UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Cove Point LNG Limited Partnership	Docket Nos. CP01-76-001, CP01-77-001, RP01-217-001, and CP01-156-001 (not consolidated)

ORDER GRANTING REHEARING IN PART,
DENYING REHEARING IN PART, GRANTING AND DENYING CLARIFICATION
AND ESTABLISHING LIMITED HEARING PROCEEDING

(Issued December 19, 2001)

On October 12, 2001,[1] the Commission issued an order granting certificate authorization to Cove Point LNG Limited Partnership (Cove Point) to construct new facilities and to reactivate and operate existing facilities at Cove Point's liquefied natural gas (LNG) terminal in Calvert County, Maryland. Subsequently, the Commission on its own motion issued an order on November 9, 2001,[2] to establish proceedings to gather further evidence with respect to any security implications associated with the decision to permit the resumption of LNG imports at the Cove Point facilities.

[1] 97 FERC ¶ 61,043 (2001).

[2] 97 FERC ¶ 61,181 (2001).

A number of parties filed requests for rehearing[3] of the October 12 certificate order. For the reasons discussed herein, the Commission is granting rehearing, in part, denying rehearing, in part, and granting and denying the requests for clarification. This order also establishes a hearing proceeding to address the limited issue of Cove Point's rates for its existing service to Washington Gas, which is not a signatory party to the settlement in this proceeding. In addition, the Commission is affirming, after reviewing the additional evidence received concerning national security, that certification of the Cove Point LNG facilities is in the public interest.

I. BACKGROUND

The Cove Point import terminal and pipeline were originally authorized and built nearly 30 years ago to receive tanker shipments of LNG originating in Algeria. LNG shipments to Cove Point began in early 1978 and ended in late 1980. From 1980 to 1994 the Cove Point facilities were used to provide Washington Gas with interruptible transportation service. In 1994, the Commission authorized Cove Point to reactivate the onshore LNG facilities and to construct a liquefaction unit to provide a peaking service whereby shippers could liquefy and store domestic gas during the summer for withdrawal during winter peak times. Cove Point currently offers firm peaking services under three FPS Rate Schedules, as well as firm and interruptible transportation services under Rate Schedules FTS and ITS.

On January 31, 2001, Cove Point filed an application for a certificate to construct new facilities and reactivate its existing LNG import terminal. Cove Point proposed to offer firm and interruptible open-access LNG tanker discharging service under proposed new Rates Schedules LTD-1 and LTD-2, which would include the receipt of imported LNG from LNG tankers, storage, vaporization of LNG, and pipeline transportation of vaporized LNG to delivery points along its pipeline and to interconnections with downstream interstate pipelines. This new service would be provided along with the existing peaking service Cove Point currently provides.

Cove Point submitted its certificate application after it held an open season in February and March, 2000, in which 750,000 Dth/d of available sendout capacity was

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[3]Requests for rehearing were filed by Cove Point, Baltimore Gas and Electric Company (BGE), PECO Energy Compay (PECO), BP Energy Company (BP), El Paso Merchant Energy, L.P. (El Paso), Washington Gas Light Company (Washington Gas), Shell NA LNG, Inc. (Shell), and the Maryland Energy Administration and the Maryland Department of Natural Resources, acting through its Power Plant Research Program (Maryland Agencies).

offered. Cove Point received a three-way tie of maximum bids from BP, Shell and El Paso. The three winning shippers agreed to a pro rata allocation of the available capacity and executed binding precedent agreements with Cove Point reflecting this allocation of capacity at the maximum rate for twenty-year primary terms.

On October 12, 2001, the Commission issued its order approving Cove Point's NGA Section 7 certificate application in Docket No. CP01-76-000. In addition, the order granted NGA Section 3 authorization in Docket No. CP01-77-000, to reactivate and expand the LNG import facilities at the Cove Point LNG terminal, approved a rate settlement filed in RP01-217-000, and authorized Cove Point to construct and operate a new pipeline interconnection with Transcontinental Gas Pipe Line Corporation (Transco) in Docket No. CP01-156-000.

Further, pursuant to the procedures established in the November 9 order, the Commission received written comments and held a non-public technical conference on November 16 so that parties to the proceeding and representatives of interested local, state, and Federal agencies could supplement the record on any national security issues raised by the Cove Point project.

This order first discusses the results of the technical conference and then addresses the requests for rehearing of the of the October 12 order.

II. TECHNICAL CONFERENCE ON NATIONAL SECURITY ISSUES

As directed by the November 9, 2001 order, Commission staff convened a non-public technical conference on November 16, 2001, in order to examine the national security implications of our decision to authorize reactivation of the Cove Point facilities for the importation of foreign LNG.[4] Those attending the conference included representatives from the United States Coast Guard (Coast Guard); the Department of Energy (DOE), Office of Natural Gas and Petroleum Import/Export Activities; the Department of Transportation (DOT), Office of Pipeline Safety; Maryland Agencies; the Maryland Conservation Council, Inc.; the Federal Bureau of Investigation (FBI); the Maryland People's Counsel; the Nuclear Regulatory Commission (NRC); and Calvert Cliffs Nuclear Power Plant, Inc. (Calvert Cliffs).

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[4]Because the Commission's November 16 conference was conducted for the purpose of obtaining evidence relating to national security issues, the transcript of the conference and the written comments have been placed in a non-public file in the record in this proceeding.

At the conference, Commission staff summarized the safety and security issues that had been identified and addressed in its Environmental Assessment of Cove Point's reactivation project. Cove Point, the shippers, and other agencies explained the safety procedures and standards for the construction and operation of LNG tankers; how tanker crews are chosen and trained; LNG transit and control in U.S. ports; and the safety procedures employed in receiving and storing LNG at import facilities. All the relevant governmental agencies explained the measures they have already taken or are in the process of developing or improving in order to guard against sabotage or terrorism in their respective areas of jurisdiction and how they are coordinating their efforts with Cove Point and with the Calvert Cliffs Nuclear Power Plant.

