151 FERC ¶ 61,095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Dominion Cove Point LNG, LP Docket No. CP13-113-001

ORDER DENYING REHEARING AND STAY

(Issued May 4, 2015)

1. On September 29, 2014, the Commission authorized Dominion Cove Point LNG, LP (Dominion),[1] pursuant to section 3 of the Natural Gas Act (NGA), to site, construct, and operate facilities for the liquefaction and export of domestically-produced natural gas at Dominion's existing Cove Point liquefied natural gas (LNG) import terminal in Calvert County, Maryland (Cove Point Liquefaction Project).[2] The September 29 Order also authorized Dominion, pursuant to section 7(c) of the NGA, to construct and operate facilities at its existing compressor station and metering and regulating sites in Fairfax County, Virginia and at a metering and regulating site in Loudoun County, Virginia (Virginia Facilities). Allegheny Defense Project and Wild Virginia (jointly, Allegheny); BP Energy Company (BP); and EarthReports, Inc. (dba Patuxent Riverkeeper), Potomac Riverkeeper, Inc., Shenandoah Riverkeeper, Sierra Club, and Stewards of the Lower Susquehanna, Inc. (collectively, EarthReports) filed timely rehearing requests. Allegheny and EarthReports also request a stay. As discussed below, this order denies the requests for rehearing and stay.

Background

2. Dominion owns the existing Cove Point LNG Terminal (Cove Point Terminal) near Lusby, in Calvert County, Maryland, as well as an 88-mile-long natural gas pipeline (Cove Point Pipeline) that extends west from the terminal to connections with interstate

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[1] Dominion Cove Point LNG, LP is a subsidiary of Dominion Resources, Inc.

[2] *Dominion Cove Point LNG, LP*, 148 FERC ¶ 61,244 (2014) (September 29 Order).

pipelines in Loudoun and Fairfax Counties, Virginia. In 1972, the Commission authorized Dominion's predecessor to begin receiving LNG imports at the Cove Point Terminal and transport natural gas through the Cove Point Pipeline.[3] LNG import services were suspended in 1980 and then reactivated in 2001.[4]

3. The September 29 Order authorized Dominion to construct and operate the Cove Point Liquefaction Project and Virginia Facilities. The Cove Point Liquefaction Project adds a liquefaction train with an expected nameplate capacity of up to 5.75 million metric tons per annum of LNG. The liquefaction train contains gas turbine-driven refrigerant compressors, draft air coolers, process vessels, pumps, and heat exchangers for liquefying natural gas. The Virginia Facilities include: (1) four additional electric-driven compressor units at the existing Pleasant Valley Compressor Station; (2) a 1,200-foot-long, 36-inch-diameter replacement discharge pipeline extending from the Pleasant Valley Compressor Station to the existing Pleasant Valley meter and regulating (M&R) site; (3) a 1,200-foot-long, 36-inch-diameter suction pipeline extending from the compressor station to the existing Pleasant Valley M&R site; and (4) miscellaneous pipeline and measurement upgrades at the Pleasant Valley and Loudoun M&R sites.

4. The Cove Point Liquefaction Project, combined with Dominion's existing facilities, will enable Dominion to provide import or export service for Pacific Summit Energy, LLC[5] and a U.S. subsidiary of GAIL (India) Limited,[6] (collectively, the Export

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[3] On June 28, 1972, the Commission authorized Columbia LNG Corporation and Consolidated System LNG Company to construct and operate the Cove Point Terminal and the Cove Point Pipeline. *Columbia LNG Corp.*, Opinion No. 622, 47 FPC 1624 (1972), *aff'd and modified,* Opinion No. 622-A, 48 FPC 723 (1972). Subsequently, the Commission authorized: (1) Consolidated System LNG Company to abandon its undivided one-half interest in the LNG facilities to Columbia LNG Corporation in *Consolidated System LNG Co.*, 42 FERC ¶ 61,078 (1988); and (2) Columbia LNG Corporation to abandon all of its jurisdictional facilities by transfer to Cove Point LNG Limited Partnership in *Cove Point LNG Limited Partnership*, 68 FERC ¶ 61,128 (1994). In 2002, Dominion Resources, Inc. acquired the equity shares of the two companies comprising Cove Point LNG Limited Partnership, and later that year, Cove Point LNG Limited Partnership became Dominion Cove Point LNG, LP.

[4] *See Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043 (2001).

[5] Pacific Summit is a United States (U.S.) subsidiary of Sumitomo Corporation, a Japanese trading company.

[6] GAIL Limited is the largest natural gas processing and distribution company in India. In an October 30, 2013 filing, Dominion requested that GAIL Global (USA) LNG, LLC (GAIL Global) be used as the identified export customer.

Customers). The Export Customers initially contracted for export service, but may jointly elect once a year to receive import and regasification service or liquefaction and export service.

Late Request for Rehearing

5. On Wednesday, October 29, 2014, at 10:38:59 p.m., Myersville Citizens for a Rural Community Inc. (Myersville) electronically filed a request for rehearing.[7] Because Myersville's rehearing request was filed after 5:00 p.m. Eastern time, the end of the Commission's regular business hours, we consider the rehearing request filed on the next business day, October 30, 2014.[8] Pursuant to section 19(a) of the NGA,[9] an aggrieved party must file a request for rehearing within 30 days after the issuance of a final Commission decision, in this case no later than October 29, 2014. The Commission cannot waive the 30-day statutory deadline for filing requests for rehearing. Consequently, because the rehearing request was filed on October 30th, we will deny Myersville's rehearing request.[10] Nevertheless, Myersville's concerns regarding the adequacy of the environmental analysis are addressed below in our response to the same issues raised by Allegheny and EarthReports.[11]

[7] On November 3, 2014, Dominion filed a request that the Commission reject Myersville's rehearing request because Dominion claimed the request was late.

[8] *See* 18 C.F.R. § 385.2001(a)(2) (2014) ("Any document received after regular business hours is considered filed on the next regular business day.").

[9] 15 U.S.C. 717r (2012).

[10] *Cameron LNG, LLC*, 148 FERC ¶ 61,237, at P 19 (2014) (citing *Boston Gas Co. v. FERC*, 575 F.2d 975, 978 (1st Cir. 1978)).

[11] Myersville's rehearing request also raised issues about noise and property values. While not addressed further below, these issues were raised previously and were addressed adequately in the Environmental Assessment (sections 2.7.2 and 2.9.8 for noise and section 2.5.5 for property values) and in the September 29 Order (paragraphs 178-183 for noise and paragraphs 146-147 for property values).

Discussion

A. BP's Rehearing Request

6. In 2001, the Commission authorized Dominion's predecessor to construct new facilities and reactivate the existing LNG terminal to recommence LNG imports.[12] BP was one of three customers that contracted for NGA section 7 LNG terminal service under Rate Schedule LTD-1.

7. In 2006, the Commission approved the Cove Point Expansion Project authorizing the expansion of the Cove Point Terminal and Pipeline, as well as the construction of related downstream pipeline and storage facilities.[13] The sole expansion customer, Statoil Natural Gas LLC (Statoil), entered into a non-open access agreement for NGA section 3 terminal service for all of the expanded capacity, and the Commission granted Dominion market-based rate treatment under the policy announced in *Hackberry LNG Terminal, L.L.C.*[14] for the expansion capacity. In addition, Statoil subscribed to jurisdictional service under Rate Schedule FTS for service on the expanded Cove Point Pipeline. Section 30 of the General Terms and Conditions (GT&C) of Dominion's tariff provides that existing customers such as BP, and the expansion customer, Statoil, are to be treated in a not unduly discriminatory manner.

8. To support the Cove Point Liquefaction Project proposed in this proceeding, Dominion held an open season and a reverse open season for transportation capacity on the Cove Point Pipeline in the spring of 2012 and received no requests under either open season. Dominion did not hold an open season for section 3 terminal service.

9. Separately, Dominion and Statoil agreed to an early termination of the non-open access Cove Point Expansion service agreement for Statoil's section 3 terminal service and section 7 Cove Point Pipeline capacity.

10. BP protested Dominion's Cove Point Liquefaction Project application, asserting that Dominion's agreement to offer Statoil the opportunity to turnback or relinquish

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[12] *Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043.

[13] *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006), *order on reh'g*, 118 FERC ¶ 61,007 (2007), *vacated and remanded sub nom. Washington Gas Light Co. v. FERC*, 532 F.3d 928 (D.C. Cir. 2008), *order on remand*, 125 FERC ¶ 61,018 (2008), *order on reh'g and clarification*, 126 FERC ¶ 61,036 (2009), *petition for review denied sub nom. Washington Gas Light Co. v. FERC*, 603 F.3d 55 (D.C. Cir. 2010).

