
**In the United States Court of Appeals
for the District of Columbia Circuit**

No. 15-1127

**EARTHREPORTS, INC., *ET AL.*,
*Petitioners,***

v.

**FEDERAL ENERGY REGULATORY COMMISSION,
*Respondent.***

**ON PETITION FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION**

**RESPONDENT'S OPPOSITION TO
EMERGENCY MOTION FOR STAY PENDING REVIEW**

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JUNE 10, 2015

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GLOSSARY

Authorization Order	<i>Dominion Cove Point LNG, LP</i> , 148 FERC ¶ 61,244 (Sept. 29, 2014)
Commission or FERC	Federal Energy Regulatory Commission
Dominion	Dominion Cove Point LNG, LP
EarthReports	Petitioners EarthReports, Inc. (dba Patuxent Riverkeeper), Sierra Club, and Chesapeake Climate Action Network
EA or Environmental Assessment	Environmental Assessment for the Cove Point Liquefaction Project, issued May 15, 2014
Liquefaction Project or Project	Dominion Cove Point LNG, LP's proposal to site, construct, and operate facilities for the liquefaction and export of domestically-produced natural gas at Dominion's existing LNG import terminal in Calvert County, Maryland
LNG	Liquefied natural gas
Motion	Motion of EarthReports for Stay Pending Judicial Review and For Expedited Briefing, filed June 1, 2015
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321 <i>et seq.</i>
Rehearing Order	<i>Dominion Cove Point LNG, LP</i> , 151 FERC ¶ 61,095 (May 4, 2015)
Terminal	The existing Cove Point LNG import facility including LNG storage tanks, liquefaction and gasification facilities, and marine facilities for large seagoing vessels

INTRODUCTION

Petitioners (collectively “EarthReports”) ask this Court for the extraordinary remedy of indefinitely delaying the in-progress construction of facilities for liquefaction and export of domestically-produced natural gas (the “Liquefaction Project”) at Dominion Cove Point LNG, LP’s (“Dominion”) existing liquefied natural gas import terminal (“LNG Terminal”). But, EarthReports’ stay request ignores the thorough consideration and balancing of competing values performed by the Federal Energy Regulatory Commission (“Commission”) and the United States Department of Energy in authorizing the Project.

EarthReports asserts that planned and on-going construction activities interfere with its members’ use and enjoyment of their homes and community. Certainly, living and recreating near a construction site will have some temporary impacts, but they were thoroughly considered by the Commission and, with required mitigation measures, determined to be limited and temporary.

In sharp contrast to EarthReports’ allegations of localized, temporary harms, the Department of Energy found, and the Commission recognized, significant, enduring public benefits from Dominion’s LNG export project, including benefits to the U.S. economy and increased energy security for U.S. allies. Moreover, all permanent project facilities are sited within the footprint of the existing Cove Point LNG Terminal. Therefore, relative to greenfield construction of a new LNG (or

pipeline) facility, the Project's environmental impacts will be significantly smaller and better defined.

The Commission carefully weighed EarthReports' concerns as part of its review. Consistent with the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*, its implementing regulations, and relevant court precedent, the Commission reasonably declined EarthReports' invitation to use Dominion's Liquefaction Project proceeding to conduct an expansive, national review of the impact of LNG exports on induced natural gas production and climate change. EarthReports' other NEPA claim, regarding the environmental impacts from ballast water from LNG ships, is similarly refuted by the record.

Where EarthReports has not shown irreparable injury, much less a likelihood of success on the merits, and where stopping on-going construction will harm Dominion, its customers and employees, and delay benefits to the U.S. economy from natural gas exports, this Court should deny EarthReports' request for stay – just as this Court has denied all other recent requests (*see infra* p. 6) to stay FERC authorizations of natural gas infrastructure projects.