The Commission was apprized of the LNG tanker industry's safety record, and how the tanker hull and cargo storage tanks are constructed to minimize the possibility of a breach. Information was received concerning the background checks and training that tanker crews are obligated to undergo. It was also confirmed, in view of LNG's unique characteristics, that any fire on an LNG tanker offshore would be confined to the waters offshore and that any fire at an onshore storage tank would be confined to plant property. Information provided at the conference indicated that no special risk was created by the proximity of the Calvert Cliffs nuclear plant located approximately 3 ½ miles from Cove Point.

In responding to specific questions by Commission staff, none of the other agencies with affected responsibilities indicated any need for the Commission to take further action at this time or to impose conditions beyond those contained in the appendix to the Environmental Assessment in the October 12 certificate order to assure the security of the Cove Point facility. Each agency with and interest in or jurisdiction over the security of the LNG import process was given the opportunity to explain the measures it is taking in response to the danger of a terrorist attack.

The Coast Guard, which has jurisdiction over the movement of tankers through the Chesapeake Bay and the docking of the ship (33 C.F.R. Part 127), controls LNG tanker movement in the Bay through an LNG operating plan (LNG OPLAN). The regulations also require a company to file a Letter of Intent 60 days before transferring LNG at an existing, active terminal. The Coast Guard then must issue a Letter of Recommendation on the suitability of using the waterway for LNG transportation. The applicant must submit an operations manual and emergency manual 30 days before transferring the LNG. Further, Coast Guard regulations establish security zones be established around the LNG terminal. The present zones are: a 50-yard zone around the entire terminal when there is not ship at the pier; a 200-yard zone when there is a ship; and a 1,000-yard zone on the main channel side when the ship is docking.

In response to a letter from Cove Point expressing its intent to resume LNG tanker shipments, the Coast Guard is in the process of preparing a Letter of Recommendation regarding the suitability of using the waterway for the shipment of LNG. The Coast Guard conducted a formal risk assessment at a closed meeting for stakeholders on December 5 and 6, 2001. Upon completion of the risk assessment and the preparation of the Letter of Recommendation, the Coast Guard will reevaluate its OPLAN and determine whether any changes are necessary.

The Coast Guard states that the proximity of the LNG terminal to the Calvert Cliffs nuclear power will be factored into its risk assessment. The Coast Guard informed the Commission that it has significant authority to require additional security measures that may be needed.

The DOT Office of Pipeline Safety is responsible for the safety, security and environmental protection of LNG facilities (49 C.F.R. Part 193) and of natural gas pipelines (49 C.F.R. Part 192). Thus, it states that the land-based portion of the Cove Point operation is within its jurisdiction. DOT states that it regularly inspects the Cove Point onshore facility to assure that security measures are in place. These measures are to protect against any accident, whether intended or not. These security measures included monitoring security parameters including intrusion detection, protected enclosures, diking, communication and security lighting. The DOT requires operators such as Cove Point, to coordinate with emergency response personnel at the local, state and federal levels. In response to recent events it has sent out advisories to pipeline operators and LNG facilities, formed internal action groups and joined outside advisory groups to address these issues. DOT reports that it is working with the Coast Guard with regard to its jurisdiction over marine loading and unloading facilities. DOT states that it is in communication with Commission staff and that staff sits on DOT advisory panels. DOT states that is supports safety conditions 30 and 36 (concerning an emergency response plant and communications linkage to Calvert Cliffs) contained in the Commission's October 12 order.

The NRC, which has jurisdiction over the safe operation of the Calvert Cliffs Nuclear Power Plant, informed the Commission that Calvert Cliffs (the licensee) is responsible for evaluating and assessing any unfavorable off-site hazards, such as might be posed by the LNG terminal. The NRC reviews the licensee's report and decides what actions the licensee must take to accommodate the hazard. The NRC states that in response to recent events it is coordinating its efforts with a number of other federal agencies, intelligence agencies and counterparts in other countries.

The FBI (Baltimore Division) states that it is responsible for hostage situations or terrorist takeovers although its role is expanding. The FBI informs the Commission that

it has visited the Cove Point LNG facility and the Calvert Cliffs Nuclear Power Plant and has conducted target assessments of many such places to determine how security can be improved and prepare FBI responses. The FBI states that it is working with the Coast Guard and has developed measures to initiate timely background checks on the crews of foreign ships entering the Bay.

The information provided by the parties and the responsible agencies at the technical conference, and a thorough review of the comments filed with the Commission regarding the security implications of the Cove Point LNG project, leads the Commission to conclude that the applicant, the shippers and the relevant government agencies have already taken steps and are also in the process of developing new or additional methods for assuring that the Cove Point facility will operate safely. We therefore affirm our earlier finding that approval of the Cove Point project is in the public interest.

III. REQUESTS FOR REHEARING

A. Environmental Assessment

The Maryland Agencies request the Commission to withhold approval of Cove Point's application until after the Coast Guard has completed its assessment of the restrictions that may be imposed to insure the safe transit of the LNG tankers into and through the Chesapeake Bay to the Cove Point facilities. Without an understanding of the proposed operation and navigational rules - including the proposed size of the exclusion zones around tankers - Maryland Agencies submit that the Commission cannot properly assess the environmental impacts of these provisions on other groups - commercial and otherwise - who use or live near the Chesapeake Bay.

In addition, Maryland Agencies state that the Commission failed to consider the impacts of the terrorist attack on September 11 on security issues related to Cove Point. Maryland Agencies recognizes that the Coast Guard has jurisdiction over the waterway, but states that the security of the loading dock, the land based storage and sendout facility and the natural gas pipeline fall withing the oversight and jurisdiction of the Commission. Therefore, Maryland Agencies state that it is essential for the Commission to coordinate with the Coast Guard to fully evaluate security and safety issues under their respective areas of jurisdiction.

Commission Response

First, we note that the Maryland Agencies' filed its request for rehearing before the Commission held the November 16 technical conference to discuss the national security issues involved with the reactivation of the Cove Point facilities. Maryland Agencies attended the conference and filed supplementary comments. As acknowledged by

Maryland Agencies, several governmental bodies share jurisdiction over the onshore and offshore aspects of the LNG import process.

