

153 FERC ¶ 61,074  
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. CP15-22-000

Dominion Cove Point LNG, LP

Docket No. CP15-24-000

ORDER ISSUING CERTIFICATES

(Issued October 20, 2015)

1. On December 3, 2014, Dominion Cove Point LNG, LP (Dominion Cove Point) filed two applications, one in Docket No. CP15-22-000 (St. Charles Project) and the other in Docket No. CP15-24-000 (Keys Project), pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for authority to construct and operate certain facilities in Fairfax County, Virginia, and Charles County, Maryland. The proposals will enable Dominion Cove Point to provide service to two contemplated power plants. For the reasons discussed below, the Commission will grant the requested authorizations, subject to the appropriate conditions.

**Background and Proposals**

2. Dominion Cove Point is a limited partnership organized and existing under the laws of Delaware. Dominion Cove Point owns the Cove Point liquefied natural gas (LNG) Terminal near Lusby, in Calvert County, Maryland, as well as an 88-mile-long gas pipeline system extending from the LNG Terminal to connections with interstate pipelines in Loudoun and Fairfax Counties, Virginia. Dominion Cove Point also owns and operates a compressor station on the pipeline, known as the Pleasant Valley Compressor Station, in Fairfax County.

3. CPV Maryland, LLC (CPV) has proposed to build a 725-megawatt natural gas-fired, combined cycle power plant in Charles County, Maryland (St. Charles Energy Center). According to Dominion Cove Point, this facility will generate enough electricity to power more than 700,000 homes.

4. Keys Energy Center, LLC (Keys) has proposed to build a 735-megawatt natural gas-fired, combined cycle electric generating power plant in Prince George's County, Maryland (Keys Energy Center). Dominion Cove Point states that this facility will generate enough electricity to power more than 500,000 homes.

**A. St. Charles Project – Docket No. CP15-22-000**

5. Dominion Cove Point proposes to add electric compression at its existing Pleasant Valley Compressor Station in Fairfax County, Virginia, and install two new pipeline taps in Charles County, Maryland. Specifically, Dominion Cove Point proposes to install one new 7,000 horsepower (hp) electric compressor; replace the existing filter-separator; install a new gas cooler; and install measurement upgrades, meter runs, and piping, fittings, and valves at its Pleasant Valley Compressor Station. Dominion Cove Point also proposes to construct and operate two new 16-inch delivery taps in Charles County, Maryland, which are required for customer delivery.<sup>1</sup> Dominion Cove Point states that the facilities will enable it to provide 132,000 dekatherms per day (Dth/d) of incremental firm transportation service to CPV.

6. Dominion Cove Point conducted an open season for the St. Charles Project in March and April 2012. As a result of the open season, Dominion Cove Point executed a precedent agreement with CPV for 132,000 Dth/d of incremental firm transportation service, i.e., the design capacity of the St. Charles Project from Transcontinental Gas Pipe Line's receipt point at Pleasant Valley in Fairfax County, Virginia, to the new St. Charles delivery point in Charles County, Maryland. The precedent agreement has a primary term of 20 years. Dominion Cove Point states that it also conducted a reverse open season but did not receive any bids in response to its posting.

7. The estimated cost for the construction of the St. Charles Project is \$30,618,189. Dominion Cove Point proposes to charge a cost-based incremental firm transportation base rate to recover the cost of the St. Charles Project facilities. There are no negotiated rates proposed.

8. Dominion Cove Point also seeks authorization to place the proposed two 16-inch delivery taps in Charles County, Maryland, into service upon the completion of construction to allow CPV to bring test gas, or initial supplies, to the St. Charles Energy Center on an interruptible basis prior to the in-service date of the St. Charles Project.

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<sup>1</sup> The proposed taps will be installed on Dominion Cove Point's TL-522 and TL-532 pipelines.

**B. Keys Project – Docket No. CP15-24-000**

9. Dominion Cove Point proposes to install one new 6,000 hp electric compressor and one new gas cooler, as well as rearrange interconnecting pipe to and from the supply/discharge headers at its existing Pleasant Valley Compressor Station. Dominion Cove Point also proposes to construct two new 16-inch delivery taps, a new metering and regulating (M&R) station, and one building that would house electronic control equipment in Charles County, Maryland, to interconnect with Keys. Dominion Cove Point states that the proposals will enable it to provide 107,000 Dth/d of incremental firm transportation service to Keys.

