

147 FERC ¶ 61,202  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Dominion Cove Point LNG, LP

Docket No. CP13-113-000

ORDER REQUIRING PRODUCTION OF MATERIAL PURSUANT TO A  
PROTECTIVE AGREEMENT

(Issued June 13, 2014)

1. On April 1, 2013, Dominion Cove Point LNG, LP (Dominion) filed an application in Docket No. CP13-113-000, for authorization under section 3 of the Natural Gas Act (NGA)<sup>1</sup> and the Commission's regulations<sup>2</sup> to construct and operate the Cove Point Liquefaction Project at Dominion's existing liquefied natural gas (LNG) terminal in Calvert County, Maryland. Concurrently, pursuant to section 7(c) of the NGA,<sup>3</sup> and the Commission's regulations,<sup>4</sup> Dominion sought authority to construct and operate additional facilities at an existing compressor station and metering and regulating (M&R) site in Fairfax County, Virginia, and at an M&R site in Loudoun County, Virginia.
2. On August 2, 2013, April 2, 2014, and May 27, 2014, Deborah Goldberg of Earthjustice requested disclosure of Critical Energy Infrastructure Information (CEII) material under 18 C.F.R. § 388.113. Earthjustice represents EarthReports, Inc., doing business as Patuxent Riverkeeper (Patuxent Riverkeeper), an intervenor in the Cove Point proceeding.<sup>5</sup> On March 7, 2014 Commission staff denied the request. On April 21, 2014 Patuxent Riverkeeper appealed Commission staff's denial.

---

<sup>1</sup> 15 U.S.C. § 717b (2012).

<sup>2</sup> 18 C.F.R. pt. 153 (2013).

<sup>3</sup> 15 U.S.C. § 717f (2012).

<sup>4</sup> 18 C.F.R. pt. 157 (2013).

<sup>5</sup> Ms. Goldberg filed the request on behalf of herself and seven colleagues. We may refer to Ms. Goldberg, Earthjustice, and EarthReports collectively and variously herein as Patuxent Riverkeeper.

3. Additionally, on February 5, 2014, Patuxent Riverkeeper filed a Request to Compel Disclosure asking the Commission to require Dominion to disclose certain CEII material pursuant to a protective order under 18 C.F.R. § 388.112.

4. As discussed below, we are requiring Dominion to provide Patuxent Riverkeeper with previously undisclosed CEII documents pursuant to a protective agreement.

### **I. Background**

5. Dominion is a limited partnership organized and existing under the laws of Delaware.<sup>6</sup> Dominion owns the existing Cove Point LNG Terminal near Lusby, in Calvert County, Maryland, as well as an 88-mile-long gas pipeline (Cove Point Pipeline) that extends from the terminal to connections with several interstate pipelines in Loudoun and Fairfax Counties, Virginia.

6. On April 1, 2013, Dominion applied for authorization to construct and operate facilities for the liquefaction and export of domestically produced natural gas at its Cove Point LNG Terminal. Dominion states that the proposed project, combined with existing facilities, would enable bi-directional service for receiving and gasifying imported LNG and liquefaction of natural gas for loading onto LNG vessels for export. Dominion's proposed liquefaction facilities are expected to have a nameplate capacity of up to 5.75 million metric tons per annum of LNG. In addition, Dominion requested authorization to add compression at the existing Pleasant Valley compressor station and to modify the existing Pleasant Valley and Loudoun M&R sites. Dominion states that the design flexibility afforded by the additional compression proposed, together with the use of turnback capacity, will enable Dominion to transport up to 860,000 decatherms per day of natural gas on a firm basis from existing pipeline interconnects near the west end of the existing Cove Point Pipeline to the LNG terminal.

7. Dominion designated certain application and supplemental documents as non-public privileged and/or CEII material.

8. Notice of Dominion's application was published in the *Federal Register* on April 19, 2013 (78 Fed. Reg. 23,552). On May 3, 2013 Patuxent Riverkeeper filed a timely, unopposed motion to intervene.<sup>7</sup>

---

<sup>6</sup> Dominion Cove Point LNG, LP is a subsidiary of Dominion Resources, Inc.