BACKGROUND

This case concerns Dominion's application to construct and operate additional liquefaction and other facilities at the existing Cove Point LNG Terminal in Calvert County, Maryland. The Terminal has been used since 1978 to

receive imported LNG from ocean-going carriers, temporarily store LNG in on-site tanks, and vaporize the LNG for delivery to U.S. markets. *See* Environmental Assessment for the Cove Point Liquefaction Project at 2 (May 2014) (“EA” or “Environmental Assessment”) (separately appended as FERC Appendix A1). Between 1994 and 2009, the LNG Terminal has been expanded and modified (after FERC’s environmental review and authorization) four times. *Id.* The Terminal’s expansion has included construction of on-shore storage tanks and liquefaction facilities. *Id.* Existing on-shore LNG terminal facilities are all located within a fenced 131-acre area which, in turn, is surrounded by over 1,000 acres of densely forested Terminal property that serves as a buffer. *See* EA at 6-7 (Project maps), and 78.

At issue in the challenged orders is Dominion’s April 2013 application to construct and operate an additional liquefaction train (gas turbine-driven refrigerant compressors, which supercool compressed gas to transform it into liquid) and associated facilities¹ to support the export of LNG – authorized by the Department of Energy – from the existing Terminal (the “Liquefaction Project”).²

¹ The Project also includes construction of gas treatment equipment and two turbines to generate electricity to meet the power demands of the Project. EA at 3, 8.

² Dominion’s application also includes some natural gas facilities on the Cove Point Pipeline in Virginia, which EarthReports does not challenge. *See* EA at 1-2 (describing the proposed “Virginia” facilities).

See Dominion Cove Point LNG, LP, 148 FERC ¶ 61,244, PP 1, 8 (Sept. 29, 2014) (“Authorization Order”) (FERC Appendix A2); *see also Dominion Cove Point LNG, LP*, 151 FERC ¶ 61,095, P 1 (May 4, 2015) (“Rehearing Order”) (FERC Appendix A3). The Project will make use of the existing storage tanks at the LNG terminal, and no additional permanent marine facilities are required for the Project. *See* Authorization Order P 10. Construction will temporarily use 190.1 acres of offsite property for staging. *See id.* P 11; *see also* EA at 37 (post-construction, the offsite areas will be restored to pre-construction conditions, including removal of a temporary pier).

Once the Liquefaction Project is constructed, the LNG Terminal will provide import or export service of up to 5.75 million metric tons of LNG per year. *See* Authorization Order P 8. Although Dominion expects its customers will initially export LNG, to maintain flexibility the Liquefaction Project will allow for bi-directional import or export service. *See id.* P 7. Each year, presumably based on the status of global gas markets, Dominion’s customers may jointly elect whether to import or export LNG from the Terminal. *Id.*; *see also* Rehearing Order P 4.

In agency proceedings extending over two years,³ and resulting in a detailed 242-page Environmental Assessment, the Commission thoroughly examined the

³ In June 2012, Dominion initiated the environmental review of the Project using FERC’s “pre-filing” procedures. *See* Authorization Order P 98.

environmental impacts of the Project and considered all comments, including EarthReports'. *See* Authorization Order PP 98-282 (discussing environmental review). Ultimately, the Commission determined, in accordance with section 3 of the Natural Gas Act, 15 U.S.C. § 717b, that the Project, upon Dominion's compliance with numerous environmental conditions and mitigation measures, "will not be inconsistent with the public interest." *See id.* P 33; *see also id.* at P 30 (detailing the Department of Energy's authorization of the export of LNG from Cove Point in an amount roughly equal to the Project's liquefaction capacity).

ARGUMENT

EarthReports has not justified the extraordinary remedy of a stay. *Munaf v. Geren*, 553 U.S. 674, 691 (2008) (stay pending appeal "is an extraordinary and drastic remedy; it is never awarded as of right"); *see also Reynolds Metals Co. v. FERC*, 777 F.2d 760, 763 (D.C. Cir. 1985) (motion for stay pending review is the "more ordinary means of seeking extraordinary relief"). To obtain such extraordinary relief, EarthReports must establish: (1) a strong showing that it is likely to prevail on the merits of its appeal; (2) that, without such relief, it will be irreparably injured; (3) a lack of substantial harm to other interested parties; and (4) that the public interest favors a stay. *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). "The courts must balance the competing claims of injury and consider the effect of granting or withholding

the requested relief, paying particular regard to the public consequences.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 9 (2008).