10. Dominion Cove Point conducted an open season for the Keys Project in March and April 2012. As a result of the open season, Dominion Cove Point executed a precedent agreement with Keys for 107,000 Dth/d of incremental firm transportation service, i.e., the design capacity of the Keys Project from the Pleasant Valley Interconnect in Fairfax Country, Virginia, to the Keys Energy Center Lateral Interconnect in Charles County, Maryland. The precedent agreement has a primary term of 20 years. Dominion Cove Point states that it also conducted a reverse open season but did not receive any bids in response to its posting.

11. The estimated cost for the construction of the Keys Project is \$36,615,014. Dominion Cove Point proposes to charge a cost-based incremental firm transportation base reservation rate to recover the costs of the Keys Project facilities.

**Notice and Interventions**

12. Public notices of Dominion Cove Point's applications in Docket Nos. CP15-22-000 and CP15-24-000 were published in the *Federal Register* on December 23, 2014 (79 Fed. Reg. 76,993). CPV filed a motion to intervene in CP15-22-000. Keys, PSEG Energy Resources and Trade, LLC and Public Service Company of North Carolina filed motions to intervene in Docket No. CP15-24-000. Allegheny Defense Project and Wild Virginia (jointly, Allegheny) and Statoil Natural Gas, LLC filed motions to intervene in both dockets. All the motions were timely filed and unopposed.<sup>2</sup>

13. CPV filed comments supporting the application in CP15-22-000. Allegheny filed comments requesting that the Commission consider the jurisdictional St. Charles and Keys Projects and the non-jurisdictional power plant construction activities in one environmental impact statement (EIS), evaluate the indirect impacts of Dominion Cove Point's proposals, and prepare a programmatic EIS addressing gas infrastructure and

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<sup>2</sup> Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2015).

development in the Marcellus and Utica shale regions. Dominion Cove Point filed an answer to Allegheny's comments. The environmental comments and concerns raised by Allegheny were addressed in the environmental assessment prepared for the projects.

### **Discussion**

14. Since Dominion Cove Point's proposed 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.

#### **A. Application of the Certificate Policy Statement**

15. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>3</sup> The Certificate Policy Statement establishes 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 explains 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. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

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

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<sup>3</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

17. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Here, Dominion Cove Point proposes incremental base reservation recourse rates for the transportation services to be provided by both the St. Charles Project and the Keys Project, which are designed to recover the costs of each proposed project without increasing the rates of existing customers. Thus, the St. Charles Project and Keys Project proposals meet the Certificate Policy Statement's threshold requirement because Dominion Cove Point will not rely on subsidies from existing customers.

18. The proposed St. Charles Project has been designed to create additional capacity which has been subscribed by CPV. Similarly, the Keys Project has been designed to create additional capacity which has been subscribed by Keys. Neither proposal will adversely affect Dominion Cove Point's existing customers because the projects will not degrade existing service. Also, the projects should not affect existing pipelines in the market or their captive customers because the proposed facilities are designed to create incremental capacity to serve new market requirements. Further, no pipeline or their captive customers have protested either of Dominion Cove Point's proposals. Thus, the Commission finds that there will be no adverse impacts on Dominion Cove Point's existing customers or other pipelines and their captive customers.

19. The proposed facilities for the St. Charles Project and the Keys Project will be constructed on land currently owned or leased by Dominion Cove Point which supports existing natural gas facilities. All of the construction will be within the property boundaries of Dominion Cove Point's existing compressor station facilities or existing rights-of-way. No landowner has protested the filings. Thus, the projects have been designed to minimize impacts on landowners and the communities.

20. CPV and Keys have subscribed to all of the capacity to be created by the construction of the facilities proposed in the project by which they will be served. Based on the benefits Dominion Cove Point's proposals will provide CPV and Keys, the lack of adverse effects on existing customers and other pipelines and their captive customers, and minimal adverse effects on landowners or communities, the Commission finds that, consistent with the Certificate Policy Statement and subject to the environmental discussion below, Dominion Cove Point's St. Charles Project and Keys Project are required by the public convenience and necessity, as conditioned in this order.