The Environmental Assessment identified that security for the onshore facilities and the pipeline are under the jurisdiction of DOT, and that security requirements for the offshore facilities fall under the jurisdiction of the Coast Guard. While lacking direct jurisdiction over security of these facilities, the Commission nevertheless has an interest in the reliability and safe operation of the facilities that it certificates. At the conference, representatives from these agencies all assured the Commission that the appropriate agencies are coordinating their efforts in maintaining and improving security of the Cove Point facility.

As to any restrictions that the Coast Guard may impose on LNG tanker operations, they will result from the Coast Guards current reevaluation of its LNG OPLAN for the Chesapeake Bay and the Regulated Navigation Area around Cove Point that was established during the original importation of LNG, and its issuance of a Letter of Recommendation (see Environmental Assessment, pages 3-43 and 3-44). This reevaluation process is ongoing and, as explained by the Coast Guard at the technical conference, is outside the jurisdiction of the Commission. The Commission can influence neither the outcome nor the timing of the Coast Guard actions with respect to the LNG tanker operations. However, the Commission notes that the Coast Guard process has sought public input from the commercial and recreational groups potentially affected by restrictions they may impose, and as such provides a forum for responding to socioeconomic or other concerns.[5]

Although the specific restrictions on LNG tanker movements will not be known until the Coast Guard process is complete, general information can be used to judge potential impacts to recreational and commercial interests. The waters of the Chesapeake Bay along the 120 mile route to the Cove Point terminal range from a minimum of 4 ½ miles to more than 20 miles wide, thereby accommodating a range of recreational and commercial vessels. The Coast Guard uses input from the various stakeholders in its risk assessment process to minimize disruption at any given point along the main ship channel. Finally, we note that the Maryland Agencies do not argue that the potential socioeconomic impacts would be unacceptable, nor do they provide any information to support adverse socioeconomic impacts. In sum, the Commission finds no reason to delay action on this application until after the Coast Guard issues its recommendations.

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[5]The Coast Guard issued a notice in the Federal Register on April 13, 2001, and conducted a local public meeting in Solomons, Maryland on August 23, 2001, to solicit input from the public and affected marine community.

B. Gas Quality Standards

1. Btu Tariff Provision

In its application, Cove point proposed to revise its existing tariff provision to increase the heating value of gas that it must accept from 1,065 Btu to 1,100 Btu. [6] Washington Gas, a local distribution company (LDC), was the only direct customer of Cove Point to object to the new Btu specification. Washington Gas argued that the higher Btu gas might not be safely interchangeable with the gas currently used in its customers' home appliances. Because there appeared to be legitimate safety, operational and cost issues that had not yet been resolved, the Commission rejected this aspect of the application without prejudice to Cove Point's making an amended proposal to address those issues. Cove Point and the three LNG shippers -- El Paso, Shell and BP -- all argue on rehearing that the Commission's response to the Btu issue was in error. They contend that the decision to reject the Btu tariff provision is arbitrary and capricious, departs from past policy and precedent and is not supported by substantial evidence.

Cove Point repeats its argument that the Commission's approval of the requested 1,100 Btu tariff limit merely would conform Cove Point's tariff to the specifications of the interstate pipelines with which Cove Point interconnects and which presently supply gas to Washington Gas.[7] Further, Cove Point asserts that Washington Gas's own tariffs in effect for its Virginia, Maryland and District of Columbia service areas, which establish a minimum heating value (1,000 Btu), do not establish a maximum limit.[8] Moreover, Cove Point notes that Washington Gas's tariff provisions require that the gas provided by the third party supplier must meet the tariff requirements of upstream suppliers,[9] thus explicitly recognizing that gas introduced into its system could have a heat content of at least 1,100 Btu.

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[6]The proposed Btu provision was contained in pro forma tariff sheets contained in Exhibit P to Cove Point's application.

[7]Citing ANR Pipeline Co., 83 FERC ¶ 61,172, 61,716-17 (1998); Distrigas of Massachusetts Corp., 75 FERC ¶ 61,363, 62,148-49 (1996); Northwest Pipeline Corp. 74 FERC ¶ 61,256, 61,842-43 (1996).

[8]See VA. S.C.C. No. 8, Second Revised Page No. 11, Washington Gas Light Tariff.

[9]See VA. S.C.C. No. 8, Original Page No. 10Y, Washington Gas Light Tariff.

El Paso argues that, in view of the fact that Cove Point's current tariff provisions allow it, at its discretion, to accept gas supplies in excess of 1,065 Btu,[10] Cove Point already has the right to deliver gas at 1,100 Btu. In this regard, Cove Point states that unless the Commission modifies its decision on the Btu issue, Cove Point may have to refuse to schedule gas receipts from interconnecting pipelines which are transporting gas that exceeds the 1,065 Btu cap. In such an event, any Cove Point customer (including those who have agreed to the 1,100 Btu limit) would be curtailed along with Washington Gas.[11]

Shell asserts that the Commission's Btu tariff ruling cannot be squared with its decision to accept the tariff proposal to allow a 4 percent nitrogen content. Shell points out that the Btu tariff provision was rejected even though it is consistent with the tariffs of interconnecting pipelines, while the nitrogen proposal was accepted even through it is inconsistent with the tariffs of interconnecting pipelines.

El Paso asserts that the Commission failed to apply the correct legal standard in ruling on the Btu issue. It states that when the Commission rejects a proposal under section 7(c) of the NGA, the Commission bears the burden of showing that the alternative chosen by the Commission is in the public convenience and necessity.

Further, El Paso and Shell submit that the October 12 order is not supported by substantial evidence that 1,100 Btu gas is unsafe. Rather than relying on specific evidence, Shell states that the Commission provided a vague, worst-case scenario justification for its ruling. These parties contend that the interchangeability studies submitted by Cove Point and Washington Gas support a finding of interchangeability. They assert that LNG distributors in the United States and around the world routinely purchase and distribute LNG for home consumption without incident or cause for safety concern. El Paso notes that following Cove Point's original certification it successfully delivered LNG with a 1,120 Btu heat value -- a higher level than the proposed limit here. Shell states the Washington Gas's argument that some appliances may need adjustment

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[10]El Paso further submits that the purpose of this tariff limit was to allow Cove Point to reject gas tendered above that limit in the event that Cove Point's liquefier (installed to provide storage service) might not be able to operate with gas at higher Btu levels.