[14] 101 FERC ¶ 61,294 (2002).

Statoil's section 3 terminal service, without offering BP the opportunity to turnback or relinquish its terminal service, constituted unlawful discrimination among similarly situated customers.[15] The September 29 Order found that BP and Statoil were not similarly situated for the purposes of relinquishing terminal service because Statoil was an expansion customer receiving non-open access service under section 3, while BP was a LTD-1 shipper receiving open access terminal service under section 7.

11. On rehearing, BP renews its arguments, contending that BP and Statoil are similarly situated customers because they receive fundamentally the same services, have binding contracts with Dominion, and share the same market risks.[16] BP asserts that the difference in the "regulatory regimes" under which it and Statoil receive service is irrelevant to the issue of whether Dominion granted an undue preference to Statoil.[17] BP also contends that the September 29 Order erred in denying its request that the Commission require revisions to Dominion's tariff to guard against such alleged discrimination.[18]

12. EPAct 2005 amended the NGA to prohibit undue preferences and undue discrimination in the context of LNG terminals providing service under sections 3 and 7 of the NGA, which is the case at the Cove Point Terminal:

> An order issued for an LNG terminal that also offers service to customers on an open access basis shall not result in subsidization of expansion capacity by existing customers, degradation of service to existing customers, or undue discrimination against existing customers as to their terms or conditions of service at the facility, as all of those terms are defined by the Commission.[19]

[15] BP Rehearing Request at 4. Dominion offered both BP and Statoil the opportunity to relinquish their section 7 pipeline capacity.

[16] BP Rehearing Request at 4.

[17] *Id.* at 12.

[18] *Id.* at 1-5.

[19] 15 U.S.C. § 717b(e)(4) (2012).

13. The September 29 Order explained that not all discrimination is undue, and only similarly situated customers need to be treated similarly.[20] BP notes that in *Columbia Gas Transmission Corp.*, the Commission found that an NGA section 7 pipeline may provide early termination rights to one group of shippers and not to another where the two groups were not similarly situated on account of different risks faced.[21] There, the Commission found no unlawful discrimination between groups where the risk that local distribution companies assumed under their service obligations differed from the risk faced by industrial end users who had not been subject to mandatory unbundling at the state level. Here, BP argues we should find the converse true, that is, that where two companies share a regulatory risk, they are similarly situated. However, different levels of market risk is not the only circumstance that might justify treating two groups of customers as being not similarly situated. Here, notwithstanding BP's assertions to the contrary, the difference in "regulatory regime" between open access and non-open access service is a relevant one. While BP and Statoil may face the same risk that the market for imported natural gas might change, as an open access customer, BP has protections not afforded Statoil. For example, BP has a regulatory right to release all or a portion of its terminal service to another shipper. BP also has regulatory rights regarding retention of its capacity upon expiration of its initial service agreement. The fact that market conditions might render these rights more or less valuable to BP at any given point in time does not negate the fact that they exist. Thus, we reaffirm our finding that section 7 and section 3 terminal services are distinguishable, and conclusion that BP and Statoil are not similarly situated.[22]

14. BP contends that our finding Statoil and BP to be not similarly situated based on the fact that they receive similar service under different regulatory regimes would effectively render the antidiscriminatory provision of NGA section 3 meaningless. We disagree. Indeed, as BP acknowledges, the terminal service that it receives from Dominion is fundamentally the same as that provided to Statoil – Statoil receives no preference in nominating, scheduling, or the quality of the terminal service provided. The Commission approved the implementation of section 30 of the GT&C of Dominion's tariff, which directly addresses the subject of providing service to different classes of

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[20] September 29 Order, 148 FERC ¶ 61,244 at P 47 (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1009 (D.C. Cir. 1987), *cert. denied sub nom. Interstate Natural Gas Ass'n v. FERC*, 485 U.S. 1006 (1988); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1139 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 917 (1984)).

[21] *Columbia Gas Transmission Corp.*, 103 FERC ¶ 61,388, *order on reh'g*, 105 FERC ¶ 61,373 (2003).

[22] September 29 Order, 148 FERC ¶ 61,244 at P 47.

customers at a single facility. The Commission found that section 30 was adequate to prevent undue discrimination, stating, "we are satisfied that there will be no undue discrimination against the existing LTD customers as to their terms and conditions of service in the critical tariff areas, such as nominations, scheduling and operating conditions."[23] Thus, there is no reason to revise Dominion's tariff to address alleged discrimination.

15. The September 29 Order held that the Commission was "not concerned with the fact that in addition to relinquishing section 3 terminal service Statoil also turned back section 7 service on the Cove Point Pipeline because Dominion held an open season providing all shippers an opportunity to turnback this service."[24] BP contends however, that relinquishing Cove Point Pipeline capacity without a corresponding relinquishment of storage and regasification capacity would have rendered BP's existing storage and regasification capacity at the Cove Point Terminal virtually useless. Whether or not it was in BP's business interest to relinquish section 7 service on the Cove Point Pipeline does not alter our observation that Dominion's open season provided all shippers the chance to turn back section 7 service.

16. BP further contends that Dominion provided Statoil with inappropriate preferential treatment in consideration for commercial benefits to Dominion's parent company.[25] BP references a fourth-quarter 2010 earnings call held on January 28, 2011, where the Chief Executive Officer of Dominion's parent company mentioned plans to work with Statoil in the development of infrastructure out of the Marcellus region, when explaining why Statoil was provided with the relinquishment opportunity. BP asserts that this rationale clearly constitutes undue discrimination. As discussed above, Dominion had no obligation to offer BP, an open access section 7 customer, the same opportunity to turn back terminal service that it offered to its customer receiving non-open access section 3 service. As Statoil is Dominion's only current non-open access section 3 customer, there is no reason for the Commission to consider whether Dominion's actions might have constituted discrimination against another such customer for inappropriate reasons.

17. For the reasons discussed above, we affirm our finding in the September 29 Order that BP was not subject to undue discrimination.

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[23] *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 at P 108.

[24] *Id.* P 47.

[25] BP Rehearing Request at 7-8.

B. Environmental Issues

1. Environmental Review Background

18. On June 26, 2012, Commission staff granted Dominion's request to use the prefiling process in Docket No. PF12-16-000. On September 24, 2012, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI).

19. On April 1, 2013, Dominion filed its application under NGA sections 3 and 7 requesting authorization to site, construct, and operate the Cove Point Liquefaction Project and the Virginia Facilities. Commission staff evaluated the potential environmental impacts of the proposed facilities in an Environmental Assessment (EA) in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA).[26] The U.S. Department of Energy, Office of Fossil Energy (DOE/FE), U.S. Army Corps of Engineers (Army Corps), U.S. Department of Transportation, U.S. Coast Guard (Coast Guard), and Maryland Department of Natural Resources (Maryland DNR) participated as cooperating agencies in the preparation of the EA.

20. The EA for Dominion's proposed project was placed into the public record on May 15, 2014.[27] All substantive comments received in response to the NOI and during the public scoping process were addressed in the EA.

21. The September 29 Order found that Dominion's proposal was thoroughly analyzed in the EA. The order found that there were no significant direct or indirect impacts and thus concluded that approval of the project would not constitute a major federal action significantly affecting the quality of the human environment and, consistent with the Council on Environmental Quality (CEQ) regulations, no Environmental Impact Statement (EIS) was required.

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[26] 42 U.S.C. §§ 4321 *et seq.* (2012). *See* 18 C.F.R. pt 380 (2014) for the Commission's NEPA-implementing regulations.

[27] The Commission published notice of the EA in the *Federal Register* on May 22, 2014. 79 Fed. Reg. 29,435 (May 22, 2014).

2. **Induced Production**

22. Allegheny[28] and EarthReports[29] contend that the September 29 Order failed to adequately analyze the indirect and cumulative effects of alleged induced natural gas drilling and hydraulic fracturing activities in the Marcellus and Utica Shale formations and the associated environmental harms.[30]

23. CEQ regulations require agencies to consider the indirect and cumulative impacts of proposed actions. Indirect impacts are "caused by the proposed action" and occur later in time or farther removed in distance than direct project impacts, but are still "reasonably foreseeable."[31] Indirect impacts may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water.[32] For an agency to include consideration of an impact in its NEPA analysis as an indirect effect, approval of the

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[28] Allegheny Defense Project is an environmental organization with a stated mission of protecting and restoring the wild forests and rivers of the Allegheny National Forest in Pennsylvania. Wild Virginia is an environmental organization with a stated mission of preserving wild forest ecosystems in Virginia's national forests.

[29] EarthReports consists of organizations largely focused on addressing environmental issues in the Mid-Atlantic region.