<sup>7</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.

9. On January 2, 2014, Patuxent Riverkeeper executed a protective agreement with Dominion. On the same day, under section 388.112 of the Commission's regulations, Patuxent Riverkeeper requested that Dominion provide a copy of the complete non-public version of all documents filed as privileged or CEII.

10. On January 16, 2014, Dominion replied to Patuxent Riverkeeper's document request indicating that the request concerned the same documents, or categories of documents, that were being sought by Patuxent Riverkeeper in a then-pending CEII request<sup>8</sup> and stated that Dominion would await the Commission's determination on that request prior to releasing additional documents.

11. On February 5, 2014, Patuxent Riverkeeper filed a Request to Compel Disclosure seeking the Commission's assistance in obtaining the documents to which it is entitled under section 388.112. It argued that Dominion had not established a sufficient basis for withholding the materials Patuxent Riverkeeper requested.<sup>9</sup>

## **II. Discussion**

12. Section 388.113 of the Commission's regulations provides the procedures for requesting access to CEII information from the Commission's CEII Coordinator.

13. Section 388.112 of the Commission's regulations permits any person filing a document with the Commission to request privileged treatment for some or all of the information contained in the document that the filer claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (FOIA). To obtain privileged treatment, the filer must (1) include a justification for requesting privileged treatment, (2) designate the document as privileged, and (3) submit a public version of the document with the information that is claimed to be privileged material redacted, to a practicable extent.<sup>10</sup>

---

<sup>8</sup> On March 7, 2014, Commission staff found that the requested CEII material was exempt from disclosure under the Freedom of Information Act and determined that the documents would not be released under the CEII process.

<sup>9</sup> On February 14, 2014, Dominion filed an answer to Patuxent Riverkeeper's Request to Compel Disclosure. On March 7, 2014, Patuxent Riverkeeper filed an answer, to which Dominion responded in a second answer on March 28, 2014. Rule 213(a)(2) of our regulations prohibits answers to answers unless otherwise ordered by the decisional authority. (18 C.F.R. § 385.213(a)(2) (2013)). The Commission finds good cause to waive Rule 213(a) and admit these answers because doing so will not cause undue delay and the pleadings may assist the Commission in its decision-making process.

<sup>10</sup> 18 C.F.R. § 388.112(b)(1) (2013).

14. However, when such material is filed in a proceeding to which a right to intervene exists (as is the case here), the filer is required to include a proposed form of protective agreement with the filing<sup>11</sup> and provide the public version of the document and its proposed form of protective agreement to each entity that is required to be served with the filing. An intervenor to the proceeding may make a written request to the filer for a copy of the complete, non-public version of the document. The request must include an executed copy of the protective agreement and a statement of the person's right to party status or a copy of their motion to intervene. The Commission specifically exempts four categories of documents from the protective agreement procedure: (1) landowner lists, (2) privileged information filed under section 380.12(f) or section 380.16(f), which pertains to cultural resources, (3) privileged information filed under section 380.12(m), which pertain to reliability and safety information that must be filed by liquefied natural gas facilities, and (4) privileged information filed under section 380.12(o), which pertain to engineering and design material information that must be filed by liquefied natural gas facilities. As pertinent here, section 388.112 provides that access to this material can be sought pursuant to a CEII request under section 388.113.

15. The situation that has arisen in this proceeding is that the information filed by Dominion and excluded from the protective agreement procedures of section 388.112 also cannot be accessed through the Commission's CEII process because Dominion has asserted other claims of privileges which have been found valid for exempting the material from public disclosure. This result, that an intervenor to a proceeding cannot gain access to record evidence for purposes of participating in the proceeding, warrants further action by the Commission.

16. It is common practice for parties to a proceeding to use a protective agreement to gain access to confidential and proprietary information submitted on a non-public basis while at the same time ensuring such information is neither publicly disclosed nor used by parties for purposes unrelated to their participation in the proceeding.<sup>12</sup> The Commission finds use of such agreements appropriately balances the interests of filers in protecting their sensitive information against inappropriate disclosure and the right of intervenors to access information necessary to their full and meaningful participation in a contested proceeding.