[11]Cove Point received gas above the 1,065 Btu level at the Columbia interconnection on 19 days from August 2000 to November 2001. Cove Point rehearing request at p.6.

before LNG can be used in them is far different from finding the LNG is unsafe or that the proposed higher Btu tariff limit is not in the public interest.

Cove Point doubts that the imported Btu has the potential to adversely affect 300,000 customers as Washington Gas claims. Cove Point notes that Washington Gas operates a high pressure distribution network on which it receives gas from Dominion at two receipt points (Leesburg and Jefferson), from Transco at two receipt points (Bull Run and Herndon), from Columbia at four receipt points (Dranesville, Rockville, Manassas and Brink) and from Cove Point at three receipt points (Centerville, White Plains and Gardiner). Due to the integrated nature of Washington Gas's high pressure pipeline network, Cove Point states that Washington Gas can reroute gas from any one of these eleven interstate receipt points to maintain continuous gas receipts in the event receipts from any of the receipt points increases or decreases for operational or economic reasons.

Cove Point further states that only two of Washington Gas's receipt points that are served exclusively from the Cove Point system are not connected to Washington Gas's high pressure pipeline network: Prince Frederick and Patuxent.[12] Cove Point estimates that only about 3,000 customers meters are served from these two receipt points. Cove Point states that Washington Gas has failed to explain why mitigation would be required for all 300,000 customers when, at most, only 3,000 customers would be receiving gas exclusively from Cove Point.

The parties contend that Cove Point's proposal raises no legitimate safety concerns. Even if there were some doubt about the interchangeability of LNG in downstream markets, they state that those concerns can be completely addressed by the addition of Btu stabilization facilities or appliance burner adjustments or some combination of the two. Thus, they argue that the interchangeability issue is a cost issue that is not a proper basis for blocking the importation of needed LNG supplies and the attendant benefits.

El Paso reiterates its argument that the real and only issue in this proceeding is who will pay for the cost of any modifications that may be needed to accommodate the LNG. With respect to the cost issue, El Paso contends that it should not be the responsibility of interstate pipelines to ensure that the gas tendered to them for transportation is interchangeable with the gas being burned by the users on each LDC that

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[12]The third receipt point is at Chalk Point. However, receipts of gas into Chalk Point do not raise issues regarding heat content because that gas is used exclusively for service to a power plant owned and operated by Mirant Corporation, whose affiliate, Mirant Americas Energy Marketing, LP, is a signatory to the settlement in this case.

the pipeline serves. Rather, El Paso states that it is the LDC that has historically performed this function. El Paso states that the Commission's decision in Columbia Gas Transmission Corp. (Columbia),[13] regarding cost responsibility no longer applies in the era of open access pipeline transportation. On the other hand, El Paso believes that Columbia is instructive to the extent the Commission authorized Columbia to import LNG without imposing a Btu limit, and then dealt with the cost consequences later.

Finally, the parties argue that placing an arbitrary limit on the heat content of LNG imports in not consistent with consumers' interests since such a limitation will significantly restrict the sources of LNG supply.[14] They note that one of Cove Point's proposed tariff provisions allows it to accept LNG with a heating value of 1,138 Btu, which Cove Point intends to process in order to reduce the heating value to 1,100 Btu before transportation and delivery. The parties state that the purpose of this provision and the size and design of the facilities are to accommodate deliveries from diverse sources of supply which Cove Point states that it may not be able to accept with the lower Btu cap.

In this regard, El Paso and Shell state that the 1,100 Btu content specified in the pro forma tariff sheet included in Cove Point's application was a critical element of the negotiations leading to the settlement in Docket No. RP01-217-000 in this proceeding. They assert that the Commission has modified a central provision of the proposed settlement that restricts the sources of LNG supply, diminishes Cove Point's operational flexibility and limits the competitiveness of gas supplies that Cove Point will be able to deliver to market. El Paso states that the modification prevents it from fully using the Cove Point capacity for which it has contracted. Therefore, El Paso requests Commission assurance that if this decision is not modified on rehearing, LTD-1 shippers have the right to withdraw from the settlement pursuant to Article IV thereof and litigate their rates and other disputed issues. In the event El Paso withdraws from the settlement, it requests that the Commission specify the procedures whereby El Paso may exercise the right to litigate what facilities are necessary for Cove Point to provide service, the rates that El Paso will

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[13] 13 FERC ¶ 61,102 (Opinion No. 101)(1980), opinion and order denying reh'g, 14 FERC ¶ 61,073 (Opinion No. 101-A)(1981), aff'd Corning Glass Works v. FERC, 675 F.2d 392 (1982).

[14] El Paso contends that the only LNG available at less than 1,065 Btu is produced in Trinidad/Tobago and that the 1,065 Btu limit excludes gas from Algeria (which presently supplies gas to the Boston market), Nigeria, Qatar, Abu Dhabi, Indonesia and other potential areas of LNG development. El Paso's request for rehearing at p. 27.

pay and the terms and conditions that will apply with respect to service under Rate Schedule LTD-1.

Commission Response

The Commission reached its October 12 decision on the Btu tariff limit issue cognizant of the fact that Cove Point's interconnecting pipelines have Btu gas tariff specifications in the range of 1,100. Under ordinary circumstances it may have been appropriate to approve such a proposal in light of Commission policy of generally approving the modification of gas specifications when the proposal is consistent with the standards used by other pipelines in the region and considering whether the specifications would impede the interchange of gas at interconnects.[15] However, in this case Cove Point's proposal, if approved, would lead to the introduction of a steady, high-pressure stream of gas at a nearly constant level of heat content much higher than that of typical domestic gas and much higher than that historically received by Washington Gas from its pipeline suppliers. The rarity of high heat content gas being delivered is evidenced by the fact that Columbia delivered gas above the 1,065 Btu level for only 19 days in a 15-month period. Cove Point's proposal appears to represent a significant departure from the Btu content of the gas normally accepted by Cove Point.