## **B. Rates**

21. For the St. Charles Project, Dominion Cove Point proposes an initial incremental firm recourse reservation charge of \$3.7417 per Dth under currently-effective Rate Schedule FTS and a commodity charge of \$0.0012 per Dth, equal to the currently-

effective Cove Point East base commodity charge.<sup>4</sup> The proposed recourse reservation charge is calculated using a first year cost of service of \$5,926,891,<sup>5</sup> which is based on: (1) Operation and Maintenance (O&M) expenses of \$359,270; (2) depreciation expenses of \$863,433; (3) other taxes of \$496,015; and (4) a pre-tax return of \$4,208,173, and reflects annual billing determinants of 1,584,000 Dth/d. Dominion Cove Point proposes to use its existing system depreciation rate of 2.82 percent and pre-tax rate of return of 14.00 percent, approved as part of its last rate case settlement in Docket No. RP11-2137-000.<sup>6</sup> Dominion Cove Point's proposed incremental reservation charge for the St. Charles Project is higher than the system recourse reservation charge contained in Dominion's tariff.<sup>7</sup>

22. For the Keys Project, Dominion Cove Point proposes an initial incremental firm recourse reservation charge of \$5.4278 per Dth under currently-effective Rate Schedule FTS and a commodity charge of \$0.0012 per Dth, again equal to the currently-effective Cove Point East base commodity charge. The proposed recourse reservation charge is calculated on a first year cost of service of \$6,969,326,<sup>8</sup> which is based on: (1) O&M expenses of \$314,355; (2) depreciation expenses of \$1,032,543; (3) other taxes of \$589,502; and (4) a pre-tax return of \$5,032,926, and reflects annual billing determinants of 1,284,000 Dth/d. Dominion Cove Point proposes to use its existing system depreciation rate of 2.82 percent and pre-tax rate of return of 14.00 percent, approved as part of its last rate case settlement in Docket No. RP11-2137-000.<sup>9</sup> Dominion Cove Point's proposed incremental reservation charge for the Keys Project is higher than the system recourse reservation charge contained in Dominion Cove Point's tariff.

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<sup>4</sup> The base commodity (usage) charge for Cove Point East is reflected in the Summary of Incremental Rates at Tariff Record No. 10.35 of Dominion Cove Point's FERC Gas Tariff, First Revised Volume No. 1.

<sup>5</sup> See St. Charles Project Application at Exhibit P.

<sup>6</sup> *Dominion Cove Point LNG, LP*, 140 FERC ¶ 61,013 (2012) (*Dominion*).

<sup>7</sup> Dominion Cove Point's currently effective Rate Schedule FTS reservation charge is \$0.4388 per Dth.

<sup>8</sup> See Keys Project Application at Exhibit P.

<sup>9</sup> *Dominion*, 140 FERC ¶ 61,013.

23. In response to Commission staff's February 4, 2015 data request, Dominion Cove Point provided a breakdown of O&M costs by FERC account number and between labor and non-labor costs for the St. Charles Project and for the Keys Project. Specifically, Dominion Cove Point's response identified a total of \$160,994 and \$142,680 in non-labor O&M costs for the St. Charles Project and Keys Project, respectively, for FERC account numbers 853, 857, 864, and 865. Consistent with the Commission's regulation requiring the use of straight fixed variable rate design (SFV),<sup>10</sup> these costs are classified as variable costs and should be recovered through a usage charge, not through the reservation charge as proposed. Accordingly, the Commission will direct Dominion Cove Point to classify its costs consistent with a SFV rate design and to recalculate both the St. Charles Project and the Keys Project incremental base reservation charge to recover only fixed costs when it files actual tariff records.

24. Under the Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate will exceed the maximum system-wide rate.<sup>11</sup> While we are requiring Dominion Cove Point to recalculate the St. Charles Project and Keys Projects reservation charges, it does not appear that removal of the improperly classified variable costs from the costs recoverable through the reservation charges will result in incremental reservation charges that are less than Dominion Cove Point's system reservation charge. Thus, because the resulting incremental base reservation charges will be higher than Dominion Cove Point's existing Rate Schedule FTS system rate, the Commission will approve, subject to the conditions discussed above, Dominion Cove Point's proposed incremental base reservation charges as initial recourse rates for firm service on the proposed projects.

25. Dominion Cove Point's proposed commodity charge for capacity on both the St. Charles Project and Keys Project is \$0.0012 per Dth, i.e., the Cove Point East commodity charge. Pursuant to the Commission's regulations, pipelines are required to base their minimum rates on the variable costs which are properly allocated to the service.<sup>12</sup> Thus, the Commission will require Dominion Cove Point to calculate initial incremental usage charges based on the variable costs allocated to each project or justify its proposed use of the Cove Point East commodity charge.

