

128 FERC ¶ 61,037
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Cove Point LNG, LP

Docket Nos. CP09-60-000
CP09-60-001

ORDER ISSUING AUTHORIZATION

(Issued July 16, 2009)

1. On February 4, 2009, Dominion Cove Point LNG, LP (Cove Point) filed an application under section 3 of the Natural Gas Act (NGA) for authorization to upgrade, modify, and expand the existing offshore pier at Cove Point's LNG terminal in Calvert County, Maryland to accommodate the docking of larger LNG vessels at the terminal (Pier Reinforcement Project) and filed pro forma tariff sheets to implement such service. On March 5, 2009, Cove Point submitted an amendment to the application proposing revisions to its pro forma tariff sheets involving the Pier Reinforcement Project. As discussed below, we are granting the requested authorizations.

Background

2. Cove Point owns and operates an LNG import terminal near Lusby, in Calvert County, Maryland, and the Cove Point Pipeline, which extends from the terminal to interconnections with several interstate pipelines in Loudon County, Virginia. The original LNG terminal and pipeline were authorized in 1972. LNG shipments to Cove Point ended in 1980, and the facilities were used only to provide a small amount of interruptible transportation through the Cove Point Pipeline until 1994, when the facilities were reactivated and adapted for the purpose of storing domestic natural gas during the summer for use at peak times during the winter. In 2001, the Commission authorized Cove Point to construct new facilities and to reactivate and operate existing facilities to recommence LNG imports at the terminal. The Commission authorized additional expansion of the terminal facilities in 2003 and 2004.

3. In 2006, the Commission approved the Cove Point Expansion Project, which included the installation of two additional LNG storage tanks at the terminal facility and

the construction by Cove Point and Dominion Transmission, Inc. of new downstream pipeline and appurtenant storage facilities.¹ The expansion was placed into service in January 2009 and increased the terminal's storage capacity to 14.6 billion cubic feet and its peak sendout capacity to 1.8 million dekatherms (Dth) per day.

4. In approving the Cove Point Expansion Project, the Commission addressed a number of issues, including a claim by Washington Gas Light Company (WGL) that the unusually high number of gas leaks on a portion of its system that receives primarily regasified LNG from the Cove Point LNG terminal is attributable to the "dry" regasified LNG's effects on the seals in its pipeline couplings. The Commission concluded that other factors, namely the application of hot tar to the coupling seals as a means of corrosion control, the increase in operating pressures on WGL's system, and colder temperatures, were primarily responsible for the leaks of which WGL complains.

5. On July 28, 2008, the United States Court of Appeals for the District of Columbia Circuit affirmed our finding that the existing leaks of which WGL complained are due primarily to the condition of WGL's pipeline couplings, not the introduction of vaporized Cove Point LNG into the WGL system. However, with regard to the post-expansion leakage, the court remanded the case so that the Commission could more fully address whether the expansion project could go forward without causing unsafe leakage on WGL's system.²

6. To address the court's concern, in our subsequent October 7, 2008 Order on Remand, we limited deliveries at WGL's interconnection with Columbia Gas Transmission Corporation in Loudoun County, Virginia to no more than 530,000 Dth a day, the level of firm primary delivery rights under the pre-expansion order authorizing reactivation of the Cove Point import facilities. We explained that this would allow timely completion of project construction, while at the same time ensuring that no additional volumes of LNG associated with the expansion project are delivered to WGL's system, thus ameliorating concerns that the safety of WGL's system could be negatively impacted by the proposed expansion's increased deliveries of regasified LNG.³ The Commission

¹ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006), *order on reh'g*, 118 FERC ¶ 61,007 (2007), *vacated and remanded*, *Washington Gas Co. v. FERC*, 532 F.3d 928 (D.C. Cir. 2008), *order on remand*, 125 FERC ¶ 61,018 (2008) (Order on Remand), *order on reh'g and clarification*, 126 FERC ¶ 61,036 (2009) (Order on Rehearing and Clarification).

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

³ Order on Remand, 125 FERC ¶ 61,018 (2008).

affirmed this finding in an order on rehearing issued January 15, 2009.⁴ On March 19, 2009, we denied WGL's request for stay of our October 7, 2008 and January 15, 2009 orders on remand.⁵

Proposal

7. The purpose of the Pier Reinforcement Project is to upgrade, expand, and modify the existing pier at the Cove Point terminal to accommodate the "next generation" LNG vessels that are much larger than what Cove Point can presently accommodate at the terminal. Cove Point currently receives vessels with a cargo capacity of no greater than 148,000 cubic meters at the LNG terminal. Cove Point proposes here to modify the receiving pier so it can receive ships carrying cargoes of up to 267,000 cubic meters of LNG.