In addition, Washington Gas, an LDC, has six gate stations on the Cove Point pipeline. Cove Point notes that Washington Gas has the ability to reroute gas on the high pressure portion of its system, which serves three of the gate stations, suggesting that Washington Gas might have some ability to manage the effects of the high-Btu gas on its system by electing to receive gas through gate stations served by Columbia or Dominion, and eventually Transco. However, this does not address the fundamental issue that Cove Point's high-Btu gas will at different times be used to serve residential customers, some of whom will receive the revaporized LNG at a constant level while others may receive it on an intermittent basis. Although the parties have argued the relative merits of applying the Columbia decision to this case insofar as that decision concerns cost reimbursement, that decision also is relevant in that it clearly recognized the potential safety hazard posed by introducing high-heat LNG to unadjusted customer appliances.

We disagree that our decision was based on conjecture rather than facts. The facts are that both interchangeability tests submitted by Washington Gas and Cove Point reach similar results. That is, when the LNGs of various chemical compositions with heat values of 1,100 Btu are used in the place of typical gas received by Washington Gas from

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[15] See, e.g., ANR Pipeline Co., 83 FERC ¶ 61,172 at pp. 61,716-17 (1998) and Distrigas of Massachusetts Corp., 75 FERC ¶ 61,363 at pp. 62,148-49 (1996).

domestic sources, the LNG has a tendency to cause yellow-tipping and incomplete combustion, with potentially hazardous consequences. Our finding on the Btu limit is not inconsistent with our approval of a 4 percent nitrogen level for gas, since there were no legitimate safety issues raised with respect to that proposal. We affirm our finding that Cove Point must resolve these safety issues before we can approve the proposed gas tariff change.

The Commission found that Cove Point's proposal is in the public convenience and necessity. Our October 12 order recognized the many benefits of this project. However, the unresolved safety issues associated with the proposed gas tariff specification change caused us to approve the application conditionally until Cove Point resolves our concern. If the only impediment to safely introducing the LNG into home appliances is one of cost as claimed by some proponents of the Btu standard, we have given Cove Point the opportunity to resolve the issue in a future filing.

The Commission is also unconvinced that the tariff limit will restrict supply sources to the extent claimed by the LNG shippers. Information submitted by Cove Point indicates that LNG imported from Algeria with a Btu level of 1,095 can be blended with up to 3.2 percent nitrogen to produce a vaporized LNG for sendout within the 1,065 Btu limit.[16] Thus, by blending different vintages of LNG of varying heat content combined with nitrogen injection of up to 4 percent, the shippers should have access to ample sources of LNG and will not be limited to Trinidad/Tobago supplies.

Insofar as El Paso and Shell or any other parties to the settlement in Docket No. RP01-217-000 believe that the Btu ruling constitutes a "material modification or condition" they may withdraw from the settlement as provided for in Article IV, Section 1 of the settlement.

2. Request for Clarification Regarding Btu Limit

Washington Gas requests the Commission to clarify that the October 12 order sets a firm cap of 1,065 Btu on the heat content of revaporized LNG that Cove Point may deliver to its customers. Washington Gas requests clarification for the reason that Cove Point has stated in its pleadings that its current tariff has no limit on the heat content of gas that may be delivered to peaking customers. Further, Washington Gas notes that Cove Point has stated that its proposal in this proceeding was to modify the acceptable heating value of gas received (not delivered) by Cove Point from 1,065 Btu to 1,100 Btu. To assure that there is no misunderstanding on this point, Washington Gas requests

[16] Cove Point's March 30, 2001 response to data request question no. 4.

confirmation that the Commission's intent was to establish an absolute limit of 1,065 Btu as a condition of operation until the safety issues related to higher heat gas are resolved.

Commission Response

As approved in the October 12 order, Cove Point's pro forma tariff sheet number 123, section 8(d) states that Cove Point will not be required to accept natural gas having a heating value of more than 1,065 Btu/cf. The provision reads as follows:

> Heating Value. Neither Buyer nor Operator shall be required to accept Natural Gas having a heating value of less than 967 Btu. Operator shall not be required to accept Natural Gas having a heating value of more than 1,065 Btu per cubic foot.[17]

Read alone, the tariff gives Cove Point the discretion to accept gas with Btu content higher than 1,065 Btu. However, Cove Point's certificate application also contains pro forma tariff sheet number 124, section 8(f) which specifically concerns LNG quality and which sets the limit on the heating value of LNG that Cove Point will accept from shippers under its tanker discharging service up to 1,138 Btu or above, so long as the natural gas sendout does not exceed the natural gas quality standard specified in section 8(d), which is 1,065 Btu.

Together these provisions do establish a strict limit of 1,065 Btu on the heat value of the imported LNG that Cove Point may send out. However, Cove Point may still accept gas, at its discretion, with a higher Btu content from other non tanker sources. As approved, the proposed tariff provisions will prevent Cove Point from being placed in the situation of not being able to accept gas from interconnecting pipelines at levels above 1,065 Btu when the same pipelines are supplying gas at higher heating levels to Washington Gas. It will also assure that Cove Point will not send out imported LNG at a heat content above 1,065 Btu until the safety issues are resolved. Accordingly, we grant Washington Gas's requested clarification that Cove Point's tariff provisions establish a limit of 1,065 Btu on the heat value of the LNG that Cove Point may deliver.

3. Cost Responsibility for Accommodating High-Btu LNG

Washington Gas asserts that the Commission erred in restricting potential cost recovery due to the introduction of LNG to costs associated with appliance adjustment and burner replacement. Washington Gas states that all customer intervention costs that

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[17] Pro forma Second Revised Vol. No. 1, Sheet No. 123.

Washington Gas would have to expend must be reimbursed, including costs for the research and testing needed to be done to assess the potential impact of the LNG on its operations. It repeats earlier by contentions that the costs of making the imported LNG merchantable must be borne by the pipeline and the shippers importing the gas. Cove Point, El Paso, Shell and BP continue to assert that Washington Gas must accept all cost responsibility for accommodating the LNG.

Commission Response

The Commission's October 12 order made no finding regarding what costs will be appropriate for reimbursement if Washington Gas or any other party must convert its facilities to accommodate LNG. The order noted that our Columbia decision, which concerned cost reimbursement issues when Columbia (Cove Point's prior owner) first began importing LNG, required the pipeline to reimburse its direct wholesale customers for a certain costs incurred to convert their facilities to accept LNG. In Columbia the Commission found that costs were reimbursable if they (1) were incurred directly as a result of LNG entering into the system, (2) were reasonable, prudent, and necessary in order to permit the safe utilization of LNG and (3) were of a one-time, nonrecurring nature.[18] While this is a reasonable standard, it would be premature to decide what costs in this case are recoverable until the Commission has a tangible proposal to consider. Accordingly, we deny rehearing and emphasize that our October 12 order made no finding regarding the specific costs that might be reimbursable.