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<sup>10</sup> 18 C.F.R. § 284.7(e) (2015).

<sup>11</sup> Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,745.

<sup>12</sup> 18 C.F.R. § 284.10(c)(4)(ii) (2015).

26. Dominion Cove Point did not propose a transportation rate for interruptible service for capacity on either the St. Charles Project or the Keys Project. Consistent with Commission policy, the Commission will require Dominion Cove Point to use its system interruptible transportation rates for interruptible service on either project.<sup>13</sup>

27. To assure that costs are properly allocated between Dominion Cove Point's existing shippers and the incremental services proposed herein, the Commission directs Dominion Cove Point to keep separate books and accounting of costs attributable to the St. Charles Project and to the Keys Project. The books should be maintained with applicable cross-references, as required by section 154.309 of the Commission's regulations.<sup>14</sup> This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.<sup>15</sup> Such measures protect existing customers from cost overruns and subsidization that might result from under-collection of the projects' incremental costs of service, as well as assist the Commission and parties to the rate proceedings in determining the costs of the projects.

#### **Fuel Retainage and Other Transportation Rates**

28. Dominion Cove Point proposes to charge St. Charles Project and Keys Project shippers all other applicable rates, charges, and surcharges under its Rate Schedule FTS, such as Transmission Electric Power Cost Adjustment (EPCA) charges, the maximum FTS fuel retention percentage, and the Cove Point East fuel retention percentage.<sup>16</sup> Dominion Cove Point states that it expects that changes will be required in the EPCA tariff provisions that will affect other Dominion Cove Point customers in addition to CPV and Keys. As a result, Dominion Cove Point plans to propose such tariff changes in a filing to be made 30 to 60 days before the in-service date of these projects. The Commission has previously found it appropriate for a pipeline to submit tariff records concerning a certificate proceeding in a section 4 proceeding, rather than the section 7 proceeding, when the proposed tariff revisions would affect not only project customers,

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<sup>13</sup> *E.g., Transcontinental Gas Pipe Line Corp.*, 124 FERC ¶ 61,160, at PP 27-28 (2008).

<sup>14</sup> 18 C.F.R. § 154.309 (2015).

<sup>15</sup> *See Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008).

<sup>16</sup> For Rate Schedule FTS service, Dominion Cove Point charges the Cove Point East fuel retention percentage, in addition to the FTS fuel retention percentage, for deliveries to points other than the Cove Point LNG Plant.

but other customers as well.<sup>17</sup> We find that reasoning applies here and will require Dominion Cove Point to submit the revised tariff records 30 to 60 days before the in-service date, as it has proposed.

29. The Commission approves Dominion Cove Point's proposal to charge its Rate Schedule FTS fuel retention percentage, Cove Point East fuel retention percentage, and EPCA charges.

### **Environmental Analysis**

30. On January 5, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed St. Charles Transportation and Keys Energy Projects and Request for Comments on Environmental Issues* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; and local libraries and newspapers.

31. We received comments in response to the NOI from the Allegheny Defense Project/Wild Virginia and the Virginia Department of Environmental Quality (VDEQ). The primary issues raised concerned impacts on the Elklick Woodlands Natural Area Preserve and associated natural heritage resources, Cub Run, the wood turtle, water quality, and wetlands.

32. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an environmental assessment (EA) for Dominion Cove Point's proposals. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

33. The EA was issued for a 30-day comment period and placed into the public record on June 19, 2015. The Commission received comments on the EA from the VDEQ, whose filing included concerns of other Virginia and local agencies; the Virginia Department of Conservation and Recreation, and Dominion Cove Point. These comments address the applicable permits and approvals, potential wetland impacts, hazardous waste impacts, sensitive resource areas near the Pleasant Valley Compressor Station, and appropriate environmental oversight. Dominion Cove Point's comments provide additional clarification regarding information included in the EA.

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<sup>17</sup> *Dominion Cove Point LNG, LP*, 148 FERC ¶ 61,244, at P 67 (2014).

34. The VDEQ reiterates comments filed in response to the NOI. Resource concerns it identifies, including impacts on water quality, stormwater/waste management, wetlands, forest resources, sensitive species, wildlife resources, historic properties, and air quality were addressed in the EA (sections B.3.0, B.4.0, B.5.0, and B.7.0, respectively). The EA concludes that these impacts would be minimized by implementation of Dominion Cove Point's proposed mitigation and additional measures recommended by Commission staff in the EA.