---

<sup>11</sup> 18 C.F.R. § 388.112(b)(2)(i) (2013). On October 16, 2013, Dominion filed a proposed protective agreement as part of a supplemental information filing.

<sup>12</sup> See, e.g., *Arlington Storage Co., LLC*, 145 FERC ¶ 61,025 (2013); *West Deptford Energy, LLC*, 134 FERC ¶ 61,189, at P 29 (2011); and *Southern Co. Energy Marketing, Inc.*, 111 FERC ¶ 61,011 (2005).

17. Accordingly, the Commission hereby orders Dominion to provide Patuxent Riverkeeper access to the following CEII and privileged materials that Patuxent Riverkeeper has requested within 15 days of the date of this order:

- 1) All materials filed as Volume III of III of Dominion's application filed on April 1, 2013 at Accession No. 20130401-5047;
- 2) Documents Described in Dominion's Filing Statement for Hazard Modeling Input/Output Files re: DCP Liquefaction Project, filed on April 29, 2013 at Accession No. 20130429-4006, and Provided to FERC on External Hard Drive on April 25, 2013;
- 3) Dominion's Response to FERC Staff 6-5-13 Data Request under CP13-113, filed on June 25, 2013 at Accession No. 20130625-5143;
- 4) Dominion's Response to 6-26-13 Data Request under CP13-113, filed on July 16, 2013 at Accession No. 20130716-5236;
- 5) Dominion's Response to Data Request (Response to Question RR13-66) under CP13-113, filed on July 17, 2013 at Accession No. 20130717-5271;
- 6) Dominion's Supplemental Information (Site Plan Modification, Updated Information, and Data Request Response) under CP13-113, filed on August 1, 2013 at Accession No. 20130801-5257;
- 7) Dominion's Annual Report of System Flow Diagrams and Capacity (FERC Form 567), filed on May 31, 2013 at Accession Nos. 20130531-0007, 20130531-0008 and 20130531-5070;
- 8) Dominion's Supplemental Information (Heat and Material Balance) under CP13-113, filed on August 22, 2013 at Accession No. 20130822-5095;
- 9) Dominion's Supplemental Information (DR Response, FERC Air Quality Modeling Report, and Geotech Information) under CP13-113, filed on August 30, 2013 at Accession No. 20130830-5178;
- 10) Dominion's Supplemental Information (Revised Consequence Modeling) under CP13-113, filed on September 19, 2013 at Accession No. 20130919-5093;

- 11) Dominion's Response to 9/3/13 Data Request under CP13-113, filed on September 23, 2013 at Accession No. 20130923-5152;
- 12) Dominion's Supplemental Information (Updated DR Responses and Rev Information) under CP13-113, filed on October 4, 2013 at Accession No. 20131004-5093;
- 13) Dominion's Supplemental Information (Supplemental DR Responses) under CP13-113, filed October 11, 2013 at Accession No. 20131011-5069; and
- 14) Dominion's Supplemental Information (Updated RR13, DR Responses, and Staff Comments) under CP13-113, filed December 27, 2013 at Accession No. 20131227-5148.

18. Any previously undisclosed material listed above, including privileged information filed under sections 380.12(m) and (o) of the Commission's regulations, shall be made available to Patuxent Riverkeeper. Should the parties desire assistance in determining the terms the disclosure, they may make use of the services of the Commission's designated on-call Settlement Judge.<sup>13</sup> However, use of such procedure shall not extend the 15-day deadline for production of the requested material.

The Commission orders:

(A) Within 15 days after the issuance of this order, Dominion shall provide the listed materials to Patuxent Riverkeeper pursuant to the terms of an executed protective agreement.

---

<sup>13</sup> If Dominion and Patuxent Riverkeeper decide to request a Settlement Judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. While parties may request a specific Settlement Judge, they must name at least one additional judge that has been agreed to by the parties. The Commission's website contains a list of the Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(B) Patuxent Riverkeeper may file additional comments based upon the privileged and CEII information within 21 days after receipt of such information.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.