPC*, wherein, according to WGL, the court made clear that the Commission may not issue a final order on issues being reviewed by an appellate court until a mandate issues or unless the Commission has received an order from the court granting it leave to do so.⁸⁵ WGL distinguishes this case from *Chamber of Commerce of*

⁸⁴ We note, however, that our decision in *El Paso* was a very narrow one, involving whether the manner in which El Paso allocated delivery point capacity on its system was just and reasonable. The Commission found that El Paso's delivery point allocation methodology was unjust and unreasonable because it had the effect of allowing El Paso to sell firm primary rights at Topack delivery point in excess of the physical and design capacity of the point. In *Kern River*, we explained that under the Commission's regulations, shippers with upstream firm capacity are not guaranteed that they will be scheduled on downstream pipelines.

⁸⁵ 511 F.2d 383 at 388. (D.C. Cir. 1974).

the U.S. v. SEC,⁸⁶ in which the D.C. Circuit held that “agencies possess authority to address issues identified by the court prior to the issuance of its mandate.”⁸⁷

Commission Response

97. We will deny WGL’s request that we vacate the October 7, 2008 Order on Remand on the premise that it was issued one day prior to the D.C. Circuit Court’s mandate and therefore, *ultra vires*. Rule 41(b) of the Federal Rules of Appellate Procedure provides that “[t]he court’s mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, rehearing en banc, or a motion for stay of mandate, whichever is later. The court may shorten or extend the time.” By order of the court issued on July 18, 2008, in *WGL v. FERC*, the court instructed the clerk to withhold issuance until 7 days after disposition of any timely petition for rehearing or petition for rehearing en banc, hence the court did not shorten or lengthen the time. In reliance of both the court’s rule and order, and to prevent any harm or hardship resulting from a lapse in certificate authorization, the Commission issued its order on remand on the date that the court’s mandate must issue, 7 days after the court denied rehearing en banc, as well as Dominion’s motion for stay of the issuance of the mandate. Moreover, if it is the case that we did not have authority to act on October 7, it is undisputed that we have the authority at this time to affirm our actions of October 7. As explained in this order and the below ordering paragraphs, the October 7, 2008 Order on Remand is affirmed except that Dominion’s request for elimination of the fuel tracking condition is eliminated and a condition is added to require that Cove Point LNG report any delivery of regasified LNG at Columbia-Loudoun that exceeds the 530,000 Dth/d limitation.

The Commission orders:

(A) WGL’s, Md. OPC’s, and Columbia Gas’s requests for rehearing are denied, as discussed in the body of this order.

(B) Md. OPC’s request for clarification is denied, in part, and granted, in part, as discussed in the body of this order.

(C) Dominion’s request for rehearing is granted. The fuel cost tracking requirement in Ordering Paragraph (G) of the October 7, 2008 Order on Remand is eliminated. During any NGA section 4 proceeding in which Dominion seeks to adjust its

⁸⁶ 443 F.3d 890 (D.C. Cir. 2006).

⁸⁷ *Id.* at 898.

fuel retention rate, it must fully support any proposed change in the system rate to ensure the existing customers are not subsidizing the incremental service to Statoil.

(D) Cove Point LNG shall report to the Commission in a public filing of any delivery of regasified LNG at Columbia-Loudoun that exceeds 530,000 Dth/d within

three days of such occurrence. Such report shall include a detailed explanation of the cause of exceeding the 530,000 Dth/d restriction.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.