35. VDEQ also recommends that FERC condition the St. Charles and Keys Projects to require adherence to applicable requirements of the Chesapeake Bay Preservation Act and Regulations. We note, however, that VDEQ already provided consistency concurrence to Dominion Cove Point on December 16, 2014, regarding Chesapeake Bay Preservation Areas, and indicated that there are certain statutory and regulatory requirements, identified in its filing, with which Dominion Cove Point must continue to comply in order to remain consistent. These include an erosion and sediment control plan and a stormwater management plan approved by VDEQ, locating facilities outside of Resource Protection Areas, and constructing and operating the facility in compliance with applicable state and federal permits to protect water resources. As indicated in the EA, Dominion Cove Point has committed to adopting these measures, including complying with the appropriate erosion and sediment control and stormwater management requirements. Dominion Cove Point has also committed to apply for and receive any appropriate permits.<sup>18</sup> Therefore, an additional condition to require these measures is not warranted.

**a. Hazardous Wastes/Wetlands/Sensitive Habitat/Natural Heritage Resources**

36. Comments from Fairfax County were included in the letter from VDEQ. Fairfax County states that the potential seepage of fuel at the Pleasant Valley Compressor Station in Fairfax County could impact wetlands adjacent to the existing facility. While the projects will not result in any direct wetland impacts at the Pleasant Valley Compressor Station, Dominion Cove Point will implement the protective measures included in FERC's Upland Erosion Control, Revegetation, and Maintenance Plan (Plan), and Wetland and Waterbody Construction and Mitigation Procedures (Procedures) with minor modifications.<sup>19</sup> Section IV.A.1 of the Procedures addresses fuel containment near wetlands and requires, among other things, that hazardous materials, including fuels, are not stored within 100 feet of a wetland, waterbody, or designated municipal watershed area. Also, secondary containment is required for all hazardous materials.

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<sup>18</sup> EA at pages 7 to 10.

<sup>19</sup> EA at page 14.

Section IV.A.2 of the Procedures addresses prompt and effective cleanup of spills, requiring that materials always be available onsite to remediate any inadvertent spills. In addition, Dominion Cove Point is required to prepare a Spill Prevention Containment and Countermeasures Plan (SPCC Plan) for both projects that would specify the secondary containment requirement (usually 110 percent of the fluid amount). We conclude that these measures will adequately protect wetlands in the vicinity of the Pleasant Valley Compressor Station from potential fuel spills.

37. Given that Dominion Cove Point intends to place an aboveground facility (the CPV Maryland Interconnect) in a palustrine emergent wetland, the EA recommends that Dominion Cove Point file a revised plot plan for the CPV Maryland Interconnect to avoid direct wetland impacts; or provide documentation from the U.S. Army Corps of Engineers and Maryland Department of the Environment that its permit allows placement of the facility in the wetland.<sup>20</sup> We agree with the EA's recommendation and we have included Environmental Condition number 11 to ensure that impacts on wetlands are minimized.<sup>21</sup>

38. The VDEQ has requirements that pesticides and herbicides be used strictly in accordance with manufacturers' recommendations, and recommends that the least toxic method be used. Our Procedures specify that herbicides and pesticides not be used within 100 feet of a wetland or waterbody unless allowed by the appropriate land management or state agency (section D.2). The EA properly concludes that Dominion Cove Point's commitment to the measures identified in the Plan and Procedures, and adherence to other relevant permits during construction and operation, would adequately minimize impacts.<sup>22</sup>

39. Fairfax County also comments that although Dominion Cove Point would only utilize land within the existing fenced area at the Pleasant Valley Compressor Station, impacts could occur on environmentally sensitive wetlands present within the Ellick Woodlands just outside of the fenced area. Our Plan and Procedures, as well as Dominion Cove Point's Erosion & Sediment Control Plan, provide protective measures to contain construction materials within the limit of disturbance. Section IV.F.3 of FERC's Plan specifies the requirement for sediment barriers, which are intended to stop the flow of sediments and to prevent the deposition of sediments beyond approved workspaces or into sensitive resources. The EA<sup>23</sup> indicates that Dominion Cove Point

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<sup>20</sup> EA at page 16.

<sup>21</sup> EA at page 16.