8. Cove Point states that the Pier Reinforcement Project does not involve an increase in the amount of LNG delivered to the LNG terminal, the amount of storage capacity, the amount of vaporized LNG sent out from the LNG terminal over the levels authorized, or any change in the purpose of the existing LNG terminal. Rather, Cove Point states that the project enhancements will provide greater flexibility for acquiring and scheduling LNG cargoes worldwide, and enable Cove Point to compete more effectively for LNG supplies and to deliver comparable quantities of LNG using fewer shipments. The estimated cost of construction for the Pier Reinforcement Project is \$51,081,626.

9. Cove Point currently offers two types of firm service to existing customers at the terminal: (1) firm peaking services under Rate Schedules FPS-1, FPS-2, and FPS-3; and (2) LNG terminal service under Rate Schedules LTD-1 and LTD-2 (LNG Tanker Discharging service).⁶ Cove Point explains that it is not seeking a pre-determination of rolled-in rate treatment in this proceeding, or a change to rates for any existing services. Further, Cove Point explains that the costs of the Pier Reinforcement Project will be allocated only to LNG LTD services.

10. Cove Point has negotiated an Incremental Port Facilities (IPF) Agreement with Statoil Natural Gas LLC (Statoil) for incremental service employing the modified pier

⁴ Order on Rehearing and Clarification, 126 FERC ¶ 61,036.

⁵ *Dominion Cove Point, LNG, LP*, 126 FERC ¶ 61,238 (2009).

⁶ Cove Point's Rate Schedule LTD customers are BP Energy Company, Shell NA LNG LLC, and Statoil.

facilities at market-based rates.⁷ In addition, Rate Schedule LTD-1 and LTD-2 shippers other than Statoil⁸ (currently, BP and Shell) may request IPF service, at a cost-based service rate, with any revenue generated from that charge credited 100 percent to Statoil. Cove Point filed cost-of-service data establishing a rate for the IPF service to be charged to Rate Schedule LTD-1 and LTD-2 shippers other than Statoil and pro forma tariff sheets providing a revised rate sheet and establishing a new section 32 (*Notice of Incremental Port Facility Service*) to the General Terms and Conditions of Cove Point's FERC tariff.

Notice and Interventions

11. Notice of Cove Point's application in Docket No. CP09-60-000 was published in the *Federal Register* on February 25, 2009 (74 Fed. Reg. 8521). Statoil, BP, Shell, and WGL filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁹ On March 5, 2009, Cove Point filed in Docket No. CP09-60-001 to amend its application.¹⁰ Notice of the amendment was issued by the Commission on March 19, 2009 and published in the *Federal Register* on March 26, 2009 (74 Fed. Reg. 13201).

⁷ NGA section 3(e)(3), added by section 311(c) the Energy Policy Act of 2005 (EPAAct 2005), P.L. 109-58, 119 Stat. 594, provides that, before January 1, 2015, the Commission shall not condition an order approving an application to site, construct, expand, or operate an LNG terminal on: (1) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant securing the order; (2) any regulation of the rates, charges, terms, or conditions of service of the LNG terminal; or (3) a requirement to file schedules or contracts related to the rates charges, terms, or conditions of service of the LNG terminal. This provision codified the more light-handed approach to the regulation of LNG terminals announced by the Commission in *Hackberry LNG, Inc.*, 101 FERC ¶ 61,294 (2002). Accordingly, Statoil currently receives 800,000 Dth of service made possible by the Cove Point Expansion Project at market-based rates on a non-open-access, non-tariffed basis.

⁸ In addition to the Cove Point expansion service which it receives on a non-tariffed basis, Statoil also takes open-access service from Cove Point under its Rate Schedule LTD-1 and LTD-2.

⁹ 18 C.F.R. § 385.214 (2008).

¹⁰ The amendment modified certain of the revised tariff sheets filed with Cove Point's February 4, 2009 application.

12. Statoil's intervention request included comments in support of Cove Point's proposal. WGL submitted comments protesting the proposal with its request to intervene, raising rate, safety, and health issues. Cove Point filed an answer to the protest. Although the Commission's Rules of Practice and Procedure do not permit answers to protests,¹¹ our rules do provide that we may, for good cause, waive this provision.¹² We find good cause to do so in this instance because Cove Point's pleading provides information that will assist us in our decision-making. WGL also submitted comments in response to the Environmental Assessment (EA) issued for this project, largely expanding on the same safety and health issues it raised in its comments and protest submitted with its motion to intervene. Cove Point filed a response to WGL's comments on the EA. We will address these pleadings together below.

Discussion

13. Since the proposed facilities would be part of an LNG terminal used to import natural gas from a foreign country, the construction and operation of the expansion facilities are subject to the requirements of section 3 of the NGA and the Commission's jurisdiction.¹³ Section 3 of the NGA provides that the Commission shall issue authorization unless it finds that granting the requested authorization "will not be consistent with the public interest."¹⁴

¹¹ 18 C.F.R. § 385.213(a)(2) (2008).

¹² 18 C.F.R. § 385.101(e) (2008).