[30] Allegheny faults the September 29 Order for failing to specifically address concerns raised about alleged induced production in the Utica Shale region. The Utica Shale region extends from West Virginia and Ohio northeast through Maryland, Pennsylvania, and New York, and the shale itself is located a few thousand feet below the Marcellus Shale. The September 29 Order focused on responding to comments regarding impacts from drilling in the Marcellus Shale region. However, since the Utica Shale underlies significant portions of the Marcellus Shale, our analysis concerning alleged induced production in the Marcellus Shale region applies equally to Utica Shale production.

[31] 40 C.F.R. § 1508.8(b) (2014).

[32] *Id.*

proposed project and the related secondary effect must be causally related, i.e., the agency action and the effect must be "two links of a single chain."[33]

24. Cumulative impacts are defined by CEQ as the "impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."[34] A cumulative impacts analysis may require an analysis of actions unrelated to the proposed project if they occur in the project area being analyzed.

25. An impact is reasonably foreseeable if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision."[35] Courts have noted the starting point of any NEPA analysis is a "rule of reason," under which NEPA documents "need not address remote and highly speculative consequences."[36]

a. Lack of Causality

26. The September 29 Order explained that potential environmental effects associated with shale region production are not sufficiently causally related to the Cove Point Liquefaction Project to warrant detailed analysis as indirect impacts.[37] The order explained that future Marcellus Shale production is not an essential predicate for the

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[33] *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394 (9th Cir. 1980). On rehearing, EarthReports notes that the EA contained language implying that the scope of our NEPA review is limited to natural gas facilities under the Commission's jurisdiction. The September 29 Order does not reference or rely on such a limitation in considering impacts and further, the EA appropriately analyzes cumulative and indirect impacts where required and correctly notes a lack of sufficient causality or reasonable foreseeability for those activities not analyzed.

[34] 40 C.F.R. § 1508.7 (2014).

[35] *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

[36] *Hammond v. Norton*, 370 F.Supp.2d 226, 245-46 (D.D.C. 2005).

[37] The Commission has been upheld in finding that it need not consider the environmental impacts of Marcellus shale region production when authorizing projects that may (or may not) make use of such supplies. *Central NewYork Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh'g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed, sub nom*., *Coalition for Responsible Growth, v. FERC*, 485 Fed. Appx. 472, 2012 WL 1596341 (2nd Cir., Apr. 17, 2012) (unpublished opinion).

Cove Point Liquefaction Project, which can receive natural gas through interconnects with three interstate natural gas pipeline systems. Further, development of the Marcellus Shale region will likely continue regardless of whether the Cove Point Liquefaction Project is approved.

27. Allegheny and EarthReports assert that the September 29 Order misapplied the causation element for assessing indirect impacts. EarthReports contends that agencies are routinely required to consider the environmental consequences that follow from approval of infrastructure projects.[38] The cases cited by EarthReports are not applicable here. The environmental impacts at issue in these cases, including impacts of development spurred by a new federal highway project, emissions caused by new electricity generation made possible by a new transmission line, and impacts from increased coal consumption made possible by providing new rail service to mines, are effects that would not have occurred had the specific federal authorizations not been granted. Here, natural gas development will likely continue with or without the Cove Point Liquefaction Project.

28. Allegheny sites two reports from the National Petroleum Council (NPC)[39] published in 2007 and 2011 to support its contention that Marcellus and Utica Shale region gas extraction activities and the Cove Point Liquefaction Project are "two links of a single chain."[40] The reports note that growing international trade in natural gas will require the development of new infrastructure and that the LNG supply chain will need to consider capital investment including upstream development.[41] Allegheny also cites a

[38] EarthReports Rehearing Request at 27 (citing *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1081-82 (9th Cir. 2011) (*Northern Plains*) (environmental review must consider induced coal production for a rail project to serve specific new coal mines); *Mid States Coalition for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549-50 (8th Cir. 2003) (*Mid States*) (environmental effects of increased coal consumption due to construction of a new rail line to reach coal mines were reasonably foreseeable); *Border Power Plant Working Group v. Dep't. of Energy*, 260 F. Supp. 2d 997, 1028-29 (S.D. Cal. 2003) (requiring consideration of environmental impacts, such as increased carbon dioxide and ammonia emissions, from additional electricity generation spurred by construction of energy transmission lines subject to federal approval); and *City of Davis v. Coleman*, 521 F.2d 661, 674-77 (9th Cir. 1975) (environmental review for highway project needed to analyze impact of induced development despite uncertainty about pace and direction of development)).

[39] The NPC is a federal advisory committee that reports to the Secretary of Energy.

[40] Allegheny Rehearing Request at 5-6.

[41] *Id.* at 6.

2014 speech given by the Principal Deputy Assistant Secretary for DOE/FE that draws a link between applications to export LNG and domestic shale gas production.[42]

29. We disagree with Allegheny's contention that the NPC reports and the 2014 speech demonstrates a clear causal connection that requires further analysis. The September 29 Order noted that it is axiomatic that natural gas exports require natural gas supplies. The fact that natural gas production, transportation, and export facilities are all components of the general supply chain required to bring domestic natural gas to market for export is not in dispute. As we found in the September 29 Order, Marcellus Shale production is not required for the Cove Point Liquefaction Project and production is likely to increase in the area regardless of whether the Cove Point Liquefaction Project is approved. Production activities in the Marcellus Shale region and the associated impacts are thus not sufficiently causally related for the Commission to consider them as indirect effects of the Cove Point Liquefaction Project.

30. Allegheny contends that the Commission erred in recognizing the DOE/FE orders,[43] which reference statements made by Dominion about the economic benefits to Marcellus Shale region producers resulting from the Cove Point Liquefaction Project, and then refusing to consider the environmental consequences of that production.[44] Allegheny also contends that the Commission should not allow Dominion to tout the "continued development of domestic natural gas" as an alleged public interest benefit to be derived from the project while simultaneously refusing to consider the environmental consequences of that development by finding it to be not sufficiently causally related to the project.

31. The September 29 Order did not rely on the benefits cited by Dominion as justification for the Commission's public interest determination. Because the Commission does not have jurisdiction over the question of whether the export of natural gas as a commodity is in the public interest, the Commission merely restated DOE/FE's determination regarding the benefits of exporting natural gas. The September 29 Order found that with the conditions required, the Cove Point Liquefaction Project results in

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[42] *Id.* at 7.

[43] In 2011, DOE/FE authorized Dominion to export up to the equivalent of 1.0 Bcf per day of domestically-produced natural gas by vessel to Free Trade Agreement (FTA) Nations. DOE/FE Order No. 3019 (2011). DOE/FE subsequently authorized Dominion to export up to 0.77 Bcf per day of natural gas to non-FTA nations, finding the potential export of such volumes to be not inconsistent with the public interest. DOE/FE Order No. 3331 (2013).

[44] Allegheny Rehearing Request at 7, 8, and 17.

minimal environmental impacts and can be constructed and operated safely. The September 29 Order therefore concluded that the siting, construction, and operation of the export facilities (the portion of Dominion's export proposal under the Commission's jurisdiction) is not inconsistent with the public interest.

b. Lack of Reasonable Foreseeability

32. The September 29 Order found that shale gas development did not need to be analyzed as an indirect or cumulative impact because such production was not reasonably foreseeable within the meaning of NEPA. As the Commission has consistently found under the circumstances presented to date, impacts from additional shale gas development upstream of LNG export projects are not reasonably foreseeable within the meaning of CEQ's regulations.[45] The source of the gas to be exported via any individual project is speculative and would likely change throughout the operation of the project. The Cove Point Liquefaction Project will receive natural gas through the Cove Point Pipeline, which as described above, interconnects with three interstate natural gas pipeline systems. Those interstate pipelines cross multiple shale-gas, as well as conventional-gas, plays and through their interconnections with other pipeline systems effectively provide access to essentially all of the production areas in the lower-forty-eight states. Thus, assessing where the gas processed by the project will originate, much less where the wells and gathering lines will be located, and where the potential associated environmental impacts occur, would require significant speculation. Engaging in speculative analysis would not provide meaningful information to inform our decision.[46]

33. The September 29 Order and the EA explain that cumulative impacts can result from the construction of other projects in the same vicinity that impact the same resource areas as the proposed facilities. In such a situation, although the impacts associated with each project might be minor, the cumulative impact resulting from all projects being constructed in the same general area could be greater. Thus, the cumulative impacts analysis in the EA evaluated other projects in the vicinity of the proposed project that affect the same resources in the same approximate time frame.[47] The EA considered

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[45] *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, at PP 94-99 (2012), *order on reh'g*, 140 FERC ¶ 61,076, at PP 8-22 (2012); *Cheniere Creole Trail Pipeline, L.P.*, 142 FERC ¶ 61,137, at PP 51-60, *order on reh'g*, 145 FERC ¶ 61,074, at PP 8-19 (2013).