Applying that balance, this Court (and the Second Circuit) have consistently declined to grant stays in other recent natural gas infrastructure cases, some with much greater project impacts (and alleged harm) than here:

- *Del. Riverkeeper Network v. FERC*, No. 15-1052 (D.C. Cir. Mar. 19, 2015) (denying a motion for stay to halt clearing of 140 acres of forest adjacent to streams and wetlands for pipeline construction);
- *Minisink Residents for Env't'l Pres. and Safety v. FERC*, No. 12-1481 (D.C. Cir. Mar. 5, 2013) (denying motion for stay to halt operation of natural gas compressor station where stated harm was the perceived safety threat to nearby residents);
- *Del. Riverkeeper Network v. FERC*, No. 13-1015 (D.C. Cir. Feb. 6, 2013) (denying a stay concerning tree clearing and construction of a 40-mile pipeline);
- *In re Minisink Residents for Env't'l Pres. and Safety*, No. 12-1390 (D.C. Cir. Oct. 11, 2012) (denying stay of construction of natural gas compressor close to residential homes);
- *Coal. for Responsible Growth & Res. Conservation v. FERC*, No. 12-566 (2d Cir. Feb. 28, 2012) (denying stay concerning clearing of 200,000 mature trees for a 39-mile greenfield natural gas pipeline); and
- *Summit Lake Paiute Indian Tribe and Defenders of Wildlife v. FERC*, Nos. 10-1389 & 10-1407 (D.C. Cir. Jan. 28, 2011 & Feb. 22, 2011) (twice rejecting motion to stay construction of a 40-mile segment of a 675-mile natural gas pipeline that crosses a habitat for two sensitive species and land with special significance to Native Americans).

In contrast, the Liquefaction Project is co-located within the footprint of the

existing LNG Terminal where much of the land in the area was previously disturbed during the construction of the Terminal and the past four expansion projects. *See* Authorization Order P 32. The Commission, based on an extensive environmental analysis, determined that the incremental Liquefaction Project will not result in significant environmental impacts, in part because it is sited within the industrial fenced area of the LNG Terminal. EA at 161. This record supports the same result as in the recent cases.

I. The Alleged Harm Is Not Certain, Substantial, Or Irreparable

A claim of irreparable injury absent a stay must be “both certain and great; it must be actual and not theoretical.” *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Implicit in this requirement is the “further requirement that the movant substantiate the claim that irreparable injury is ‘likely’ to occur.” *Id.* “Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will in fact occur. The movant must provide proof . . . indicating that the harm is certain to occur in the near future.” *Id.* Unsupported assertions are not enough. *Cuomo v. NRC*, 772 F.2d 972, 978 (D.C. Cir. 1985).

EarthReports premises its motion for stay upon unsubstantiated and speculative allegations of perceived safety threats and nuisance claims. None of EarthReports’ injuries – generalized, temporary harms from construction activities

and speculative concerns about the future safety or impact from operations at the LNG Terminal – rises to the level of irreparable injury required for stay.

First, EarthReports cannot rely on past injuries from completed construction activities to support its stay request. *See* Motion at 17 (citing tree removal and the new, temporary pier). Past environmental injuries cannot support a stay because a stay would do nothing to prevent them. *See* D.C. Cir. Rule 18(a)(1) (movant must demonstrate the “prospect of irreparable injury . . . if relief is withheld”).