¹³ The regulatory functions of section 3 of the NGA were transferred to the Secretary of Energy in 1977 pursuant to section 301(b) of the Department of Energy Organization Act. 42 U.S.C. § 7151(b) (2006). In reference to regulating the imports or exports of natural gas, the Secretary subsequently delegated to the Commission the authority to approve or disapprove the construction and operation of particular facilities, the location of the proposed facilities, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry or exit for exports. DOE Delegation Order No. 00-44.00A, reissuing, effective May 16, 2006, authorities contained in previous delegation orders. However, applications for authority to import natural gas must be submitted to the Department of Energy. The Commission does not authorize importation of the commodity itself.

¹⁴ 15 U.S.C. § 717b(a) (2006).

WGL's Comments on Health Risks and Cove Point's Replies

14. WGL asserts that the expansion of Cove Point's offshore pier to accommodate new, significantly larger LNG vessels will result in the receipt of increased volumes of LNG at the terminal, and, in turn, an increase in Cove Point's annual throughput of regasified LNG. According to WGL, this will expose WGL's distribution system to more regasified LNG than it has historically received from Cove Point. WGL maintains that before the Commission can approve Cove Point's proposal, it must assess, as part of its review under the National Environmental Policy Act of 1969 (NEPA), the human health concerns associated with potential increases in gas leaks on WGL's system resulting from gasified LNG.

15. WGL states that portions of its system are connected to Cove Point's pipeline, and that since the reactivation of Cove Point's LNG terminal in August 2003, WGL has experienced significantly increased leak rates in parts of its distribution system that were exposed to unblended vaporized LNG. WGL states that scientific studies have shown that the LNG shrinks the rubber seals in WGL's mechanically coupled pipes, causing these leaks to occur. WGL states that for these reasons, it contested the Cove Point Expansion Project application, claiming that other parts of its distribution system would be exposed to the increased deliveries of LNG, causing additional leaks. WGL states that, over its objections, the Commission authorized the project despite this risk to safety and health.

16. WGL states that it has presented scientific studies demonstrating that LNG can harm the mechanical couplings in pipeline infrastructure. Notwithstanding that Cove Point is not seeking authorization to increase its certificated capacity, WGL contends that throughput of regasified LNG will increase because Cove Point's proposed Pier Reinforcement Project will make it possible for Cove Point to accommodate the docking and offloading of larger tankers at the Cove Point terminal. WGL asserts the proposal therefore will result in increased coupling exposure to vaporized LNG, which will cause harm to human health. WGL maintains that there will be an overall increase in the quantity of LNG, which will have an environmentally significant impact, and therefore should have been considered in the EA.

17. In reply, Cove Point emphasizes that its Pier Reinforcement Project does not involve any increase in the amount of LNG that may be delivered to Cove Point, the amount of LNG that may be stored at the terminal, or the amount of vaporized LNG that may be sent out from the terminal over the levels already authorized by the Commission. Cove Point contends that WGL's claim that the increased flexibility that the proposed Pier Reinforcement Project will afford Cove Point's shippers to use a broader range of LNG vessels at the expanded pier will lead to increased volumes of re-vaporized LNG in WGL's system is speculative.

18. Cove Point states that contrary to WGL's assertion that scientific studies have demonstrated that the leaks on its system were caused by low levels of heavy hydrocarbons in LNG, the Commission found WGL's analysis to be flawed, and determined that the leaks were caused primarily by other factors. Cove Point argues that WGL's human health concerns are "based on a chain of unproven and implausible theories: (1) the larger pier will result in greater send-out from the terminal; (2) the greater send-out will result in increased deliveries from Cove Point to Columbia; (3) Columbia will then deliver largely unblended vaporized LNG to WGL; (4) WGL's hexane injection operations and other self-help measures taken to prepare for the expansion will fail; (5) as a result leaks will occur on WGL's system; and (6) the leaks will adversely affect human health." Cove Point contends that under NEPA, the Commission need not consider effects that are remote, speculative, or indefinite.¹⁵

Commission Determination

19. We emphasize that the Pier Reinforcement Project does not involve an increase in Cove Point's authorized amount of storage capacity, or the authorized amount of vaporized LNG that may be sent out from the terminal at any given time. These parameters are constrained by both Cove Point's tariff and the maximum operating capabilities of its approved storage and vaporization facilities. Cove Point is proposing the Pier Reinforcement Project to enable the safe docking, discharge, and departure from the pier of larger LNG vessels. Cove Point must comply with its tariff and cannot exceed its authorized level of deliveries to WGL. We find that the EA correctly concluded that because increased throughput is not part of the project proposal, there are no direct, indirect, or reasonably foreseeable human health issues associated with the Pier Reinforcement Project that would require further analysis.¹⁶

20. In the Cove Point Expansion Project proceeding, moreover, we explained that WGL's leaks were caused primarily by factors other than vaporized LNG, and that these leaks would not occur on a properly maintained system. Further, in the January 15, 2009 order the Commission stated that:

it is beyond the Commission's jurisdiction and ability to ensure that non-jurisdictional entities (*e.g.*, local distribution companies) downstream of jurisdictional pipelines can safely accommodate gas volumes that will be

¹⁵ Citing *Sierra Club v. Marsh*, 976 F.2d 763, 767-68 (1st Cir. 1992); *Sierra Club v. Marsh*, 769 F. 2d 868, 878 (1st Cir. 1985); *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283-84 (9th Cir. 1974); *Islander East Pipeline Co.*, 100 FERC ¶ 61,276, at 62,118 (2002), *reh'g*, 102 FERC ¶ 61,054, at 61,121 (2003).