4. Other Gas Quality Concerns of Downstream Shippers

BGE and PECO assert that the Commission did not resolve all gas quality concerns when it ordered Cove Point to retain its 1,065 maximum Btu tariff limit. BGE is a Columbia customer that will receive LNG gas from Cove Point through Columbia's system. PECO is a Transco customer that expects to receive Cove Point's LNG when the Transco interconnection is completed. Both BGE and PECO operate their own LNG facilities where they liquefy domestic natural gas.

BGE and PECO are concerned that the quality and composition (percentage of hydrocarbons and nitrogen) of the offshore LNG being injected into the Columbia and Transco systems are not compatible with domestic quality natural gas and will interfere with the operation of their existing LNG facilities. BGE and PECO state that the normal content of ethane in domestic gas is approximately 3 percent and that their LNG facilities are designed to process gas with no more than 4.2 and 3.2 percent ethane, respectively.

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[18] 13 FERC at p. 61,219.

PECO states that the composition of some of the gas that Cove Point intends to deliver to Transco may have much higher levels of ethane and contain more propane and butane than domestic gas, which will also degrade plant performance.

Further, PECO states that injecting nitrogen into the stream to reduce the Btu content of the LNG will result in gas with triple the level of nitrogen in domestic gas and degrade the performance of both the heat exchangers used to liquefy the LNG and the boil-off re-condensing system at PECO's LNG facility.

BGE states that its concern could be addressed either by either rejecting Cove Point's request to increase the ethane levels or requiring Cove Point to reimburse BGE for the costs of modifying its LNG system operations to accommodate the elevated ethane levels. PECO also seeks reimbursement for costs it will incur to mitigate the effects of injecting LNG into Transco's system. Both parties contend that reimbursement for these costs is consistent with the Commission's decision in Columbia.

Commission Response

BGE and PECO are indirect customers of Cove Point. We have no information about the actual levels of vaporized imported LNG that will be received and commingled with domestic supplies by Transco, Columbia, or Dominion for re-delivery to BGE or PECO. We are unable to assess the adverse effects, if any, that could be experienced at BGE's and PECO's liquefaction facilities. At the time that Cove Point's shippers make their downstream sales and transportation arrangements known, Transco, Columbia, and Dominion will have to fully assess the impact of the receipt of vaporized imported LNG from Cove Point on their systems.

C. Request to Reallocate Capacity Under Contract for LTD Service

Washington Gas states that when Cove Point held its open season for the new firm storage and transportation capacity associated with the reactivation of the LNG facilities it bundled these services together under the LTD-1 Rate Schedule. Washington Gas asserts that the Commission's failure to require Cove Point to unbundle the components of the LNG service and to offer a separate firm transportation service in an open season is contrary to Commission orders, such as in Equitrans, Inc.,[19] that have required that pipeline services to be unbundled into separate sales, transportation, and storage components.

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[19] 62 FERC ¶ 61,082 at p. 61,612 (1993).

Washington Gas also contends that the bundled transportation arrangement ignores Washington Gas's historic reliance on the Cove Point pipeline for service and will force it to purchase the bundled LNG service for its captive gate stations rather than allowing Washington Gas to contract for capacity so that it can bring gas purchased in the open market through the Cove Point interconnects with Columbia, Dominion, or, in the future, Transco. Washington Gas states that it desires to contract for additional firm transportation on Cove Point service but has been unable to do so because no separate firm transportation service was offered in Cove Point's open season. In addition to being contrary to the Commission's open access policies, Washington Gas states that Cove Point's proposal represents an unlawful tying arrangement under the applicable principles of antitrust law.[20] For these reasons, Washington Gas requests the Commission to grant rehearing to require the unbundling of Cove Point's LTD service and to hold another open season so that Washington Gas may bid only for firm transportation service.

Commission Response

The Cove Point terminal and pipeline were constructed for the purpose of importing and delivering LNG.[21] After the project became uneconomical and was "mothballed" in 1980, Cove Point began using the pipeline to provide transportation service. Cove Point's LNG storage facilities were reactivated in 1994 to provide gas peaking services utilizing domestic supplies and are now being enlarged to recommence storage and transportation service that utilizes imported LNG supplies. As a result , the pipeline is again needed for its original purpose, the delivery of imported LNG.

For its LNG storage facilities to be used for importation, Cove Point must be able to ensure its customers that they can unload tankers at the LNG facility, store the gas at the facility and then have the LNG revaporized and redelivered to points on Cove Point's pipeline facilities. Requiring Cove Point to unbundle capacity contracted to secure its LNG import function could result in underutilization of Cove Point's terminalling,

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[20] Citing Eastman Kodak Co. v. Image Technical Service, Inc., 504 U.S. 451, 461-62 (1992); Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 9-18 (1984).

[21] Columbia LNG Corp. and Consolidated System LNG Co., Opinion No. 622, 47 FPC 1624 (1972), aff'd and modified, Opinion No. 622-A, 48 FPC 723 (1972).

offloading, storage, liquefaction, vaporization and storage facilities, which represent a far greater investment than the 87.7-mile pipeline. Such a requirement would be inconsistent with the purpose for which the certificate was issued.

The Equitrans case cited by Washington Gas did not involve the special considerations present here. We deny Washington Gas' rehearing request that Cove Point be required to conduct a new open season for the purpose of reallocating the capacity under contract for its new LTD peaking services.