The bulk of EarthReports’ allegations of harm are associated with temporary impacts related to construction. These claims range from the minor irritation of mud making it “very difficult to keep my car clean” (Eno Decl., Ex. 2 at ¶ 4) to concerns over safety, air quality, noise, and light pollution from construction impacting recreational activities and enjoyment of movants’ homes. Project construction will have some impacts on those living and recreating close to the construction zone, but the Commission carefully addressed each of these concerns in its Environmental Assessment and concluded that, as mitigated, none of the impacts would be significant. *See, e.g.*, EA at 78 (surrounding dense forest and installation of sound barrier will shield sights and sounds); *id.* at 79 (temporary pier will receive only 2.3 barge deliveries per month during construction; will be removed after Project’s construction); *id.* at 81 (construction noise and dust impacts limited to daylight hours); *id.* at 83-85 (visual impacts mitigated by

required landscaping and lighting plans); *id.* at 90 (Dominion’s use of local roads during construction only a temporary impact on local traffic, and requiring measures to reduce impacts); *id.* at 91 (property values will not be significantly affected); *id.* at 106 (emission reduction credits purchased by Dominion will result in a net decrease in emissions during construction); *id.* at 109-10 (describing mitigation measures to address fugitive dust from construction); *id.* at 118-20 (as mitigated, noise within applicable noise regulations); *id.* at 159 (Project would not have a significant impact on public safety). As the Environmental Assessment concludes, these construction impacts are temporary, limited, and by no means irreparable. *See Comm. of 100 on the Federal City v. Foxx*, 2015 WL 1567902, at *7 (D.D.C. Apr. 7, 2015), *appeal docketed*, No. 15-5112 (D.C. Cir. Apr. 20, 2015) (finding construction impacts insufficient to establish irreparable harm); *see also Safari Club Intl. v. Jewell*, 47 F. Supp. 3d 29, 35 (D.D.C. 2014) (no irreparable harm where recreational activity may be diminished, but not eliminated).

EarthReports’ other allegations are unsubstantiated fears for safety or risk to health (Motion at 18) – not harms “certain” to occur. *See Reynolds Metals*, 777 F.2d at 763 (irreparable injury must be “likely” to occur). This is particularly true with respect to EarthReports’ concerns associated with the operation of the Project. These harms are especially speculative given the fact that the LNG Terminal has been in operation for decades. Speculative, future concerns over safety, air

pollution, and visual and noise impacts (all of which were identified and mitigated in the Environmental Assessment) are neither sufficiently imminent nor certain enough to justify the Court exercising the extraordinary and drastic remedy of a stay. *See N.Y. v. Nuclear Regulatory Comm’n*, 550 F.2d 745, 755 (2d Cir. 1977) (an injunction may not be used simply to “eliminate a possibility of a remote future injury”); *see also Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (stay should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion).

II. EarthReports Fails To Show A Likelihood Of Success On The Merits

A. FERC’s Finding Of No Significant Impacts Complies With NEPA And Is Fully Supported By The Record

EarthReports’ allegation (Motion at 7) that the Commission erroneously concluded that the Project has no significant environmental impacts is belied by the record. To determine if an action has a “significant” impact, an agency initially performs an environmental assessment, which leads to either a finding of no significant impact or (if there will be significant effect) preparation of a full impact statement. 42 U.S.C. § 4332(2)(C). “[T]o decline to prepare an [environmental impact statement] an agency must have concluded that there would be no significant impact or have planned measures to mitigate such impacts.” *Myersville Citizens for a Rural Comty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015).

Consistent with NEPA, Commission staff prepared a thorough, 242-page Environmental Assessment (including appendices) for the Project that addresses the Project's impacts and imposes mitigation measures, including site-specific measures for each special interest area. Based on that EA, the Commission reasonably determined the Project, as mitigated, would not have a significant impact on the environment. *See* Authorization Order P 281.

EarthReports' claimed "significance" of the Project relies upon its inaccurate assertion that Dominion is "building a terminal." Motion at 1, 3, 8, 17. Far from it, the Liquefaction Project consists of the conversion of the over 30-year old LNG Terminal to accommodate exports, with construction of liquefaction facilities "within the footprint of the existing LNG terminal," which was previously the subject of an environmental impact statement. Authorization Order P 275. The Commission reasonably concluded that, here, an environmental assessment was appropriate because "the relevant issues that needed to be considered were relatively small in number and well-defined." *Id.* P 275; *see also Pub. Citizen v. Nat'l Hwy. Traffic Safety Admin.*, 848 F.2d 256, 266 (D.C. Cir. 1988) (agency's finding of no significant impact is entitled to deference).