¹⁶ EA at p. 21.

transported by jurisdictional facilities authorized by the Commission. We can neither effectively monitor the physical and/or operational conditions for such entities, nor compel repairs or improvements when such are warranted, even for safety purposes.¹⁷

Nevertheless, in our October 7, 2008 Order on Remand in that proceeding we limited the volume of deliveries to Columbia-Loudoun to the level of pre-expansion firm delivery rights at that point to ensure that no additional volumes of LNG associated with the expansion project are delivered to WGL's system. Our approval of the Pier Reinforcement Project will not affect that delivery limitation. As the EA points out, all vaporized LNG from Cove Point must continue to meet the quality specifications set forth in Cove Point's tariff and be subject to this delivery limitation.

Rates

21. Although WGL does not have an agreement with Cove Point for terminal service under either of the LTD Rate Schedules, WGL is an existing customer of Cove Point under Rate Schedule FPS (Firm Peaking Service), receiving transportation service on Cove Point's take-away pipeline facilities. As such, WGL is concerned that it could be assessed for costs related to the proposed Pier Reinforcement Project to accommodate larger LNG tankers. Cove Point explains, however, that under its agreement with Statoil, the only customer that has entered into an agreement for the use of the enhanced pier facilities for the docking and offloading of larger tankers, Statoil will be responsible for all costs associated with constructing and operating the incremental port facilities. Thus, the negotiated charges to be paid by Statoil for service using the proposed incremental pier facilities will recover the project costs.

22. Although Statoil is the only customer that has entered into an agreement for services utilizing the new facilities, and its negotiated charges will recover the costs of the Pier Reinforcement Project, Cove Point's LTD terminal customers other than Statoil - i.e., Shell and BP -- will have the opportunity to take advantage of the fact that Cove Point will be able to dock and offload larger LNG tankers as the result of the project. If and when BP and Shell do use the enhanced pier facilities to bring in larger vessels, they will be charged Cove Point's proposed cost-based rates for such service.

23. Cove Point has filed pro forma tariff sheets to revise Rate Schedules LTD-1 and LTD-2 to increase the current tariff cargo delivery limit from 148,000 to 155,600 cubic

¹⁷ Order on Rehearing and Clarification, 126 FERC ¶ 61,036 at P 47.

meters of LNG.¹⁸ Above that limit, Shell and BP will pay an additional cost-based rate under existing Rate Schedules LTD-1 and LTD-2. Specifically, Cove Point proposes to charge BP and Shell a commodity rate of \$0.0283 per Dth for using larger LNG vessels in accordance with the proposed new IPF provisions for Rate Schedules LTD-1 and LTD-2. The IPF commodity rate will be paid by shippers in addition to the currently applicable rates and charges paid for their terminal service. Cove Point is basing its rates on an estimated construction cost of \$51,081,626 and a cost of service of \$9,462,812 for the first full year of service. Cove Point designed its rates based on a system-wide depreciation rate of 3.63 percent and a pre-tax rate of return of 14.00 percent which were approved in its most recent general rate case.¹⁹ Cove Point states that the rate design used to establish the cost-based IPF charge is not intended to establish any precedent with respect to such rate or any other rate. Cove Point further states that nothing in the agreement among itself and its firm import shippers is intended to determine the allocation of costs associated with the enhanced pier facilities in any future Cove Point rate case. The IPF service will be provided under the terms and conditions of Cove Point's Rate Schedules LTD-1 and LTD-2. One hundred percent of any IPF revenues generated from this charge will be credited to Statoil.

Commission Determination

24. The Commission finds that the proposed rate design, i.e., treating the costs associated with upgrading Cove Point's pier and the additional operating costs to accommodate larger LNG vessels on an incremental basis and assigning them to Statoil is appropriate, since Statoil is the customer that has entered into an agreement for the firm

¹⁸ As noted above, under NGA section 3(e)(3)(B), the Commission's present authority does not allow it to condition an order approving an application to site, construct, expand, or operate an LNG terminal on any regulation of the rates, charges, terms, or conditions of service or the filing of schedules or contracts related thereto. However, an applicant seeking authority to construct a new LNG terminal, expand the capacity of an existing terminal or offer new terminal services may choose to propose an open-access tariff, rate schedules and rates. As we have stated previously, we do not read NGA section 3(e)(3)(B) as precluding the Commission from issuing and enforcing such authorizations when proposed by the applicant. *See, e.g., Southern LNG, Inc.*, 120 FERC ¶ 61,258, at P 52 (2007), and *Trunkline LNG Co., LLC*, 117 FERC ¶ 61,339, at P 20 (2006). Indeed, if an applicant chooses to offer LNG terminal services under Commission-approved rate schedules, the Commission applies its usual policies to ensure that such services are offered on a non-discriminatory basis with an appropriate cost-based recourse rate and reasonable terms and conditions. *Trunkline LNG Co., LLC*, 117 FERC ¶ 61,339 at P 24, 25 and 28.