[46] *See Habitat Education Center v. U.S. Forest Service*, 609 F.3d 897 (7th Cir. 2010) (an environmental impact would be considered too speculative for inclusion in the NEPA document if at the time the document is drafted the impact cannot be described with sufficient specificity to make its consideration useful to a reasoned decision maker.).

[47] September 29 Order, 148 FERC ¶ 61,244 at PP 240-241.

several such projects including a proposed addition to the Calvert Cliffs Nuclear Power Plant, road and bridge upgrades and improvements, residential development, and sewer system construction.

34. Allegheny contends that the Commission takes an unjustifiably constricted view of cumulative impacts and asserts that geographic proximity is not in and of itself the standard for including other actions in a cumulative impacts analysis.[48] Allegheny cites CEQ guidance that states:

> For a project-specific analysis, it is often sufficient to analyze effects within the immediate area of the proposed action. When analyzing the contribution of this proposed action to cumulative effects, however, the geographic boundaries of the analysis almost always should be expanded. These expanded boundaries can be thought of as differences in hierarchy or scale. Project-specific analyses are usually conducted on the scale of counties, forest management units, or installation boundaries, whereas cumulative effects analysis should be conducted on the scale of human communities, landscapes, watersheds, or airsheds.[49]

35. Allegheny's criticism of our analysis ignores the distinction between the geographic scope of projects to be included in a cumulative effects analysis and the geographic scope of the cumulative effects of such projects. CEQ's guidance stated above provides direction to agencies on the appropriate geographic scope of effects to consider when analyzing the impacts of projects or actions that may impact resources cumulatively. It does not delineate which projects should be included in that analysis.

36. In their rehearing requests, Allegheny and EarthReports cite *Mid States*[50] referencing the application of the "reasonably foreseeable" standard in circumstances they claim to be analogous to those present here. *Mid States* involved the Surface Transportation Board's failure, in approving a proposal to construct 280 miles of new railroad and upgrade 600 miles of existing railroad to reach the coal mines of Wyoming's Powder River, to examine the effects on air quality that a reasonably foreseeable increase

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[48] Allegheny Rehearing Request at 19.

[49] *Id.* at 18 (citing CEQ, Considering Cumulative Effects under the National Environmental Policy Act at 12 (1997)).

[50] 345 F.3d 520.

in the supply of low-sulfur coal to power plants would produce. The court held that the Surface Transportation Board was required under NEPA to examine the effects that may occur as a result of the reasonably foreseeable increase in coal consumption, stating that: (1) due to Clean Air Act restrictions, many utilities will likely shift to the low-sulfur coal that will be made available by this project; (2) long-term demand for coal will almost certainly increase as a result of the increased availability of inexpensive coal that the project will provide; (3) the indirect effect, specifically, degradation of air quality resulting from the emission of noxious air pollutants, was identifiable; and (4) parties identified computer models widely used in the electric power industry that could be used to forecast the effects of the project on coal consumption.

37. Here, unlike the circumstances in *Mid States*, the indirect effect is not identifiable. The court in *Mid States* found that "when the *nature* of an effect is reasonably foreseeable, but the extent is not, an agency may not simply ignore the effect."[51] However, in this proceeding, the nature of the effect of any induced natural gas production from the proposed project is not "reasonably foreseeable," as contemplated by the CEQ regulations. Here, it is unknown at this time where, and to what extent, gas development will occur. As the Commission has made clear in prior LNG export cases, it is virtually impossible to accurately estimate how much, if any, of the export volumes at a particular facility will come from existing or new gas production.[52] In addition, it was not disputed in *Mid States* that computer modeling software existed to forecast the project's effects on coal consumption. In contrast, the parties to this proceeding have cited no such modeling software that forecasts when, where, and how gas development attributable to exports from the Cove Point Liquefaction Project will occur.

38. EarthReports asserts that the Commission has not made appropriate use of available tools or news announcements. EarthReports states that the Commission should follow the DOE's lead and undertake a conceptual analysis of the impacts of natural gas production like that included the DOE's Draft Addendum report concerning unconventional gas production for use in its environmental review of LNG projects.[53]

39. The September 29 Order explained that while the DOE Draft Addendum provides certain general estimates about the environmental impacts associated with natural gas production, those impacts have no particular relationship to Dominion's proposal. In its own report, DOE explained:

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[51] *Id.* at 549.

[52] *See Cheniere Creole Trail Pipeline, L.P.*, 145 FERC ¶ 61,074 at P 17.

[53] EarthReports Rehearing Request at 29-30.

> By including this discussion of natural gas production activities, DOE is going beyond what NEPA requires. While DOE has made broad projections about the types of resources from which additional production may come, DOE cannot meaningfully estimate where, when, or by what method any additional natural gas would be produced. Therefore, DOE cannot meaningfully analyze the specific environmental impacts of such production, which are nearly all local or regional in nature.[54]

We affirm the conclusion made in the September 29 Order that the existence of the DOE Draft Addendum provides no basis to alter the conclusions of the EA with regard to whether our environmental review should analyze shale gas.

40. EarthReports also asserts that the September 29 Order failed to adequately consider information from news clips filed in the proceeding indicating that Cabot Oil & Gas (Cabot) has committed to supply gas to one of Dominion's customers. EarthReports contends that the Commission cannot demand certainty about the location of additional well pads, gathering lines, and transmission systems, and refuse to investigate announcements that would provide additional clarity.[55]

41. The September 29 Order addressed this issue and disagreed with the assertions that the cited news clips provided a level of certainty sufficient to support a meaningful analysis of impacts associated with increased natural gas production.[56] The order noted that Pacific Summit Energy, LLC's contract with Cabot has not been submitted as part of the record in the proceeding and that nothing in the record indicates where gas will originate. Even if we were to assume that the gas was to come from Marcellus Shale region supplies, the record lacks sufficient specificity for a meaningful analysis of potential impacts from production. As we explained in the September 29 Order, the Commission has found the impacts of production to be beyond the scope of our review,

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[54] DOE *Addendum to Environmental Review Documents Concerning the Export of Natural Gas from the United States Draft Report* (DOE Addendum) (May 29, 2014), *available at* http://energy.gov/sites/prod/files/2014/05/f16/Addendum_0.pdf.

[55] EarthReports Rehearing Request at 29-31.

[56] September 29 Order, 148 FERC ¶ 61,244 at P 233.

even when particular producers were known to be shippers on the proposed pipeline.[57] The tie between Dominion's customers' gas supplier and the project is more attenuated than in those cases where the producer was a customer of a pipeline project. Moreover, knowing the identity of a supplier, and even the area where its existing wells are located, does not alter the fact that the number, location, and impacts associated with any additional production that the producer may engage in to supply Dominion's customers are matters of speculation.

42. Allegheny and EarthReports cite *Northern Plains*[58] in support of their contention that induced production is a reasonably foreseeable effect of the Cove Point Liquefaction Project's exportation of domestically produced natural gas. *Northern Plains* addressed the issue of whether the Surface Transportation Board should have considered the cumulative impacts of coal bed methane well development as part of its NEPA analysis of a proposed 89-mile-long rail line intended to serve specific new coal mines in three Montana counties. *Northern Plains* is distinguishable because, as part of an earlier, programmatic EIS, the Bureau of Land Management had already analyzed reasonably foreseeable coal bed methane well development which provided the Surface Transportation Board with information about the timing, scope, and location of future coal bed methane well development, whereas the Commission has no similar information in the present case about the timing, location, and scope of future shale (or conventional) well development which might be associated with the proposed Cove Point Liquefaction Project. Moreover, as the Commission stated in the September 29 Order, *Northern Plains* establishes that while agencies must engage in reasonable forecasting in considering cumulative impacts, NEPA does not require an agency to "engage in speculative analysis."[59]

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[57] *See*, *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138, at PP 70-73, *order on reh'g*, 141 FERC ¶ 61,043, at PP 37-41 (2012); *Tennessee Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,161, at PP 178-200, *order on reh'g*, 142 FERC ¶ 61,025, at PP 72-87 (2012), *rev'd on other grounds*, *Delaware Riverkeeper Network v. FERC*, Case No. 13-1015 (D.C. Cir., June 6, 2014); *Transcontinental Gas Pipe Line Co., LLC*, 141 FERC ¶ 61,091, at PP 127-141 (2012), *order on reh'g*, 143 FERC ¶ 61,132, at PP 49-60 (2013).

[58] 668 F.3d 1067.