The remainder of EarthReports' merits arguments, a scattershot of alleged NEPA violations, are dispelled by the Commission's findings in its orders and the Environmental Assessment.

B. FERC's Indirect Impacts Analysis Satisfies NEPA

EarthReports focuses its stay request on the Commission's decision to exclude from the EA alleged indirect impacts related to (1) upstream natural gas production activities and (2) climate impacts associated with downstream consumption of the exported LNG. *See* Motion at 8-14. In order to merit analysis, an environmental impact must be both causally-related to the proposed action and reasonably foreseeable. *See* Authorization Order PP 227-230 (discussing NEPA requirements and associated precedent). Indirect impacts "are caused by the action" and are later in time or farther removed in distance, but are still "reasonably foreseeable." *Id.* P 227 (quoting 40 C.F.R. § 1508.8(b)). Here, the Commission found no reasonably foreseeable incremental gas production that is related to the Project. *See id.* PP 226-233; Rehearing Order PP 23-44; EA 18, 24-25, 163; *see also Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976) (scope of an impacts analysis is a task assigned to the "special competency" of the agency).

EarthReports seeks review of impacts (induced gas development of fracked gas from the Marcellus Shale gas play) that are not "caused by" the siting, construction, and operation of the Project. *See id.* PP 228-229 (finding no connection between the Project and any specific, quantifiable induced production); *see also Myersville*, 783 F.3d at 1326-27 (upholding FERC determination that, although a pipeline project's excess capacity may be used to move gas to an LNG

export project, the projects are “unrelated” for purposes of NEPA). As the Commission noted, the LNG Terminal has access to abundant and diverse domestic supply sources through its interconnection with three expansive interstate natural gas transmission systems. EA at 18 (three “interconnects [will] allow feed gas for the Project to be sourced from a wide variety of regions in the U.S.”). Because Marcellus Shale production is not required for the Project and production is likely to increase in that area regardless of whether the Project exports gas, Marcellus Shale production activities and their associated impacts are not sufficiently causally related to warrant their consideration as indirect effects of the Liquefaction Project. Rehearing Order P 29; *see also id.* P 27 (natural gas development will likely continue with or without the Liquefaction Project); Authorization Order P 228 (Marcellus Shale production is not an “essential predicate” for the Liquefaction Project).

Likewise, the Commission reasonably determined that “impacts from additional shale gas development supported by LNG export projects are not reasonably foreseeable,” because the source of the gas to be exported from Cove Point is unknown and will likely change throughout the operation of the Project. Authorization Order P 231 (Project’s export customers effectively have “access to essentially all the production areas in the lower 48 states”). While EarthReports is correct that NEPA requires “reasonable forecasting” (Motion at 9 (quoting

Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n, 481 F.2d 1079, 1092 (D.C. Cir. 1973)), it does not require an agency to “engage in speculative analysis” or “to do the impractical, if not enough information is available to permit meaningful consideration.” *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011); *see also Fund for Animals v. Kempthorne*, 538 F.3d 124, 137 (2d Cir. 2008) (agency is not obliged to engage in endless hypothesizing as to remote possibilities).

Further, EarthReports' reference (Motion at 10) to FERC's environmental review of the unrelated Constitution pipeline project also is unavailing. In that case, the Commission declined to provide a specific analysis of Marcellus Shale upstream gas production activities because the “exact location, scale, and timing of future [production] facilities are unknown . . . and the available information does not assist [FERC] in making a meaningful analysis of potential impacts.”