¹⁹ *Dominion Cove Point LNG, LP*, 120 FERC ¶ 61,012 (2007).

service (i.e., the docking and offloading of larger LNG vessels) that will be made possible by the proposal. Further, as Statoil is the firm shipper responsible for the IPF costs, it is appropriate that any revenue generated by the other import shippers that bring in LNG vessels capable of carrying cargoes from 155,600 to 267,000 cubic meters of LNG, thus requiring the enhanced pier facilities, will be credited 100 percent to Statoil. The Commission further finds that Cove Point has supported and appropriately designed the proposed cost-based IPF recourse rate. Therefore, we will approve the proposed rate and tariff provisions. Cove Point will be required to file actual tariff sheets consistent with the proposed pro forma sheets between 30 and 60 days prior to commencing IPF service.

25. To ensure that Cove Point's terminal customers (or its customers such as WGL which receive transportation service on Cove Point's take-away pipeline) that do not benefit from Cove Point's ability to accommodate larger LNG vessels as a result of its Pier Reinforcement Project are adequately protected from paying the costs associated with the project, we will require Cove Point to maintain separate books and records with applicable cross references as required by section 154.309 of the Commission regulations²⁰ and in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 proceedings.²¹ Requiring Cove Point to isolate the costs for the Pier Reinforcement Project by keeping separate books and accounts of the costs attributable to the proposed incremental service will protect Cove Point's other customers. Subject to these conditions, the Commission accepts Cove Point's proposal to recover the costs of the Pier Reinforcement Project from Statoil and, to the extent that other Rate Schedule LTD-1 shippers use the pier facilities for the larger LNG vessels, to credit 100 percent of such revenues to Statoil.

Public Interest

26. Cove Point's proposed Pier Reinforcement Project will enable the safe docking and handling at the pier of LNG vessels larger than the pier is currently capable of handling, which will provide LNG shippers with greater flexibility in acquiring and scheduling cargoes from a variety of supply sources from around the world. The proposed pier project will not alter the scope of the LNG terminal's operations. The project will not change the terminal's capacity or deliverability and, other than the new IPF service, the costs of which will be fully recovered from Statoil, Cove Point proposes no new or additional service as a result of the proposed facilities. The Pier Reinforcement Project will not result in subsidization by existing customers or discrimination against any customers, and will enable Cove Point to enhance and

²⁰ 18 C.F.R. § 154.309 (2008).

²¹ See *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337, at P 109-110 (2006).

improve the flexibility of terminal operations to accommodate recent advances in LNG ship technology. Therefore, we find, subject to the conditions imposed in this order, that the Pier Reinforcement Project is not inconsistent with the public interest.

Environment

27. On May 21, 2008, in Docket No. PF08-20-000, we approved a request by Cove Point to use the pre-filing process for the Pier Reinforcement Project. As part of the pre-filing review, we issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI) on July 16, 2008. We received three comment letters in response to the NOI from the Virginia Department of Environmental Quality (VDEQ), the Maryland Energy Administration (acting on behalf of the Maryland Department of Natural Resources (MDNR), Power Plant Research Program), and the Maryland Department of Planning. The comments addressed regulatory and permitting requirements for the project, human health and safety concerns, spill prevention, impacts on the Chesapeake Bay, and potential disruptions to shipping, commercial fishing, and recreation.

28. As noted, the Commission's staff prepared an EA for the proposed Pier Reinforcement Project. The EA was issued on May 8, 2009. The Commission's *Notice of Availability of the Environmental Assessment for the Proposed Pier Reinforcement Project* was published in the *Federal Register* on May 15, 2009 (74 Fed. Reg. 22919). The EA addresses geology and soils, water resources and wetlands, fisheries, vegetation and wildlife (including threatened and endangered species), land use, recreation, visual resources, cultural resources, air quality and noise, safety and reliability, cumulative impacts, and alternatives. The EA also addresses all substantive issues raised in the scoping comments.

29. The notice established a deadline of June 8, 2009, for comments on the EA. The EA was mailed to federal, state, and local agencies, elected officials, public interest groups, public libraries and newspapers in the project area, intervenors in this proceeding, and other interested parties. The Commission received five comment letters on the EA from the VDEQ, WGL, National Marine Fisheries Service (NMFS), the United States Environmental Protection Agency (EPA), and Cove Point. All substantive comments are summarized and addressed below.