<sup>22</sup> EA at pages 16 and 17.

<sup>23</sup> EA at page 10

would comply with VDEQ's 1992, Third Edition, Virginia Erosion and Sediment Control Handbook to further minimize sediment movement outside of the project areas. The EA concludes that Dominion Cove Point's commitment to the measures identified in the Plan and Procedures, and adherence to other relevant permits and the requirements of Environmental Condition 37, will adequately limit and minimize impacts on wetlands during construction and operation.<sup>24</sup>

40. The VDEQ recommends the reduction, reuse, and recycling of all solid wastes generated, and the minimization and proper handling of generated hazardous wastes. Fairfax County also questions the composition of and procedures for disposal of the spoil material at the Pleasant Valley Compressor Station. The EA in section B.2 describes the soil types disturbed in the project area. Section III.E of our Plan requires that Dominion Cove Point's environmental inspector verify the locations for any disposal of excess construction materials for beneficial reuse; that disposal methods and locations must be determined throughout the construction process; and that applicable permits must be followed when disposing for environmental reuse. The EA concludes that adherence to Dominion Cove Point's Erosion & Sediment Control Plan, which contain measures consistent with our Plan and Procedures, as well as Dominion Cove Point's practices regarding stormwater management, will limit impacts on soils in the project areas. We find that the EA properly concludes that impacts on soils will not be significant, and that Dominion Cove Point will properly dispose of any hazardous material at the compressor station site.<sup>25</sup>

41. The Virginia Department of Conservation and Recreation provided comments about natural heritage resources and confirms that no habitat was present within the project area to support rare plant species, which is consistent with the EA's conclusion in section 4.4.<sup>26</sup>

**b. Environmental Inspectors**

42. Although the EA specifies that an environmental inspector would be onsite during construction, Fairfax County questions whether environmental inspectors would be present on the site during normal operations at the Pleasant Valley Compressor Station. Environmental inspectors are employed during active construction and restoration of a project to ensure compliance with environmental permits and construction and restoration procedures. On an ongoing basis, trained company officials would operate the facility in

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<sup>24</sup> EA at pages 16 and 17.

<sup>25</sup> EA at page 14.

<sup>26</sup> EA at page 20.

compliance with U.S. Department of Transportation's safety standards and applicable state and federal regulations. Therefore, an environmental inspector will not be required during normal operations at the Pleasant Valley Compressor Station.

**c. Dominion Cove Point's Project Clarifications**

43. In its comments on the EA, Dominion Cove Point clarifies that the non-jurisdictional Northern Virginia Electric Cooperative Substation is only associated with the Keys Project, and is not associated with the St. Charles Project. Also, in reference to the discussion on page 11 of the EA, Dominion Cove Point clarifies that it will operate the metering and regulating station, but that CPV Maryland will own it. These clarifications do not change the analysis or substantive information contained in the EA.

44. Dominion Cove Point also identifies an additional non-jurisdictional facility, the Dominion Virginia Power Switching Station and associated facilities, that would be constructed at the Pleasant Valley Compressor Station within the projects' construction limits of disturbance and during the same timeframe. This switching station and associated facilities will be located on approximately 1.5 acres within the Northern Virginia Electric Cooperative substation property/easement and the existing Dominion Cove Point right-of-way. Given the temporal and geographic overlap of proposed construction in areas previously disturbed for industrial purposes, and the implementation of our Plan and Procedures, Dominion Cove Point's SPCC Plan, and Dominion Cove Point's Erosion & Sediment Control Plan, we find the projects will not contribute significant additional cumulative impacts beyond those already analyzed. For these same reasons, we conclude that the switching station and associated facilities will have no additional impact, and are consistent with the temporary and minor impacts identified in the EA.

45. Although the EA indicates that Dominion Cove Point would not construct during nighttime hours, Dominion Cove Point now proposes that some construction activity may occur during nighttime hours during outages for tie-in of the new projects' facilities. Generally, we agree with use of this construction approach, as it will reduce the amount of time outages would occur. However, Dominion Cove Point has not identified the length of the proposed outages, identified whether any noise sensitive areas exist within one half mile of the nighttime construction work areas, or provided a detailed noise assessment and mitigation plan to demonstrate that nighttime construction noise levels will be below the FERC criterion day-night sound level of 55 decibels on the A-weighted scale. Therefore, we have added Environmental Condition number 15 to ensure that nighttime construction will not result in significant impacts.