[59] September 29 Order, 148 FERC ¶ 61,244 at P 230. *See also Natural Res. Defense Council v. Callaway*, 524 F.2d 79, 90 (2d Cir. 1975) (holding that an agency need not "consider other projects so far removed in time or distance from its own that the interrelationship, if any, between them is unknown or speculative").

43. Allegheny notes that *Northern Plains* states that projects need not be finalized before they are reasonably foreseeable and that NEPA requires reasonable forecasting. As noted above, *Northern Plains* concerned the foreseeability of impacts from coal bed methane well development in specific new coal mines in three Montana counties. Here, Allegheny is not asking the Commission to consider the effects of specific proposed but non-finalized projects. Rather, Allegheny asks us to consider the environmental impacts from potential gas production activities in a multistate region. As stated in *Northern Plains*, agencies are not required "to do the impractical, if not enough information is available to permit meaningful consideration."

44. To support its claim that an analysis of the environmental impacts of shale gas production is not impractical, Allegheny points to surveys conducted by agencies and interest groups that estimate the average footprint of well pads for shale gas drilling and associated infrastructure.[60] We affirm our finding in the September 29 Order that the impacts from additional shale gas development supported by LNG export projects are not reasonably foreseeable within the meaning of the CEQ regulations and find that engaging in speculative analysis of survey estimates and projections would not provide meaningful information to inform our decision. This is particularly true where, as discussed above, our approval of the Cove Point Liquefaction Project is not conditioned on an assumption that Dominion's customers will receive gas from any particular supplier or production area. Dominion's customers are not required to enter into purchase contracts prior to our approval of the export facilities and, the source of supply could change over the course of the project's operation. Consequently, our environmental review should not indicate that project approval is tied to assumptions concerning potential gas supply.

3. <u>Air Emissions</u>

45. EarthReports states that the Commission erred in relying on Dominion's plan to purchase nitrogen oxide (NOx) emission offsets to eliminate impacts because these offsets are intended to mitigate for ozone formation and do not mitigate local NOx health impacts.[61] We disagree with EarthReports' interpretation of our analysis. When NOx offsets are discussed throughout the EA, it is in reference to mitigating ozone precursor pollutants impacts.[62] Therefore, the EA also includes detailed air dispersion modeling to identify localized NOx impacts.[63] The September 29 Order explained that the results of

[60] Allegheny Rehearing Request at 13-14.

[61] EarthReports Rehearing Request at 9-10.

[62] *See* EA at section 2.7.1.

[63] *See* EA at 113 through 116.

this modeling demonstrate that NOx impacts will be below the National Ambient Air Quality Standards (NAAQS), which are set by EPA to be protective of human health and welfare.

46. EarthReports maintains that any amount of nitrogen dioxide emissions is linked to significant health impacts and states that the EPA is reconsidering the NAAQS standard. Section 2.7.1 of the EA includes detailed air dispersion modeling in comparison with the NAAQS. In developing each NAAQS, EPA periodically reconsiders the standards, taking into account the latest research on health impacts.[64] Further, the September 29 Order explains that while the EPA may consider available studies and re-evaluate the need to change the applicable thresholds in the future, our environmental analysis was based on the current standards that were issued by EPA following a proposed rulemaking and public comment period.[65]

47. It is speculative to assume the outcome of a potential future EPA rulemaking updating the nitrogen dioxide NAAQS and the final basis for that standard. EPA routinely proposes ranges of NAAQS thresholds for comment and there currently is no proposed range even under consideration. Each standard is developed to provide an adequate margin of safety and considers concentrations for the more sensitive populations at risk for each pollutant (e.g. asthmatics, those with cardiovascular disease, children, the elderly, etc.).

48. EarthReports states that assuming compliance with the Clean Air Act (CAA) does not address potentially significant impacts from hazardous air pollutants. While the EA compares hazardous air pollutant emissions and sources with the CAA's permitting requirements and National Emission Standards for Hazardous Air Pollutants, this is not the sole basis for our analysis. The EA and September 29 Order also explain the toxic air pollutant assessment performed under the Maryland air permitting regulations.[66] The modeled results indicate that the project's air emissions would fall well below Maryland's

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[64] In considering carbon monoxide concentrations, EPA placed less emphasis on health impacts of infrequent concentrations and placed more emphasis on the impacts of repeated exposure concentrations. *Review of National Ambient Air Quality Standards for Carbon Monoxide*; Final Rule. 76 Fed. Reg. 54,293-343 (Aug. 31, 2011).

[65] September 29 Order, 148 FERC ¶ 61,244 at 174.

[66] *See* EA at 116 and September 29 Order, 148 FERC ¶ 61,244 at P 172.

acceptable ambient levels.[67] Therefore, we continue to find the EA's analysis appropriate in determining that impacts would not be significant.

49. EarthReports states that the EA does not include a description of methane emissions, a more potent GHG. [68] EarthReports also contends that the Commission mischaracterized the significance of the project's direct GHG emissions.[69] EarthReports states that the expected direct $CO_{2\text{-eq}}$ emissions from the project are nearly two orders of magnitude greater than the threshold the CEQ has set, in draft guidance, beyond which quantification is recommended in NEPA discussion of GHG emissions.[70]

50. We note that the EA is a summary document that presents all GHG emissions converted to $CO_{2\text{-eq}}$ based on the individual GHG's global warming potential (GWP).[71] All assumptions and detailed calculations for each GHG are available publicly as part of Resource Report 9 to Dominion's application and supplemental filings for the project. Also, the EPA has recognized that GHG emissions are orders of magnitude greater than conventional pollutants. The CEQ has clearly stated that its recommended threshold is not a significance criterion, but rather an indicator of when GHG emissions should be discussed in a NEPA document. Further, the quantity of emissions of a pollutant does not indicate the level of impact on the environment. The EA does follow the CEQ's guidance of quantitatively discussing GHG emissions from project construction and operation.[72] The EA also identifies several climate change related environmental effects in the northeast region resulting from overall GHG emissions.[73]

[67] Maryland's acceptable ambient levels are concentrations of a toxic air pollutant in the atmosphere that provide a margin of safety to protect public health from toxic, noncarcinogenic effects that may be caused by the toxic air pollutant.

[68] EarthReports Rehearing Request at 33.

[69] EarthReports Rehearing Request at 32-33.

[70] EarthReports Rehearing Request at 33.

[71] The GWP is a ratio relative to carbon dioxide that is based on the properties of the GHG's ability to absorb solar radiation, as well as the residence time within the atmosphere. *See* EA at 98.

[72] EA at 107-112.

[73] EA at 170.

51. EarthReports maintains that the Commission should have based the methane $CO_{2\text{-eq}}$ emissions on GWPs published by the Intergovernmental Panel on Climate Change in its 5th assessment report, which was finalized after the EA was issued.[74] EarthReports also continues to state that the Commission's use of a 100-year time period for methane's GWP is inappropriate because the pollutant is short-lived.

52. The new studies that were completed after Commission staff issued the EA do not represent significant new circumstances or information that would require the preparation of a supplemental environmental document.[75] While it is important to consider the latest science, NEPA does not require agencies to constantly revise their issued analyses as new information becomes available. Further, the September 29 Order clearly justifies the Commission's selection of a 100-year GWP value for methane.[76] However, we also note that the liquefaction project's GHG emissions are primarily carbon dioxide (CO_2), as a result of combustion. Direct CO_2 emission comprise about 99.7 percent of the $CO_{2\text{-eq}}$ GHG emissions. Even under the new IPCC report's 20-year methane GWP, direct CO_2 emissions would still constitute over 99 percent of the $CO_{2\text{-eq}}$ emissions. Therefore, methane emissions under any timescale or GWP value would not meaningfully modify the emissions or impacts presented in our analysis.

53. Additionally, EarthReports states that the Commission failed to use the social cost of carbon tool. EarthReports estimates that over the next 20 years the social cost of carbon for the project's GHG emissions will exceed $2 billion and challenges our conclusion that the direct GHG emissions of the project are insignificant.[77]

54. The social cost of carbon tool is used to estimate the comprehensive costs associated with a project's GHG emissions. The tool provides monetized values, on a global level, of addressing climate change impacts and is intended for estimating the climate benefits of rulemakings and policy initiatives. While we recognize the availability of this tool, we believe that for the following reasons, it would not be

[74] The IPCC's 5th assessment report was finalized in November 2014. http://www.ipcc.ch/publications_and_data/publications_and_data.shtml

[75] *See AES Sparrows Point LNG, LLC*, 129 FERC ¶ 61,245, at P 13 (2009) (citing *State of Wisconsin v Weinberger*, 745 F.2d 412, 418 (7th Cir. 1984) (finding a supplement EIS only merited if "new information provides a seriously different picture of the environmental landscape.")). *See also, Altamont Gas Transmission Co.*, 69 FERC ¶ 61,034, at 61,150 (1994).