30. In accordance with the November 21, 2007 *Memorandum of Understanding to Ensure Consultation and Coordination On The Effect Of Liquefied Natural Gas Terminals On Active Military Installations* between the Commission and the United States Department of Defense (DoD), we consulted with military departments and concluded in the EA that construction and operation of the Pier Reinforcement Project would not affect the testing, training, or operational activities of any active military installation. The DoD provided a letter of concurrence on June 26, 2009.

31. In its comments on the EA, the VDEQ provided concurrence that the Pier Reinforcement Project is consistent with the Virginia Coastal Resources Management Program (also called Virginia Coastal Zone Management Program). This satisfies a portion of the EA's recommendation that Cove Point file Coastal Zone Management Program concurrences from both the VDEQ and Maryland Department of the Environment (MDE). We have, therefore, modified the EA recommendation, as set forth in environmental condition No. 14 in the appendix to this order.

32. The VDEQ also discussed the applicable regulations, permit modifications, and agency coordination that would be required if dredge materials are placed at Port Tobacco at Weanack (hereafter referred to as Shirley Plantation), a pit mine reclamation site in Charles City County, Virginia. The EA evaluated three potential dredge disposal sites: the Cove Point marsh site, located adjacent to the Cove Point terminal; Barren Island, located within the Chesapeake Bay about eight miles from the dredging area; and Shirley Plantation. The EA did not find that any of the three should be excluded from further consideration. To date, no permits have been issued for the dredge disposal and/or the ultimate disposal location. During the ongoing permit review process, Cove Point is coordinating with the Commission, the U.S. Army Corps of Engineers (COE), MDE, MDNR, Maryland Board of Public Works, Maryland Critical Area Commission, NMFS, and United States Fish and Wildlife Service (FWS) to refine its dredge material placement designs. The EA concludes that the ongoing permit review process will ensure that environmental impacts from dredge material placement are minimized to a less than significant level.

33. Cove Point has stated it will not commence dredging until all local, state, and federal permits are received for the finalized disposal site. In addition, we have included environmental condition No. 12, which requires Cove Point to file its final COE-approved dredge material placement plan, developed in consultation with the applicable state agencies, prior to commencing dredging activities.

34. WGL contends that the EA failed to assess the potential environmental harm to human health in WGL's service territory and that the EA erred in its finding of no significant environmental impact, which, it contends, was made without appropriate notice, study, or review. We disagree. WGL's assertions are without merit. Commission staff began reviewing the Pier Reinforcement Project in May 2008. Since that time, staff have: participated in an open house, a site visit, and interagency meetings; reviewed and commented on draft analyses and reports during our pre-filing process; conducted a detailed and interdisciplinary review of Cove Point's application; and developed an EA in close coordination with the COE and United States Coast Guard. Public input opportunities were provided during the open house and the comment periods associated with the NOI, the Notice of Application, and the Notice of Availability of the

Environmental Assessment. As discussed above, we disagree with WGL's claims that the proposed project would result in increased exposure of the Washington Gas distribution system to vaporized LNG.

35. In its comments on the EA, the NMFS provided Essential Fish Habitat (EFH) recommendations pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Fishery Conservation & Management Act. The NMFS commented that the EFH Assessment provided by staff was well prepared, that most impact-related issues have been thoroughly discussed, and that adequate mitigating measures have been proposed. The NMFS, however, expressed concerns regarding the dredge material placement locations under consideration due to the fine-grain size of the dredge material, exposure to high energy shorelines, and potential for material loss onto adjacent valuable resources. Specifically, the NMFS recommends that dredge materials be placed at Shirley Plantation. However, due to potential ecological benefits associated with placement at the Cove Point marsh site, NMFS will not object to use of that location provided a coarse sand cap is applied to dredge material following placement. NMFS strongly recommends against selection of the Barren Island site.

36. Cove Point responded to the NMFS' EFH recommendations, stating that revised designs will incorporate engineering components to address NMFS concerns over material loss. The permitting and review process is ongoing and the COE will ensure the NMFS EFH recommendations are addressed in its permitting review and decision process.

37. In its comments, EPA states that the EA did not discuss the potential for increased shore erosion rates from larger transport vessels. The EA did, in fact, discuss this matter. Wave height modeling studies, summarized in section B.1.b. of the EA, demonstrate that waves generated by larger LNG vessels would be less than 0.01 foot at distances greater than 1,000 feet from the vessel, would be about the same height as waves generated by the existing ships traveling to the Cove Point LNG Terminal, and would be within the normal range of waves generated by wind and existing boat traffic. Based upon the modeling results and the limited shorelines potentially affected (the closest shoreline is over 5,000 feet away), the EA concluded that transit of larger LNG vessels would have no incremental erosive effect on shorelines. Additional detail regarding the modeling is provided in the public record for this proceeding (*see* Resource Report 7 of Cove Point's application). Given the site-specific parameters, and considering the Chesapeake Bay's well-established history of deep draft vessel transits, we find the EA's level of detail and conclusions regarding shoreline erosion are appropriate.