D. NGA Section 7(b) Abandonment Authority

Next, Washington Gas states that Cove Point's proposal to reduce the storage capacity available under Rate Schedule FPS from 5.0 MMDth to 1.29 MMDth was, in fact, a proposal to abandon service which required the Commission's authorization pursuant to Section 7(b) of the NGA. Washington Gas submits that when Cove Point conducted its open season that was a prelude to its application in this proceeding and made available only the bundled LTD services, it violated its existing certificate obligation without the requisite Commission authority. Washington Gas further states that the Commission may not grant such abandonment because Washington Gas is essentially a captive customer and the purpose of Section 7(b) is to protect captive customers from the exercise of market power by their pipeline suppliers when their pipeline contracts expire.[22]

Washington Gas submits that the Commission must grant rehearing to find that Cove Point does not have the authority to abandon its existing service obligation under Rate Schedule FPS and to require Cove Point to conduct a new open season for capacity on its system, consistent with its existing service obligations and its open access policy.

Commission Response

The Commission denies rehearing. Cove Point had no obligation to seek abandonment under section 7(b) of the NGA when it allocated its unused storage capacity to the LTD service. In 1994, Cove Point filed for authority to reactivate its "mothballed" LNG facilities to provide three new peaking services. The Commission issued an order granting Cove Point a blanket transportation certificate under Part 284, Subpart G of the

[22] Citing Sunray Mid-Continent Oil Co. v. FPC, 364 U.S. 137, 143 (1960).

Commission's regulations to provide the proposed peaking and transportation services.[23] At that time Cove Point reported that it had 5.0 MMDth of storage capacity available for its proposed peaking services. In the intervening years Washington Gas has entered into both short and long-term contracts for peaking service. It presently has one long-term FPS contract for 250,000 Dth of storage capacity and an associated 50,000 Dth/d of sendout capacity.

The pre-granted abandonment provisions in Part 284 of the Commission's regulations apply to Cove Point's services under its blanket certificate.[24] The regulations grant section 7(b) abandonment authority for transportation service upon the expiration of a contract term or upon termination of each individual transportation arrangement authorized under a blanket certificate. Therefore, only that part of the total 5.0 MMDth of storage capacity necessary to provide the services currently under contract is considered dedicated to Cove Point's existing peaking service.

Moreover, under the same regulations, a shipper's right to continued service is protected by the shipper's right-of-first-refusal (ROFR) when a long-term contract expires. If a shipper allows a long-term contract to expire and does not exercise its ROFR, then the pipeline has automatic authority to abandon that particular service to that customer and may resell that capacity to anyone, under any of its applicable rate schedules. Thus, Washington Gas only has a right to capacity under its present long-term firm contract and retains those rights until it no longer exercises its ROFR to hold on to that capacity.[25] Unsubscribed capacity is not considered dedicated to any particular rate schedule until it is under contract. Therefore, Cove Point was under no obligation to obtain section 7(b) abandonment authority before holding its open season for the LNG service.

E. Settlement

Washington Gas states that the Commission erred in approving this contested settlement because the record lacks the evidence to support a finding on the merits

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[23]Cove Point LNG Limited Partnership, et al., 68 FERC ¶ 61,28 (1994).

[24]18 C.F.R. 284.221(d)(2001).

[25]Cove Point's settlement provides that upon expiration of the existing FPS and FTS contracts, turned back capacity will be allocated to LTD-1 service. The Commission grants requests from BP and Shell to clarify that the October 12 order did not intend to modify this storage allocation procedure.

regarding Cove Point's filing in Docket No. RP01-217-000 to revise its existing FPS rates and establish its initial rates for the proposed new LTD services. The fact that the settlement lowers rates for existing customers does not, states Washington Gas, remove the need for Commission to conduct an inquiry into such questions as the appropriate return on equity, cost of service, allocation of costs to Cove Point's various services as well as the proper allocation of costs to Cove Point from its parent, the Williams Companies. In addition, Washington Gas asserts that the Commission erred in finding that Washington Gas is a party aggrieved by the level of costs allocated to the LTD-1 rates. It states that it will undoubtedly have to pay the LTD-1 rates when it purchases services from the LTD-1 shippers who will be the sole source of additional supply or capacity on the Cove Point line. Washington Gas requests rehearing so that the rate issues raised by this contested settlement are set for hearing.

Commission Response

Where a settlement is contested, the Commission must make an "independent finding supported by substantial evidence on the record as a whole, that the proposal will establish just and reasonable rates."[26] Consistent with this requirement, Rule 602(h)(1)(i) of the Commission's settlement regulations provides that the Commission may approve a contested settlement if there is substantial evidence in the record to support the settlement, or if the Commission determines that the settlement presents no genuine issue of material fact.[27] Moreover, Rule 602(h)(1) gives the Commission broad discretion by providing that, if the Commission finds that the record lacks substantial evidence, it may establish procedures for receiving additional evidence or take other action that the Commission deems appropriate.[28] As provided in Rule 602(h)(1)(iii), that discretion includes severing contesting parties in appropriate circumstances.

The instant settlement resolves a number issues concerning the reactivation of Cove Point's LNG facilities. Taken as a whole, the settlement provides substantial benefits to Cove Point and the supporting parties, who represent approximately 97 percent of the capacity on Cove Point's system, including providing rate certainty and avoiding costly litigation. These substantial benefits of the settlement are sufficient to

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[26] Mobil Oil Corp. v. FERC, 417 U.S. 283, 312 (1974).

[27] 18 C.F.R. § 385.602(h) (2001).

[28] Arctic Slope Regional Corp. v. FERC, 832 F.2d 158, 164 (D.C. Cir. 1987).

satisfy the standard of Rule 602 and Tejas Power Corp. v. FERC,[29] that uncontested settlements must be fair and equitable and in the public interest.

We agree on rehearing that the current record is insufficient for the Commission to decide the issues raised by Washington Gas on the merits or to find that it is just and reasonable as to the single contesting party. However, the Commission also does not find that Washington Gas has raised a valid concern such that the settlement should be modified for all parties.