[76] *See* September 29 Order, 148 FERC ¶ 61,244 at P 245.

[77] EarthReports Rehearing Request at 32.

appropriate or informative to use for this project: (1) the EPA states that "no consensus exists on the appropriate [discount] rate to use for analyses spanning multiple generations"[78] and consequently, significant variation in output can result;[79] (2) the tool does not measure the actual incremental impacts of a project on the environment; and (3) there are no established criteria identifying the monetized values that are to be considered significant for NEPA purposes. While the tool may be useful for rulemakings or comparing alternatives using cost-benefit analyses where the same discount rate is consistently applied, it is not appropriate for estimating a specific project's impacts or informing our analysis under NEPA.

55. EarthReports cites a recent court decision cautioning that although NEPA does not require an explicit cost-benefit analysis, where such an analysis is included it cannot be misleading.[80] In *High Country*, the court stated that "[e]ven though NEPA does not require a cost-benefit analysis, it was nonetheless arbitrary and capricious to quantify the benefits of the lease modification and then explain that a similar analysis of the costs was impossible when such an analysis was in fact possible and was included in an earlier draft EIS."[81] As we explained in the September 29 Order, unlike in *High Country*, our environmental analysis did not attempt to quantify anticipated benefits of project approval while excluding potential costs from a cost-benefit analysis. Although the EA recognizes the unquantified, generic economic benefit of the project in considering the no-action alternative, EarthReports incorrectly assumes that the EA's conclusions and Commission decision relied solely on the economic benefits, supporting its belief that a cost-benefit analysis has occurred. To the contrary, the EA and the September 29 Order note non-economic factors supporting the Cove Point Liquefaction Project, such as the fact that the project will utilize existing facilities and storage tanks and the export facilities will be located on its existing property.[82] Also, the EA clearly explains that under the no-action alternative, the export customers would likely seek alternatives to

[78] *See Fact Sheet: Social Cost of Carbon* issued by EPA in November 2013, *available at* http://www.epa.gov/climatechange/Downloads/EPAactivities/scc-fact-sheet.pdf.

[79] Depending on the selected discount rate, the tool can also project a 20-year value of about $611 million, resulting in an over 200 percent difference in results compared to EarthReports' estimate.

[80] *Id.* at 36 (citing *High Country Conservation Advocates v. U. S. Forest Service*, No. 13-cv-01723-RBJ, 2014 WL 2922751 (D. Colo. June 27, 2014) (*High Country*).

[81] *Id.* at *10.

[82] September 29 Order, 148 FERC ¶ 61,244 at P 10 and P 11.

meet the contracted service, resulting in similar impacts, or costs, for the construction and operation of other facilities.[83] For these reasons, the social cost of carbon tool does not aid or further inform our decision on the project.[84]

4. Indirect and Cumulative Greenhouse Gas Impacts

56. EarthReports contends that the Commission was obligated to analyze the cumulative and indirect impacts of climate change from GHG emissions associated with drilling, transportation, and ultimate burning oversees.[85] EarthReports states that DOE has undertaken a life cycle assessment of GHG emissions from LNG exports and asserts that this demonstrates the feasibility of calculating life cycle GHG emissions from LNG export facilities.[86]

57. As discussed above and in the September 29 Order, the future development of upstream production is speculative and not reasonably foreseeable.[87] DOE acknowledges that its life cycle analysis contained in the Draft Addendum report goes beyond NEPA requirements and states that DOE cannot meaningfully analyze specific upstream impacts.[88] DOE found in the Sabine Pass Liquefaction, LLC Project (DOE/FE Order No 2961-A) that without knowing the specific location and timing for upstream

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[83] *See* EA at 173 and September 29 Order, 148 FERC ¶ 61,244 at P 264 and PP 275 -277.

[84] Our consideration of GHG emissions and climate change was sufficiently informed by section 2.9.9 of the EA which identifies the potential future impacts of climate change in the region and the impact that climate change would have on the project facilities, acknowledges that the emissions associated with the project would increase atmospheric GHG concentrations, and discusses mitigation measures to reduce GHG emissions from the project and protect the facilities from climate change impacts.

[85] EarthReports Rehearing Request at 35.

[86] *Id.* (citing DOE *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas* (DOE Life Cycle Report) (May 29, 2014) *available at*: http://energy.gov/fe/downloads/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.) (A life cycle GHG analysis compares medium and long distance LNG export scenarios with regional fuel alternatives in the destination import markets).

[87] September 29 Order, 148 FERC ¶ 61,244 at P 246.

[88] *Id.* P 236.

production, the environmental impacts are not reasonably foreseeable within the meaning of CEQ's NEPA regulations.[89] Upstream production is therefore outside the scope of our environmental analysis.

58. Similarly, countries seeking to import natural gas will continue to negotiate and find natural gas supplies. Therefore, end use consumption of natural gas will likely occur regardless of whether this project is approved. Although DOE's Life Cycle report concludes that LNG exports will not increase the life cycle GHG emissions, the report also references limitations and uncertainty in the modeling data.[90] The EA considered air emissions, including GHG emissions, attributable to the construction and operation of the project. Air emissions and the climate change impacts of such emissions from the transportation and ultimate consumption of gas exported from the Cove Point Liquefaction Project is not part of the project before us. Accordingly, the Commission believes the information provided in the DOE Addendum and Life Cycle reports is too general to assist us in our consideration of the specific proposal before us.

59. EarthReports also contends that the September 29 Order failed to analyze all of the impacts of climate change on the project, particularly from more intense winds and storms.[91] We disagree. The EA and September 29 Order state that the potential climate change impacts most likely to affect project facilities are increased sea level rise and storm surge.[92] The EA states that the project facilities would be constructed at a

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[89] We note that although EarthReports points to DOE's report to support its contention that this type of life cycle analysis is possible, EarthReports also contends that DOE's analysis and conclusions are incorrect. This further supports our view that this type of forecasting is complex and unreliable, involving speculation and too many uncertainties to be appropriate for NEPA.

[90] The Life Cycle report states that "[t]he natural gas power results are based on U.S. natural gas production in 2010. The results do not include the anticipated 30 percent reduction in upstream life cycle greenhouse gas emissions for new marginal unconventional wells in compliance with EPA's 2012 New Source Performance Standards for the oil and gas sector." DOE Life Cycle Report at 10. In addition, while the DOE Addendum does include an assumed reduction percentage based on the EPA regulation, it notes that "[s]ome states directly adopt federal regulations and standards, but can also make the standards more stringent. For example, in 2013 Pennsylvania revised the requirements associated with its General Permit for Air Pollution Control in Natural Gas Compression and/ or Processing Facilities (GP-5), making it more stringent than some federal standards." DOE Addendum at 22.

[91] EarthReports Rehearing Request at 26.

[92] EA at 171 and September 29 Order, 148 FERC ¶ 61,244 at P 247.

sufficient elevation to avoid conflict with future projected sea level rise and storm surge. With respect to impacts from intense winds and storms, the EA and September 29 Order identify that the facility will be designed to withstand 150 miles per hour sustained wind speeds (equivalent to a category 4 hurricane).[93] Further, Dominion has the ability to safely shut-down operations of the facility and the Coast Guard has the authority to restrict LNG vessel transit in the Chesapeake Bay during or in anticipation of high intensity storm events. Therefore, the impacts of climate change on the project were adequately considered.

5. Segmentation

60. Allegheny contends that our EA improperly segmented the review of upstream pipeline infrastructure. Allegheny asserts that the Commission should have considered Dominion's Atlantic Coast Pipeline and nine other projects intended to connect Marcellus and Utica Shale gas to downstream markets together with the Cove Point Liquefaction Project in a programmatic EIS.[94]

61. When assessing a proposed project's scope under NEPA, an agency must examine both connected and cumulative actions, and may examine similar actions. An agency impermissibly "segments" NEPA review when it divides these federal actions "into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration." Only by comprehensively considering "pending proposals can the agency evaluate different courses of action."

62. Actions are "connected" if they: "[a]utomatically trigger other actions which may require environmental impact statements;" "[c]annot or will not proceed unless other actions are taken previously or simultaneously;" or "[a]re interdependent parts of a larger action and depend on the larger action for their justification." Actions are not "connected" if they have "independent utility."

63. Actions are "cumulative" if they, when viewed with other proposed actions, have cumulatively significant impacts and should therefore be discussed in the same impact statement. Similar to connected actions, cumulative actions must be proposed.

64. In evaluating whether actions are improperly segmented courts typically employ an "independent utility" test, which "asks whether each project would have taken place in

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[93] EA at 133 and September 29 Order, 148 FERC ¶ 61,244 at P 106 and P 211.