Constitution Pipeline Co., LLC, 149 FERC ¶ 61,199, at P 107 (2014) (Pet. for Mandamus denied Apr. 21, 2015, 2d Cir. No. 15-926) (proposed pipeline to transport gas from new shale gas supplies being developed in central Pennsylvania). Moreover, here, the “tie between Dominion's customers' gas supplier^[4] and the [Liquefaction] Project is more attenuated than in those cases

⁴ EarthReports' reliance on a December 2013 press release by Cabot Oil & Gas Corporation announcing a gas sale contract with Pacific Summit, a Dominion export customer, is unhelpful. *See* Motion at 10-12. The Commission explained

where the producer was a customer of a pipeline project.” Authorization Order P 233; *see also Coal. for Responsible Growth & Res. Conservation v. FERC*, 485 Fed. Appx. 472 (2d Cir. 2012) (unpublished opinion) (dismissing challenge to FERC’s conclusion that future Pennsylvania shale gas production was not sufficiently causally related to a proposed pipeline transporting gas across Pennsylvania to market to warrant an in-depth impacts analysis).

The other cases cited by EarthReports (Motion at 9-10) do not help their cause. *See* Rehearing Order P 27 (distinguishing cases). In *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549-50 (8th Cir. 2003), for example, the reviewing agency, noted that the availability of cheaper coal created by new rail lines would result in the construction of new coal burning power plants, but failed to consider the impacts of the new power plants. Here, in contrast, the Commission found that future natural gas production was not a reasonably foreseeable result of the Liquefaction Project. Rehearing Order P 37;

that Cabot’s press release does not “provide[] the level of certainty sufficient to support a meaningful analysis of any impacts of increased natural gas production,” because even where FERC knows the identity of one of Dominion’s customer’s gas suppliers, the “number, location, and impacts associated with any additional production that producer may engage in to supply Dominion’s customer[] are matters of speculation.” Authorization Order P 233 (also noting Cabot contract not part of record); Rehearing Order P 41 (same).

see also id. P 27 (noting natural gas production will likely continue with or without the Cove Point Liquefaction Project).⁵

For all the reasons stated above, EarthReports’ secondary argument (Motion 13-14), related to greenhouse gas emissions associated with drilling, transportation, and consumption of the exported LNG also fails. *See* Rehearing Order PP 57-59 (noting that, like upstream gas production, end use consumption of natural gas will likely occur regardless of whether the Liquefaction Project is approved).

Accordingly, FERC did not “refuse to acknowledge” (Motion at 8) the environmental impacts of the export of LNG. Rather, the Commission correctly declined to engage in the speculation necessary to consider the global impacts from the consumption of exported LNG by foreign countries. *See also* EA at 107-112 (quantitative discussion of greenhouse gas emissions attributable to the construction and operation of the Project).

C. FERC Fully Identified Ballast Water Impacts

EarthReports’ claim that the Commission cavalierly “dismissed” (Motion at 14) their concern regarding pollutants in ballast water invites this Court to

⁵ EarthReports’ reliance on *Scientists’ Institute* is similarly misplaced. There, this Court faulted the federal agency for failing to prepare any NEPA analysis for a proposed reactor program. *See Scientists’ Inst.*, 481 F.2d at 1091-92. EarthReports’ other case, *Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1 (D.D.C. 2009), is similarly distinguishable – the agency violated NEPA by failing to conduct any environmental review. *Id.* at 19.

“flyspeck” the Commission’s expert factual analysis. *See Myersville*, 783 F.3d at 1322-23; *see also Minisink Residents for Env’tl. Pres. & Safety v. FERC*, 762 F.3d 97, 112 (D.C. Cir. 2014) (finding petitioners’ NEPA claims (e.g., failure to undertake cost-benefit analysis or examine project’s impact on property values) fall into the “flyspecking” camp). EarthReports ignores the extensive discussion in the EA regarding the Project’s potential impacts from ballast water discharge.⁶ *See* EA at 53-55.