38. The EPA also states that the EA's discussion of sediment sampling results lacked detailed analysis of pollutant levels and excess nutrients, specifically ammonia. The EA is a summary document based upon staff's evaluation of technical details and studies, referenced therein, including a comprehensive site-specific sediment sampling and water quality report included in the proceeding's public record (*see* Appendix 2-A of Cove

Point's application). Sediment sampling and analyses were conducted in accordance with EPA protocols and guidance, and quantitatively characterized the dredge sediments with regard to physical characteristics, chemical constituents, and potential for release of chemical constituents during or following placement. In consideration of the site-specific sediment analysis and typical dilution factors, as summarized in section B.2.b. of the EA, the EA found that concentrations of ammonia in the water column during dredging would be reduced below the State of Maryland saltwater acute and chronic water quality criteria for aquatic life. The sediment evaluation results further indicate that the dredge material is suitable for each of the three potential dredge material placement locations currently under consideration.

39. The EPA questions the noise frequency levels of larger ships and their potential impacts on marine life, especially mammals. Section B.3.c. of the EA provides a discussion of typical acoustic energy emitted from large vessels, marine life hearing capabilities, and impacts on marine mammals. As further explained in section B.7.b. of the EA, the noise emissions from transiting LNG vessels are not significantly different from other tank vessels that routinely transit the Chesapeake Bay's heavily-used main navigation channel. Following project construction, noise emissions from LNG unloading operations will be similar to noise levels from existing operations. The primary potential acoustical effect of the proposed project is a decrease in noise resulting from a decrease in LNG vessel transits. Given the minor but potentially beneficial impacts, we find that the level of detail in the EA regarding acoustic impacts on marine life is appropriate and commensurate with the significance of the potential effect.

40. The EPA also seeks information as to how severely the northeastern tiger beetle would be affected by dredge material placement at the Cove Point marsh. As summarized in section B.4.a. of the EA, the Northeastern beach tiger beetle (*C. dorsalis dorsalis*) is a federally threatened species that historically inhabited the Cove Point marsh beach, but has not been found in recent years. Cove Point has been working closely with the appropriate permitting agencies to ensure loss of individual and suitable habitat is minimized through appropriate design, monitoring, and adaptive management protocols. The EPA continues to be involved in the ongoing permit review process for selection of the final disposal site which will more fully evaluate tiger beetle impacts and appropriate avoidance and mitigation options. As required by environmental condition No. 13 in the appendix to this order, construction may not commence until staff has completed consultations with the FWS and NMFS. Required consultations under section 7 of the Endangered Species Act will ensure that impacts to the threatened tiger beetle are appropriately evaluated prior to any dredge material placement.

41. Finally, the EPA states the EA lacks description of air emission data calculations "when determining the impacts of baseline operations vs. the pier reinforcement project." Emissions data from construction of the pier modifications, as well as the operation of the larger LNG vessels, were developed from applicant-supplied data using a mix of EPA-

developed (i.e., AP-42) emission factors and manufacturer supplied data. As discussed in section B.7.a. of the EA, the facility's potential-to-emit will not increase because the project and ship emissions are estimated to decrease as a result of increased efficiency of the larger capacity LNG vessels.

42. We received a late-filed comment from the Federal Aviation Administration (FAA) stating that Cove Point may be required to comply with FAA requirements set forth at 14 C.F.R. Part 77, Objects Affecting Navigable Airspace. This regulation requires notice to the FAA of any construction that will exceed specified heights. We have advised Cove Point of this requirement, and Cove Point has stated that it will comply.

43. The United States Coast Guard (Coast Guard) is the federal agency responsible for assessing the suitability of the waterway for LNG vessel traffic and providing recommendations to authorities having jurisdiction for approval. On May 5, 2008, Cove Point submitted a Letter of Intent to the Captain of the Port (COTP), Baltimore, requesting an assessment of the suitability of the waterway for the larger vessels that could call at the Cove Point LNG terminal after construction of the Pier Reinforcement Project. The COTPs, Baltimore and Hampton Roads, responded in a June 8, 2009 letter, stating that the Coast Guard will not issue a new or revised Letter of Recommendation (LOR) for the Pier Reinforcement Project. The Coast Guard determined that the project does not appear to pose any new or significant issues that would affect the waterway or the existing requirements as contained in the previous LOR issued for Cove Point's Expansion Project on July 29, 2008, in which the Coast Guard determined that the waterway is suitable for the type and frequency of proposed marine traffic, provided that certain Risk Mitigation Measures are fully implemented.

44. In its comments on the EA, Cove Point requests modification of the EA's recommendation that Cove Point not begin construction until it files its final COE and MDE-approved dredge material placement plan. Cove Point requests modification of this recommendation and the ability to construct the project in phases, such that initial tasks for berth construction (i.e., demolition, installation of piles, electrical modifications) can commence prior to finalization of the dredging permits. Construction activities for certain berth components have independent utility from the proposed dredging, and commencement of such work would not affect the permitting status of the dredge material placement sites. Environmental condition No. 12 in the appendix to this order reflects this determination.