[94] Allegheny Rehearing Request at 25.

the other's absence. If so, they have independent utility and are not considered connected actions."[95]

65. Dominion's Atlantic Coast Pipeline is planned to span approximately 550 miles, from Harrison County, West Virginia southeast through Greensville County, Virginia, and terminate in southern North Carolina.[96] The Atlantic Coast Pipeline and other natural gas pipeline projects planned to transport natural gas from the Marcellus and Utica Shale regions to downstream markets are not "connected actions" here within the meaning of NEPA. The Cove Point Liquefaction Project is in no way connected with, or dependent upon, the Atlantic Coast Pipeline, or any other pipeline transportation project. The Cove Point Liquefaction Project can go forward regardless of whether the Atlantic Coast Pipeline or any other pipeline project is authorized by the Commission.[97] Nor will these projects cumulatively affect the same resources impacted by Cove Point Liquefaction Project. Instead of reviewing these non-connected projects in a programmatic analysis, the Commission will consider each proposed project on its own merits, based on the facts and circumstances specific to each proposal.

6. Safety

66. EarthReports contends that the Commission failed to independently analyze the safety impacts of the project and instead referenced compliance with safety regulations promulgated by the U.S. Department of Transportation (DOT).[98] EarthReports also challenges the September 29 Order's explanation of why a quantitative risk assessment was not conducted.[99]

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[95] *Webster v. U.S. Dep't. of Agric.*, 685 F.3d 411, 426 (4th Cir. 2012).

[96] *See* Atlantic Coast Pipeline Frequently Asked Questions, available at https://www.dom.com/library/domcom/pdfs/gas-transmission/atlantic-coast-pipeline/acp-faq-general.pdf. Dominion states that the purpose of the project is to move Marcellus Shale gas from Ohio, West Virginia, and Pennsylvania to Virginia and North Carolina in response to growing market needs for both power generation and for local distribution to customers.

[97] September 29 Order, 148 FERC ¶ 61,244 at P 252.

[98] EarthReports Rehearing Request at 12.

[99] EarthReports Rehearing Request at 13.

67. EarthReports' statement that the Commission did not analyze the safety impacts of the proposed project is inaccurate. Safety impacts were addressed in both the EA and in the September 29 Order. The order explained that the EA's principal focus in summarizing potential hazards is on facilities that may pose a hazard to the public. Commission staff reviewed the engineering design, including specifications, control systems, emergency shutdown systems, hazard detection, hazard control, structural fire protection, and other safety and reliability material in addition to the siting requirements, for all proposed equipment including the liquefaction facilities, power generation equipment, the mixed refrigeration system, offshore gas blowers, gas flares, and the plant air system.[100]

68. The September 29 Order further notes that Commission staff's review focused on the engineering design and safety concepts of the various protection layers, as well as the projected operational reliability of the proposed facilities.[101] These layers would generally be independent of one another so each could perform its function of preventing an incident or of mitigating the severity of an incident, regardless of the failure of any other protection layer. We agree with Commission staff's conclusion in the EA that the inclusion of such systems or safeguards in the facility design minimizes the potential for incidents that could impact the safety of the off-site public.

69. The September 29 Order explains that Dominion's facility must comply with the DOT's *Federal Safety Standards for Liquefied Natural Gas Facilities* in 49 C.F.R. Part 193.[102] Those regulations incorporate by reference portions of the 2001 and 2006 edition of National Fire Protection Association (NFPA) 59A, *Standard for the Production*, *Storage, and Handling of LNG*. The order notes that Chapter 15 of the 2013 edition of NFPA 59A allows use of a quantitative risk assessment subject to acceptance by DOT. The order goes on to explain however that the 2013 edition of NFPA 59A is not currently part of the federal regulations covering LNG. There are multiple unresolved issues with the NFPA 59A quantitative risk assessment methodology requiring the establishment of specific assumptions, inputs, databases, and models on which to base such an analysis.[103] The September 29 Order explains that a quantitative risk-based siting methodology must be able to produce consistent results when used by different parties examining the same installation. Until these issues are resolved, the methods provided for conducting a quantitative risk assessment can be manipulated to

[100] September 29 Order, 148 FERC ¶ 61,244 at P 194.

[101] *Id.* P 195 (citing EA at 132).

[102] *Id.* P 184.

[103] EA at 148.

achieve widely divergent results, which questions their appropriateness as a siting methodology. In addition, there are no quantified acceptance criteria for acceptable or tolerable risks in the U.S. regulatory framework.[104] Even after issues such as equipment failure frequency and selection of appropriate consequence models are settled, there are no established criteria on which to judge the resulting numerical estimates of risk. As a result, the Commission relies on an assessment of whether the proposed facilities would be able to operate safely and securely and minimize potential public safety impacts.[105] This review is based on a technical review of the facility engineering design, as well as a review of the siting analysis that Dominion must perform in order to comply with the DOT's regulations in 49 C.F.R. Part 193. We find that the September 29 Order and the EA independently analyzed potential safety impacts and that the order adequately explained our rationale for not performing a quantitative risk assessment.

7. Shipping and Ballast Water Impacts

70. EarthReports challenges the September 29 Order's reliance on Maryland Department of the Environment Science Services Administration's statement that "because the project does not entail increased shipping traffic over and above prior approvals, there is no anticipated increased risk of ballast water introduction from the project."[106] EarthReports asserts that because import vessels did not discharge ballast water, whereas the export vessels will, Dominion's change in operations does present an increased risk that the ballast water will introduce invasive species or otherwise pollute the Chesapeake Bay.[107]

71. EarthReports criticizes the September 29 Order's finding that current regulations requiring an open ocean ballast water exchange and new Coast Guard regulations likely to take effect before the project is operational provide best management practices.[108] EarthReports contends that potentially significant impacts from ballast water discharges may still occur if the Coast Guard delays the new ballast water regulations. EarthReports

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[104] Although the 2013 edition of NFPA 59A presents individual and societal risk acceptability criteria (Tables 15.10.1 and 15.10.2, respectively), these have not been reviewed and incorporated into the federal regulations on LNG facility siting.

[105] EA at 125.

[106] EarthReports Rehearing Request at 15 (citing September 29 Order, 148 FERC ¶ 61,244 at P 127).

[107] *Id.* at 15.

[108] *Id.* at 16 (citing September 29 Order, 148 FERC ¶ 61,244 at 127-129).

further asserts that the new regulations do not remove the threat of invasive species and biofouling organisms.[109]

72. The Commission's conclusion on impacts associated with shipping and ballast water impacts was presented in the EA and did not rely solely upon comments provided by the Maryland Department of the Environment Science Services Administration, which were received after issuance of the EA. As indicated in the September 29 Order, the EA acknowledges and appropriately discloses the risks of invasive species introduction and water quality impacts from shipping even with federal controls.[110] The EA and order also state that the currently-required measures for all ships entering U.S. waters, including offshore ballast water exchange, provide best management practices to minimize risks from invasive species and contamination from non-U.S. ports. Dominion's vessel operators will be required to comply with current and future Coast Guard regulations. Whether the regulations are updated in 2016 or at some point in the future, Dominion's operators will be subject to the most recent regulations.

73. While EarthReports may believe that current regulations, including the use of offshore ballast water exchange, are not adequate to protect water quality, the Commission has disclosed the impacts associated with compliance and implementation of these regulations. EarthReports believes that our analysis should result in the elimination of all risk from ballast water exchange and biofouling organisms and the Commission should be "requiring mitigation beyond the current regulations."

74. NEPA requires that possible mitigation be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated, but does not require that a complete plan to mitigate environmental harm be formulated before an agency may act.[111] Moreover, an agency need not conclude that all impacts require mitigation; NEPA does not constrain an agency from concluding that other values outweigh the environmental costs of a proposed action.[112] It is outside of the Commission's jurisdiction and expertise to promulgate regulations or invent best management practices

[109] *Id.* at 16-19.

[110] September 29 Order, 148 FERC ¶ 61,244 at P 128, EA at 53-54.

[111] *See, Public Service Co. of New Hampshire*, 68 FERC ¶ 61,177, at 61,870 (1994) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). *See also, Ruby Pipeline, L.L.C.*, 133 FERC ¶ 61,015, at P 33 (2010); and *Southern Natural Gas Co.*, 85 FERC ¶ 61,134, at 61,512 (1998).