EarthReports centers its claim on perceived “deficiencies” in Coast Guard regulations governing ballast water management. *See* Motion at 15-16. Yet, as the Commission noted, LNG ships discharging ballast water must comply with multiple U.S. laws, regulations and policies – not just the Coast Guard’s regulations. EA at 53 (listing seven different laws, regulations and policies governing ballast water discharge). Moreover, the Commission acknowledged that there are risks of invasive species introduction and water quality impacts even with federal controls. *See* Authorization Order P 128 (citing EA at 53-54). The Commission reasonably concluded that the currently-required measures for all ships entering U.S. waters, including offshore ballast water exchange, provide best management practices that minimize risks from invasive species and contamination

⁶ Ballast water is water that is collected and carried by ships to provide balance and stability during transport. EA at 53.

from non-U.S. ports. *Id.* P 128; *see also* Rehearing Order P 74 (no basis to presume that established regulations are not satisfactory to maintain water quality).

This conclusion was supported by the Maryland Department of the Environment Science Services Administration, the agency tasked with protecting the state's environmental resources. *See* Authorization Order P 127. Based on the existence of extensive federal regulation with which Dominion and ships entering U.S. waters must comply and which mitigate impacts from discharging ballast water, the Commission reasonably concluded that ballast water discharges will not have any noticeable, long-term impact on the Chesapeake Bay or aquatic resources beyond those that have already occurred. *Id.* P 129; EA at 54-55. The Commission's judgment is based upon its expertise and entitled to deference from this Court. *See, e.g., Myersville*, 783 F.3d at 1308 (FERC's evaluation of scientific data is afforded "an extreme degree of deference"); *Nat'l Comm. for the New River v. FERC*, 373 F.3d 1323, 1327 (D.C. Cir. 2004) (same).

Despite EarthReports' belief regarding the adequacy of ballast water regulations, there can be no claim that the Commission failed to identify and disclose the potential impacts on water quality associated with ballast water. *See* Rehearing Order PP 73-74. The EA's level of discussion is sufficient. *See Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 376-77 (1989) (holding that agencies retain substantial discretion as to the extent of the inquiry and level of explanation

necessary for an impacts analysis); *see also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 346 (1989) (courts apply a rule of reason in evaluating the adequacy of an EA).

III. A Stay Will Substantially Injure Other Parties

The Court must also consider whether “a stay would have a serious adverse effect on other interested persons.” *Va. Petroleum Jobbers Ass’n. v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). This Court has recognized a substantial interest in continuing with approved construction activities in light of the costly nature of interruptions. *See 3883 Conn. LLC v. D.C.*, 336 F.3d 1068, 1074 (D.C. Cir. 2003) (“the permit holder has a substantial interest in the continued effect of the permit and in proceeding with a Project without delay”); *Tri County Indus. v. D.C.*, 104 F.3d 455, 461 (D.C. Cir. 1997) (“The property interest here – the entitlement to continue construction without unfair interference – is substantial”).

To date, Dominion has undertaken construction activities authorized by FERC in 29 issued “notices to proceed.” *See* Motion at 17. In addition to potential losses to Dominion, any delay to the Project “would likely adversely impact [Dominion’s] Export Customers that have a need for gas supply from the United States[.]” *See* Dominion’s Answer to Motion for Stay at 10-11, Docket No. CP13-113 (Oct. 21, 2014).

IV. The Public Interest Does Not Favor A Stay

The Project is necessary to implement the export authorizations granted by the U.S. Department of Energy to Dominion. *See* Authorization Order PP 29-31. The Department of Energy determined that the export of LNG from Cove Point is in the public interest. Specifically, the export of LNG will benefit the U.S. economy, diversify global LNG supply options, and improve energy security for U.S. allies and trading partners. *See id.* P 31. Regionally, the Project will have a positive impact on employment (peak construction workforce of 1,441 employees), local businesses, and tax revenue. *See* EA at 86-87, 92. A stay would unnecessarily delay, if not altogether defeat, these significant public benefits.

CONCLUSION

For the foregoing reasons, EarthReports' Motion should be denied.

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June 10, 2015