

127 FERC ¶ 61,075  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Dominion Transmission, Inc.

Docket No. CP05-131-005

ORDER DENYING REHEARING

(Issued April 23, 2009)

1. On November 14, 2008, the Director, Division of Gas-Environment and Engineering of the Commission's Office of Energy Projects, issued a letter order (November 14, 2008 Letter Order) in this proceeding, approving Dominion Transmission, Inc.'s (Dominion) request to place in service certain facilities in Pennsylvania and West Virginia. Washington Gas Light Company (WGL) filed a timely request for rehearing of the November 14, 2008 Letter Order. As discussed below, we will deny WGL's request for rehearing.

**Background**

2. On June 16, 2006, the Commission issued an order authorizing Dominion Cove Point LNG, LP's (Cove Point LNG) and Dominion's construction and operation of facilities which comprise the Cove Point Expansion Project.<sup>1</sup> This project includes, among other things, Dominion's construction of new downstream pipeline and storage facilities.

3. On July 28, 2008, the United States Court of Appeals for the District of Columbia Circuit issued its decision in *Washington Gas Light Company v. FERC (WGL v. FERC)*,<sup>2</sup> vacating the orders approving the Cove Point Expansion Project and remanding the case so that the Commission could more fully address whether the expansion project can go forward without causing unsafe leakage on WGL's system.

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<sup>1</sup> *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006), *order on reh'g*, 118 FERC ¶ 61,007 (2007).

<sup>2</sup> *Washington Gas Light Company v. FERC*, 532 F.3d 928 (D.C. Cir. 2008).

4. On October 7, 2008, the Commission issued an order on remand,<sup>3</sup> reissuing authorizations for Cove Point LNG's and Dominion's construction of all facilities that comprise the Cove Point Expansion Project. In addition, the Commission reissued authorizations for the operation of all project facilities, except that the operation of the expanded LNG import terminal facilities was specifically conditioned upon deliveries by Cove Point LNG through its Cove Point Pipeline to an interconnection with Columbia Gas Transmission System at Loudoun, Virginia not exceeding 530,000 dekatherms per day, which is the level of pre-existing firm delivery rights at that point.<sup>4</sup>

5. On January 15, 2009, the Commission issued an order on rehearing and clarification of the October 7, 2008 Order on Remand.<sup>5</sup> The January 15, 2009 Order, among other things, rejected WGL's contention that the Commission should vacate its October 7, 2008 Order on Remand because the remand order issued one day prior to the October 8 issuance of the D.C. Circuit's mandate for its decision in *WGL v. FERC*.

#### **The November 14, 2008 Letter Order**

6. The November 14, 2008 Letter Order approved, in accordance with environmental condition 11 of the June 16, 2006 Order authorizing the Cove Point Expansion Project, Dominion's request to commence service using:

- a. the PL-1 Extension 2 Pipeline in Juniata, Mifflin, Huntington, Centre, and Clinton Counties, Pennsylvania;
- b. the Perulack Compressor Station in Juniata County, Pennsylvania;

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<sup>3</sup> *Dominion Cove Point LNG, LP*, 125 FERC ¶ 61,018 (2008).

<sup>4</sup> Cove Point LNG was initially authorized in 1972 to construct and operate the Cove Point LNG Terminal and the Cove Point Pipeline as part of a project to import LNG from Algeria and transport natural gas to United States markets. Shipments of LNG to the Cove Point LNG Terminal began in March 1978, were interrupted in April 1980, and ceased in December 1980. In 2001, the Commission authorized Cove Point LNG to construct new facilities and to reactivate and operate existing facilities to recommence LNG imports at the terminal. See *Cove Point Limited Partnership*, 97 FERC ¶ 61,043 (2001), *order granting and denying rehearing in part, granting and denying clarification*, 97 FERC ¶ 61,276 (2001), *order denying rehearing and granting and denying clarification*, 98 FERC ¶ 61,270 (2002).

<sup>5</sup> *Dominion Cove Point LNG, LP*, 126 FERC ¶ 61,036 (2009) (January 15, 2009 Order).

- c. the Leidy Meter Station and pipeline replacement at the Leidy Hub complex in Clinton County, Pennsylvania;
- d. the Chambersburg Compressor Station piping modifications in Franklin County, Pennsylvania; and
- e. the additional compression at the Mockingbird Hill Compressor Station in Wetzel County, West Virginia.<sup>6</sup>

### **WGL's Rehearing Request**

7. WGL contends that the Commission should vacate the November 14, 2008 Letter Order because it relies on the October 7, 2008 Order on Remand, which WGL contends was issued one day prior to the October 8 issuance of the D.C. Circuit's mandate for its decision in *WGL v. FERC*. WGL states that the court's mandate is only "effective when issued," rendering the Commission's remand order *ultra vires*. In support of its contention that the October 7, 2008 Order on Remand should be vacated, WGL relies on *Alabama Power Co. v. FPC*,<sup>7</sup> wherein, according to WGL, the court made clear that the Commission may not issue a final order on issues being reviewed by an appellate court until a mandate issues or unless the Commission has received an order from the court granting it leave to do so. WGL distinguishes this case from *Chamber of Commerce of the U.S. v. SEC*,<sup>8</sup> in which the D.C. Circuit held that "agencies possess authority to address issues identified by the court prior to the issuance of its mandate."<sup>9</sup>

8. WGL's request for rehearing is denied. WGL's argument regarding the validity of the October 7, 2008 Order on Remand mirrors the arguments it made in its request for rehearing of the October 7, 2008 Order on Remand. This argument was addressed and rejected in our January 15, 2009 Rehearing Order, where we stated:

Rule 41(b) of the Federal Rules of Appellate Procedure provides that "[t]he court's mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, rehearing en banc, or a motion for stay of mandate, whichever is later. The court may shorten or extend the time." By order of the

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<sup>6</sup> Dominion filed its request to commence service on October 27, 2008.

<sup>7</sup> 511 F.2d 383 at 388 (D.C. Cir. 1974).

<sup>8</sup> 443 F.3d 890 (D.C. Cir. 2006).

<sup>9</sup> *Id.* at 898.

court issued on September 18, 2008, in *WGL v. FERC*, the court instructed the clerk to withhold issuance until 7 days after disposition of any timely petition for rehearing or petition for rehearing en banc, hence the court did not shorten or lengthen the time. In reliance of both the court's rule and order, and to prevent any harm or hardship resulting from a lapse in certificate authorization, the Commission issued its order on remand on the date that the court's mandate must issue, 7 days after the court denied rehearing en banc, as well as Dominion's motion for stay of the issuance of the mandate. Moreover, if it is the case that we did not have authority to act on October 7, it is undisputed that we have the authority at this time to affirm our actions of October 7.<sup>10</sup>

The Commission orders:

WGL's request for rehearing is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>10</sup> 126 FERC ¶ 61,036 at P 96.