[112] *See, Public Service Co. of New Hampshire*, 68 FERC ¶ 61,177 at 61,870. *See also, Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,198, at P 29 (2012).

regarding ballast water exchange and invasive species control that go above and beyond the currently-approved regulations enforced by the Coast Guard. Given these factors, in addition to the fact that Maryland does not currently require more stringent standards than the federal ballast water program, the Commission has no grounds to presume the established regulations are not satisfactory for maintaining the quality of the environment in the project area. Therefore, we affirm that the EA and the September 20 Order adequately disclose the potential impacts and discuss potential mitigation for impacts associated with ballast water exchange and introduced invasive species.

8. North Atlantic Right Whale

75. EarthReports states that the Commission and the U.S. National Oceanic and Atmospheric Administration (NOAA) failed to adequately analyze potential impacts on the North Atlantic right whale.[113] Specifically, EarthReports challenges Commission and NOAA staff's reliance on a six-year-old study of impacts associated with Dominion's 2007 import expansion project.[114] In addition, EarthReports asserts that the agencies also should have considered how current and future development of area ports and other infrastructure, such as offshore drilling and seismic activities, as well as climate change, might affect the North Atlantic right whale and compound the effects of the project.[115]

76. The Commission staff and NOAA, during the informal consultation process, reviewed previous extensive analyses for past Cove Point projects (the Cove Point Expansion Project and Pier Reinforcement Project) that originally assessed the effects of vessel traffic of up to 200 LNG vessels annually, a quantity greater than the currently-approved 85 LNG vessels per year with an additional 42 barges anticipated over an 18-month period during construction.[116] Staff reviewed the potential impacts and the measures required in Dominion's existing Vessel Strike Avoidance Measurers and Injured and Dead Protected Species Reporting Plan, as well as NOAA's regulations regarding vessel speed restrictions. During this review, both Commission staff and NOAA did not find a significant difference in the type of impacts and available mitigation measures associated with the project that would necessitate a change in the previous determination of effect for the North Atlantic right whale.

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[113] EarthReports Rehearing Request at 21.

[114] *Id.* at 21-25

[115] *Id.* at 26.

[116] *See* the Environmental Impact Statement for the Cove Point Expansion Project, April 2006, Docket No. CP05-130-000 *et al.* and EA for the Pier Reinforcement Project, May 2009, Docket No. CP09-60-000.

77. With regard to the purported increase in vessel traffic, the potential change in LNG vessel transit and ship traffic since the previous analyses was also evaluated for the project and presented in the EA.[117] The Coast Guard concurred that the project should not result in an increase in the size and/or frequency of LNG marine traffic beyond what was originally envisioned in the current Waterway Suitability Assessment for the Cove Point Terminal. The EA also indicated that the volume and size of vessels authorized would not change from the previous analyses and that the maximum authorized ship traffic to the Cove Point Terminal would only account for 1.6 percent of commercial ship traffic transitioning past the Cove Point Terminal annually.[118] As such, we conclude that the analyses for the previous Cove Point projects and in the EA adequately considered the effects of vessel traffic and indicated that the project would not substantially increase the number and type of vessels previously reviewed for the Cove Point Terminal. Thus, we conclude that the review of impacts on the North Atlantic right whale from vessel transit associated with the project did not trigger a significant change that would necessitate an alteration in the previous determination of effect for the North Atlantic right whale.

78. Regarding potential effects on whales compounded from current and future development of area ports and other infrastructure, offshore drilling and seismic activities, and climate change, the analysis contained in the EA for this project and past Cove Point projects adequately characterizes the threat of impact on the North Atlantic right whale. The Commission is unaware of future development that would increase ship traffic and does not speculate on the scope or effect of these undefined activities. However, the Commission is comfortable that in the review of future threats to the North Atlantic right whale, NOAA will direct appropriate measures to protect the species. Therefore, we affirm the determination in the September 20 Order that the EA properly concluded that the project is not likely to adversely affect the North Atlantic right whale and that consultation is complete for this species.

9. Sufficiency of the EA

79. Allegheny and EarthReports assert that the Commission violated NEPA by failing to prepare an EIS for the project.[119] Allegheny notes that the Commission's regulations state that an EIS will normally be prepared for authorizations under sections 3 or 7 of the Natural Gas Act for the siting, construction, and operation of jurisdictional LNG import/export facilities.[120] Allegheny states that when indirect and cumulative effects of

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[117] EA at 89.

[118] *Id.*

[119] Allegheny Rehearing Request at 21; EarthReports Rehearing Request at 4-9.

[120] Allegheny Rehearing Request at 21-22 (citing 18 C.F.R. § 380.6(a)(1)).

natural gas production and downstream emissions are considered, the EA cannot support the finding of no significant impact. EarthReports contends that proposed construction activities (including building a pier to receive construction equipment, clearing land for a construction staging area, and constructing a 130 megawatt power plant) combined with the on-site storage of chemicals and receipt of LNG tankers once the project is operational justifies the preparation of an EIS.

80. Though the CEQ regulations do not provide an explicit definition of the term "significant impacts," they do provide that whether a project's impacts on the environment will be considered "significant" depends on both "context" and "intensity."[121] Context means that the "significance of an action must be analyzed in several contexts," including "the affected region, the affected interest, and the locality."[122] With regard to "intensity," the CEQ regulations set forth 10 factors agencies should consider, including: the unique characteristics of the geographic area, the degree to which the effects are highly controversial or highly uncertain or unknown, the degree to which the action may establish a precedent for future actions, whether the action is related to other actions with insignificant but cumulatively significant impacts, and the degree to which the action may adversely affect threatened and endangered species.[123]

81. Commission staff determined that an EA was appropriate in this case because the proposed facilities would be within the footprint of the existing Cove Point Terminal and because the relevant issues that needed to be considered were relatively small in number and well-defined. The project impacts listed are discussed in detail in the EA and the September 29 Order, and we are satisfied that the potential impacts are not significant.

82. As detailed above, the Commission has found that impacts resulting from additional production of natural gas are beyond the necessary scope of its inquiry and that no substantial question relating to the impacts of air emissions from the project exists. The impacts associated with additional gas production, as they relate to Dominion's project, are not reasonably foreseeable and do not qualify as "highly controversial" for NEPA purposes. For an action to qualify as "highly controversial" for NEPA purposes, there must be a "dispute over the size, nature, or effect of the action, rather than the existence of opposition to it."[124] A controversy does not exist merely because

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[121] 40 C.F.R. § 1508.27 (2014).

[122] *Id.*

[123] *Id.*

[124] *See Cheniere Creole Trail Pipeline, L.P.*, 145 FERC ¶ 61,074 at P 23 (citing *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1557 (2d Cir. 1992)).

individuals or groups vigorously oppose, or have raised questions about, an action.[125] We do not find that our action here meets the standard of "controversial" so as to require the preparation of an EIS. The EA concludes, and we agree, that the project would not have a significant impact on the quality of the human environment. Thus, an EIS is not required.

10. Conformity with the Natural Gas Act

83. Allegheny and EarthReports contend that the September 29 Order erred in its determination of whether the Virginia Facilities should be authorized under the Natural Gas Act, as implemented through the Certificate Policy Statement.[126]

84. The September 29 Order states that since Dominion's proposed Virginia Facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.[127] The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.[128] The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences.

85. Allegheny and EarthReports repeat their contentions that: (1) the September 29 Order failed to adequately consider indirect and cumulative impacts of upstream production; and (2) the finding of no significant environmental impact was unjustified. For those reasons, Allegheny and EarthReports assert that the order failed to appropriately balance public benefits against potential adverse environmental impacts. As discussed above, the Commission need not analyze the impacts of upstream production for the purposes of our environmental analysis for this project and the EA's conclusion that the project would result in no significant environmental impact is

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[125] *Id.*

[126] Allegheny Rehearing Request at 26 and EarthReports Rehearing Request at 41.

[127] 15 U.S.C. §§ 717f(c) and 717f(e) (2012).

[128] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified,* 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

supported. Thus, we find no error in the September 29 Order's application of the Certificate Policy Statement.

C. **Stay Requests**

86. On October 15, 2014 and December 24, 2014, respectively, EarthReports and Allegheny filed motions for stay of the September 29 Order pending rehearing and judicial review, claiming that the project would cause irreparable environmental impacts.[129] Dominion filed an answer to EarthReports' request for stay. Since the Commission is now acting on the requests for rehearing and there is no pending judicial appeal of this order, the requests for stay are moot.

The Commission orders:

Allegheny, BP, and EarthReports' requests for rehearing of the September 29 Order are denied as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[129] In addition, on October 3, 3014 EarthReports filed comments in opposition to Dominion's request for approval of its Implementation Plans, and for a notice to proceed with initial site preparation. EarthReports argued that certain compliance information was inadequate or improperly filed. Commission staff found Dominion to be in compliance with the conditions of the September 29 Order and granted Dominion's request to proceed with site preparation.