46. Based on the analysis in the EA, as supplemented in this order, we conclude that if Dominion Cove Point constructs and operates the St. Charles Project and the Keys Project in accordance with Dominion Cove Point's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval

of these proposals would not constitute a major federal action significantly affecting the quality of the human environment.

47. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction and operation of facilities approved by this Commission.<sup>27</sup>

### **Conclusion**

48. For the reasons set forth herein, and subject to the conditions set forth below, we find that granting authorization under section 7(c) of the NGA for Dominion Cove Point's proposals is required by the public convenience and necessity. Thus, we grant the requested authorizations to Dominion Cove Point.

49. The Commission, on its own motion, received and made part of the record in this proceeding all evidence, including the applications and exhibits thereto, and all comments, and upon consideration of the record,

#### **The Commission orders:**

(A) A certificate of public convenience and necessity is issued to Dominion Cove Point authorizing it to construct and operate the St. Charles Project, as described and conditioned herein, and as more fully described in the application in Docket No. CP15-22-000.

(B) The certificate authorized in Ordering Paragraph (A) above for the St. Charles Project is conditioned upon:

- (1) Dominion Cove Point's facilities being made available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations.
- (2) Dominion Cove Point's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions

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<sup>27</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

- (3) Dominion Cove Point's compliance with the environmental conditions listed in the appendix to this order.
- (4) Dominion Cove Point executing firm service agreements equal to the level of service and in accordance with the terms of service presented in its precedent agreements, prior to construction.
- (5) Dominion Cove Point's incremental base reservation charge under Rate Schedule FTS for the St. Charles Project is approved, subject to recalculation to recover only fixed costs as described above.
- (6) Dominion Cove Point is required to calculate an incremental usage charge for the St. Charles Project to recover variable costs, as described above.
- (7) Dominion Cove Point is required to use its system interruptible transportation rates.
- (8) Dominion Cove Point's request for use of its system-wide EPCA, maximum FTS fuel retention percentage, and the Cove Point East fuel retention percentage is approved, subject to the condition described above.

(C) A certificate of public convenience and necessity is issued to Dominion Cove Point authorizing it to construct and operate the Keys Project, as described and conditioned herein, and as more fully described in the application in Docket No. CP15-24-000.

(D) The certificate authorized in Ordering Paragraph (C) above for the Keys Project is conditioned upon:

- (1) Dominion Cove Point's facilities being made available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations.
- (2) Dominion Cove Point's compliance with all applicable Commission regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.
- (3) Dominion Cove Point's compliance with the environmental conditions listed in the appendix to this order.

- (4) Dominion Cove Point executing firm service agreements equal to the level of service and in accordance with the terms of service presented in its precedent agreements, prior to construction.
- (5) Dominion Cove Point's incremental base reservation charge under Rate Schedule FTS for the Keys Project is approved, subject to recalculation to recover only fixed costs as described above.
- (6) Dominion Cove Point is required to calculate an incremental usage charge for the Keys Project to recover variable costs, as described above.
- (7) Dominion Cove Point is required to use its system interruptible transportation rates.
- (8) Dominion Cove Point's request for use of its system-wide EPCA, maximum FTS fuel retention percentage, and the Cove Point East fuel retention percentage is approved, subject to the condition described above.

(E) Dominion Cove Point shall file actual tariff records with the incremental base reservation charges and the incremental base usage charges applicable to each project no earlier than 60 days, and no later than 30 days, prior to the date the respective project facilities go into service.

(F) Dominion Cove Point shall keep separate books and accounting of costs attributable to each proposal's incremental services, as described above.

(G) Dominion Cove Point shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental non-compliance identified by other federal, state, or local agencies on the same day that such agency notifies Dominion Cove Point. Dominion Cove Point shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**Appendix**  
**Dominion Cove Point LNG, LP**  
**St. Charles Transportation Project and Keys Energy Project**  
**Docket Nos. CP15-22-000 and CP15-24-000**

1. Dominion Cove Point shall follow the construction procedures and mitigation measures described in its applications and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this order. Dominion must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
  - b. justify each modification relative to site-specific conditions;
  - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
  - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the St. Charles and Keys Projects (Projects). This authority shall allow:
  - a. the modification of conditions of this order; and
  - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Dominion Cove Point shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Dominion Cove Point shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this order. All requests for modifications of environmental conditions of this order or site-specific clearances

must be written and must reference locations designated on these alignment maps/sheets.