45. Cove Point also states that it has complied with the EA's recommendation that it not begin construction until it files all cultural resources survey reports and any necessary treatment plans, and the State Historic Preservation Officer (SHPO) comments for our review and approval. At the time the EA was issued, the Maryland Historical Trust (MHT) had not yet commented on the dredge material placement locations. On June 15, 2009, Cove Point filed the comments of the MHT stating that no historic properties

would be affected by the undertaking. We concur. Moreover, all outstanding SHPO consultations have been completed. Accordingly, the EA recommendation is not included as an environmental condition in the appendix to this order.

46. Based on the discussion in the EA, we conclude that if Cove Point constructs and operates the Pier Reinforcement Project in accordance with Cove Point's application and supplements, and in compliance with the environmental conditions in the appendix to this order, approval of this proposal 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 authorization. The Commission encourages cooperation between regulated natural gas companies 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 or operation of facilities approved by this Commission.²²

48. At hearing held on July 16, 2009, the Commission on its own motion, received and made a part of the record all evidence, including the application(s), as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) Cove Point is granted authorization under section 3 of the NGA to construct and operate the proposed facilities, as more fully described in Cove Point's application, as amended, and as conditioned herein.

(B) Cove Point shall install and make available for service the facilities authorized herein within two years from the date of this order.

(C) Cove Point must comply with the environmental conditions set forth in the appendix to this order. Cove Point shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Cove Point. Cove Point shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

²² See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(D) Cove Point must file actual tariff sheets between 30 and 60 days prior to placing the proposed facilities into service.

(E) Cove Point must maintain separate and identifiable accounts for the Pier Reinforcement Project in sufficient detail so that they can be identified in Statements G, I, and J, and other statements in any future NGA section 4 or 5 rate cases.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX

As recommended in the EA, as modified by this order, this authorization includes the following conditions:

1. Cove Point shall follow the construction procedures and mitigation measures described in its application and supplements and as identified in the EA, unless modified by the order. Cove Point 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 all steps necessary to ensure the protection of life, health, property and the environment during construction and operation of the project. This authority shall include:
 - a. stop-work authority and authority to cease operation; and
 - b. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of the order.
3. **Prior to any construction**, Cove Point shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector'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 soon as they are available, and before the start of construction**, Cove Point shall file with the Secretary any revised detailed survey maps/figures at a scale not smaller than 1:6,000 for all facilities approved by the order. All requests for modifications of environmental conditions of the order or site-specific clearances must be written and must reference locations designated on these maps/figures.

5. Cove Point shall file with the Secretary detailed alignment maps/sheets 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, and 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/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

6. **Within 60 days of the acceptance of the authorization and before construction** begins, Cove Point shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Cove Point must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Cove Point will implement the construction procedures and mitigation measures described in its application and supplements, identified in the EA, and required by the order;
 - b. how DCP 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 environmental inspectors assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - e. the training and instructions Cove Point 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 and specific portion of Cove Point's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Cove Point will follow if noncompliance occurs; and
 - h. a project schedule, with dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.

7. Cove Point shall employ at least one environmental inspector, who shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (*see* condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of the order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - e. responsible for maintaining status reports.

8. Beginning with the filing of its Implementation Plan, Cove Point shall file updated status reports with the Secretary on a **biweekly** 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 Cove Point's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, 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 environmental inspector 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 the order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Cove Point from other federal, state, or local permitting agencies concerning instances of noncompliance, and Cove Point's response.

9. Cove Point must receive written authorization from the Director of OEP **before commencing service** from the modified berths at the LNG terminal. Such

authorization will only be granted following a determination that the facilities have been constructed in accordance with Commission approval and applicable standards, can be expected to operate safely as designed, and the rehabilitation and restoration of other areas affected by the project are proceeding satisfactorily.

10. **Within 30 days of placing the authorized facilities in service**, Cove Point shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. confirming that the facilities have been constructed/ installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions 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**, Cove Point shall file with the Secretary a project-specific Marine Spill Prevention Containment and Countermeasures (SPCC) Plan for the review and written approval of the Director of OEP. The Marine SPCC Plan should address refueling, storage and containment of hazardous materials, spill kit requirements, spill response, training, inspection, and reporting procedures specific to marine construction activities.
12. **Prior to commencement of dredging activities**, Cove Point shall file with the Secretary, its final U.S. Army Corps of Engineers-approved dredged material placement plan, prepared in consultation with the applicable state agencies.
13. Cove Point shall **not begin construction until** the staff completes consultation with the National Marine Fisheries Service/U.S. Fish and Wildlife Service; and Cove Point has received written notification from the Director of OEP that construction or use of mitigation may begin.
14. **Prior to construction**, Cove Point shall file with the Secretary documentation of concurrence from the Maryland Department of the Environment that its project is consistent with the states' Coastal Zone Management Program.