This brings us to the option of severing Washington Gas from the settlement. The Commission has held that severance is an option of last resort.[30] Nonetheless, the Commission concludes that severance of Washington Gas, while approving the settlement for consenting parties, is appropriate in these circumstances. Balanced against our concern with imposing the settlement on Washington Gas over its objections, is the support of customers representing 97 percent of the gas transported on Cove Point's system. We conclude that it is appropriate to preserve the benefits of the settlement for the consenting parties by approving the settlement for consenting parties and severing Washington Gas. This will give Washington Gas a forum to litigate its issues with respect to Washington Gas's current FPS-2 rates.[31] Accordingly, we will establish a hearing proceeding limited to examining the proposed settlement rate for Washington Gas's current peaking service. We are not setting the LTD or other settlement rates for hearing. The settlement parties who have agreed to pay LTD and other settlement rates have consented to those rates and we have found the settlement to be fair and reasonable and in the public interest. We find that Washington Gas's interest in the LTD-1 rate is too attenuated since it holds no contract for LTD service to warrant severance and separate litigation on Washington Gas's behalf. [32]

The rate determined in the hearing established herein will apply only to Washington Gas. It may be determined that the just and reasonable rate for Washington

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[29]902 (F.2d 998 D.C. Cir. 1990).

[30]Trailblazer Pipeline Co., 85 FERC ¶ 61,345 at p. 62,344 (1998).

[31]Article IV, Section 2 of the settlement agreement provides that Cove Point will file a general section 4 rate case to be effective, assuming the full five-month suspension period, no later than October 1, 2007.

[32]Cf. Southern Cal. Edison Co. v. FERC, 162 F.3d 116 (D.C. Cir. 1998)(indirect customer having downstream contract with direct customer is entitled to contest settlement).

Gas's existing rate is higher or lower than the settlement rate. However, whatever rate results from the litigated proceeding in this case will be the rate that Washington Gas will pay prospectively from the date such rate is established. Until that date Washington Gas will continue to pay its current FPS-2 rate for current firm service.

In addition, if the just and reasonable rate for Washington Gas is found to be lower than the settlement rate, Cove Point will not be allowed to seek recovery of any lost revenues from its other customers; if Washington Gas's just and reasonable rate is found to be higher, Cove Point will not be required to credit any additional revenues to its other customers.

Accordingly, pursuant to the authority of the NGA and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP01-217-000, that will address only the firm peaking service rate that Washington Gas currently pays under its existing contract (and upon the in-service date of the fifth LNG tank, if applicable). An Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference is for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

F. Columbia Interconnect Pressure Problems

The October 12 order recognized the proposed higher operating pressures on Cove Point may impede Columbia's ability to deliver gas into the Cove Point line (at Loudoun County, Virginia), with the possible consequence that serious gas imbalances could accrue between Columbia and Cove Point. The October 12 order directed Cove Point to attempt to negotiate a resolution of this issue with Columbia by either negotiating more flexible terms for their operating balancing agreement (OBA) or some other method. The order stated that if the parties are unable to reach resolution the Commission will take further action necessary to assure appropriate resolution before pressure is increased on the Cove Point system.

In its rehearing request, Washington Gas asserts that its contracts for firm service may be affected by the inability of Columbia to deliver gas into the western end of Cove Point and that it should, therefore, also be involved in the ultimate solution of the pressure issue. El Paso requests clarification that the Commission authorized Cove Point to operate its system at the pressure levels proposed in its application and that Cove Point

will not be allowed to include pressure reductions as an agreed upon resolution of the imbalance issue raised by Columbia. It states that there are a number of other avenues available to Cove Point and Columbia to resolve imbalance issues that may exist. However, El Paso states that periodic pressure reductions should not be one of them since the pressure is necessary to serve the new electric generating plants being built near Cove Point and any reduction in pressure or available throughput would subject shippers to extraordinary charges, such as demurrage charges that apply in the event of offloading delays. BP agrees and also requests assurance that resolution of the pressure issue will not delay the increase in operating pressure. BP submits that negotiations may continue beyond the date of the pipeline pressure increase without injuring the ability to ultimately balance deliveries between Columbia and Cove Point.

Commission Response

The purpose of directing Cove Point and Columbia to resolve the possible gas balancing problems that may arise from higher operating pressure on Cove Point is to assure that shippers on the respective pipelines will not be adversely affected. Although Washington Gas is a customer of both pipelines, there is no cause for Washington Gas to participate in their negotiations to either amend their OBA or find another solution to this problem. Further, any solution to the balancing issue should not degrade the LTD service for which the LNG import shippers have contracted. As provided for in the October 12 order, if the parties cannot reach agreement, they must file information with the Commission 90 days prior to the in-service date of the facilities, and parties may file responses within 30 days thereafter. At that time the Commission will assess what steps need to be taken before pressure is increased on Cove Point's system.

G. Consolidation With Order No. 637 Proceeding

Washington Gas requests that the Commission grant rehearing to consolidate this proceeding with the Cove Point's Order No. 637 filings since both dockets share the goal of determining the terms and conditions of service which are to be provided consistent with Commission regulations. It notes that Cove Point's pending Order No. 637 filing proposes tariff provisions that will have an impact on Washington Gas. It asserts that the proposed changes to the segmentation and penalty provisions contained in the Order No. 637 filing may conflict with the Commission's directive in the October 12 order that existing services not be degraded. Thus, Washington Gas states that consolidation would be proper.

Commission Response

The Commission denies rehearing. Washington Gas may raise its concerns regarding the Order No. 637 filing in that ongoing proceeding. We find no reason to consolidate this application with the Order No. 637 docket. As we noted in the October 12 order, the settlement included with Cove Point's certificate application provides that Cove Point's proposed tariff will be amended to conform with all applicable Order No. 637 requirements.

H. Motions to Intervene Out of Time

Late motions to intervene were filed by Orion Power Holdings, Inc. (Orion) and Dynegy LNG Production Terminal, LP (Dynegy LNG) on November 13 and November 15, 2001, respectively. Orion states that it has an interest in this proceeding because it is a potential shipper on Cove Point's system while Dynegy LNG states that it is developing its own LNG project. Both Orion and Dynegy state that the Commission's November 9th order reopening the record prompted them to seek late intervention. The Commission finds that granting these interventions will not unduly disrupt this proceeding or place undue additional burdens on existing parties. Consequently, for good cause shown, the late-filed motions will be granted.

The Commission orders:

(A) The requests for rehearing and clarification are granted in part and denied in part, as discussed in the body of this order.

(B) The late motions to intervene are granted

(C) A public hearing is to be held in Docket No. RP01-217-000 for the limited purpose of determining the justness and reasonableness of the proposed FPS-2 rate to be paid by Washington Gas.

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference is for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.