Dominion Cove Point's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to this order must be consistent with these authorized facilities and locations. Dominion Cove Point's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Dominion Cove Point shall file with the Secretary detailed alignment maps and aerial photographs at a scale not smaller than 1:6,000 identifying all facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by Dominion Cove Point's Upland Erosion Control, Revegetation, and Maintenance Plan and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
  - b. implementation of endangered, threatened, or special concern species mitigation measures;
  - c. recommendations by state regulatory authorities; and
  - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the Certificates and before construction begins**, Dominion Cove Point shall file an Implementation Plan for the respective Projects with the Secretary for review and written approval by the Director of

OEP. Dominion Cove Point must file revisions to its plans as schedules change. The plans shall identify:

- a. how the company will implement the construction procedures and mitigation measures described in its applications and supplements (including responses to staff data requests), identified in the EA, and required by this order;
  - b. how the company will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
  - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - e. the location and dates of the environmental compliance training and instructions the company will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
  - f. the company personnel (if known) and specific portion of the company's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) the company will follow if noncompliance occurs; and
  - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    - (1) the completion of all required surveys and reports;
    - (2) the environmental compliance training of onsite personnel;
    - (3) the start of construction; and
    - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plans, Dominion Cove Point shall file updated status reports for the Projects with the Secretary on a **monthly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on efforts to obtain the necessary federal authorizations;
  - b. the construction status of the Projects, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;

- c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;
  - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of this order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by the company from other federal, state, or local permitting agencies concerning instances of noncompliance, and Dominion's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of its respective project facilities**, Dominion Cove Point shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Dominion Cove Point must receive written authorization from the Director of OEP **before placing its Projects into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the Projects are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, Dominion Cove Point shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the Certificate conditions Dominion Cove Point has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction of the St. Charles Project**, Dominion Cove Point shall file with the Secretary a revised plot plan for the CPV Maryland Interconnect, for review and approval by the Director of OEP, to avoid direct wetland impacts; or provide documentation from the U.S. Army Corps of Engineers and the Maryland Department of the Environment that its permit allows its placement in the wetland.

12. **Prior to construction**, Dominion Cove Point shall file the documentation of concurrence from the Maryland Department of the Environment that the project facilities are consistent with and the Maryland Coastal Zone Management Program.
13. **Dominion Cove Point shall file noise surveys with the Secretary no later than 60 days after placing each project's modification to Pleasant Valley Compressor Station in service.** If a full load condition noise survey is not possible, Dominion Cove Point shall provide an interim survey at the maximum possible horsepower load and provide the full load survey within 6 months. If the noise attributable to the operation of all of the equipment at the compressor station, under interim or full horsepower load conditions, exceeds a day-night sound level of 55 A-weighted decibels (dBA) at any nearby noise sensitive areas (NSA), Dominion Cove Point shall file a report on what changes are needed and shall install the additional noise controls to meet the level within 1 year of the in-service date. Dominion Cove Point shall confirm compliance with the above requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.
14. **Dominion Cove Point shall file noise surveys with the Secretary no later than 60 days after placing the CPV Maryland and Keys Energy Interconnect in-service.** If the noise attributable to operation of either interconnect site exceeds a day-night sound level of 55 dBA at any nearby NSAs, Dominion Cove Point shall file a report on what changes are needed and shall install the additional noise controls to meet the level within 1 year of the in-service date. Dominion Cove Point shall confirm compliance with the above requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.
15. **Prior to any construction during nighttime hours (10:00 pm to 7:00 am)**, Dominion Cove Point shall file with the Secretary for review and written approval by the Director of OEP, a nighttime construction noise analysis and mitigation plan for all noise sensitive areas within one half mile of the construction work areas where nighttime construction is requested. The plan shall include:
  - a. the length of time nighttime construction would occur;
  - b. clear identification of all NSAs within one half mile of the construction work areas where nighttime construction is requested, and the projected noise levels of construction activities at night at the NSAs;
  - c. specifications regarding the input parameters that were modeled (particularly the number of each equipment and the consideration of back-up alarms); and

- d. details for mitigation measures Dominion Cove Point commits to implementing (e.g. height and material of moveable barriers, use of a spotter over back-up alarms, the availability of lower-pitched back-up alarm equipment).