

129 FERC ¶ 61,137
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 No. CP09-60-002

ORDER DENYING REHEARING

(Issued November 19, 2009)

1. On July 16, 2009, the Commission issued an order authorizing Dominion Cove Point LNG, LP (Cove Point) under section 3 of the Natural Gas Act (NGA) 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 (Pier Reinforcement Project).¹ The July 16 Order denied a protest by Washington Gas Light Company (WGL). WGL filed a timely request for rehearing of the July 16 Order. For the reasons set forth below, we are denying WGL's request for rehearing.

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. In 2006, the Commission approved the Cove Point Expansion Project in Docket No. CP05-130-000, *et al.*, which, upon going into service in January 2009, 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.²

¹ *Dominion Cove Point LNG, LP*, 128 FERC ¶ 61,037 (2009) (July 16 Order).

² *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 reh'g and clarification*, 126 FERC ¶ 61,036 (2009).

3. In approving the Cove Point Expansion Project, the Commission addressed a contention by WGL that gas leaks on a portion of its system that receives regasified LNG from the Cove Point LNG terminal are attributable to the effects of the regasified LNG on the seals in its pipeline couplings. The Commission concluded in that proceeding 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. In our order on rehearing, we found that there is no scientific evidence that regasified LNG presents safety issues in a properly maintained gas distribution system. The Commission found that while the Cove Point Expansion Project would result in an increased amount of regasified LNG in the gas received by WGL, the gas would continue to meet the gas quality standards of Cove Point Pipeline's tariff.

4. On July 28, 2008, the United States Court of Appeals for the District of Columbia Circuit affirmed our finding that the existing leaks on WGL's system were due primarily to the condition of WGL's pipeline couplings, not the introduction of vaporized LNG into the WGL system. However, with regard to post-expansion leakage, the court found that the Commission had not provided substantial evidence to support its finding that WGL could repair its system prior to the proposed in-service date of the Cove Point Expansion Project, and remanded the case so that the Commission could more fully address whether the expansion project could go forward without unsafe leakage on WGL's system.³

5. In the October 7, 2008 Order on Remand, the Commission reissued its prior authorizations in Docket No. CP05-130-000, *et al.* for the Cove Point Expansion Project with the new condition that deliveries from Cove Point Pipeline into its interconnection with Columbia Gas Transmission Corporation's system at Loudoun, Virginia (Columbia-Loudoun), not exceed the 530,000 Dth per day level of existing pre-expansion firm primary delivery rights at that point. The Commission concluded that this new condition would ensure that no additional volumes of LNG associated with the expansion project are delivered to WGL's system, thus ameliorating expansion-related concerns about the safety of WGL's system.

6. On February 4, 2009, Cove Point filed an application in this proceeding proposing to upgrade, expand, and modify the existing pier at the Cove Point LNG terminal. Cove Point stated that the expanded pier facilities, known as the Pier Reinforcement Project, will enable it to receive "next generation" LNG vessels that are much larger than those 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 proposed here to modify the receiving pier so it can dock ships carrying cargoes of up to 267,000 cubic meters. In its application, Cove Point stated that

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

the Pier Reinforcement Project will not increase the overall amount of LNG delivered to the LNG terminal, the amount of storage capacity, the amount of vaporized LNG sent out from the LNG terminal beyond the levels authorized, or any change in the purpose of the existing LNG terminal.

7. In the July 16 Order approving the Pier Reinforcement Project, we found that the 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 around the world. In response to arguments by WGL in its protest that the Pier Reinforcement Project raised rate, safety, and health issues, we emphasized that the pier project will not alter the scope of the LNG terminal's operations, explaining that the project will not change the terminal's capacity or deliverability and that Cove Point proposes no new or additional service as a result of the proposed facilities.⁴ We affirmed the conclusion in the Environmental Assessment (EA) that because increased throughput is not part of the pier project proposal, there are no direct, indirect, or reasonably foreseeable human health issues associated with the Pier Reinforcement Project that would require further analysis.⁵ We also reiterated that, while it is beyond our jurisdiction and ability to ensure that local distribution companies can safely accommodate gas volumes from upstream jurisdictional facilities authorized by the Commission, our October 7, 2008 order on remand in the proceeding in Docket No. CP05-130-000, *et al.* on the Cove Point Expansion Project had limited gas deliveries to Columbia-Loudoun to pre-expansion levels, and found that our approval of the Pier Reinforcement Project would not affect that restriction. The Pier Reinforcement Project, we further found, will not result in subsidization by existing customers or discrimination against any customers, and will enable Cove Point to enhance and improve the flexibility of terminal operations to accommodate recent advances in LNG ship technology.⁶

WGL's Rehearing Request

8. WGL asserts that the Commission did not give appropriate consideration to its contention that the Pier Reinforcement Project would result in an increase in the volume of regasified LNG introduced into WGL's distribution system, which it alleges would, in turn, lead to further gas leaks on its distribution system and potential dangers to human health.

⁴ July 16 Order, 128 FERC ¶ 61,037 at P 19.

⁵ *Id.*

⁶ *Id.* P 26.

9. WGL states that the Cove Point LNG terminal has not been operating up to its authorized capacity, but that the ability of larger tankers to access the terminal would “unlock the potential of the terminal” to achieve the level of send-out authorized in the Cove Point Expansion Project. WGL argues that the Commission disregarded statements by Cove Point in the application that the project would “improve access for additional supplies of LNG” and that “any increases in gas supply [to the plant] should assist in “stabilizing energy costs for consumers in the Mid-Atlantic and Northeast regions.” WGL contends that these statements support a finding that the project will increase the utilization of and throughput over the existing Cove Point facilities, and asserts that improved access for additional gas supplies and price stabilization are in fact the only factors referred to in the application that would support a finding that the project would further the public interest.

10. WGL argues that the Commission erred in not addressing the environmental impact from the increased throughput made possible by Cove Point’s proposal. WGL renews its arguments that studies it has conducted show that increased deliveries of regasified LNG into its system will cause leaks in the couplings in its system, which will have a negative impact on human health. WGL contends that the Commission failed to assess the environmental effects the Pier Reinforcement Project would pose to WGL’s customers and infrastructure and simply adopted the EA’s determination that “increased throughput is not part of this project proposal.” WGL claims, moreover, that the Commission has never performed an analysis of the effect of regasified LNG on the infrastructure of the WGL system or on human health, despite the court’s direction that the Commission give further consideration to whether the Cove Point Expansion Project could go forward without causing unsafe leakage on WGL’s facilities.

Cove Point’s Answer to WGL’s Request for Rehearing

11. Cove Point argues that no analysis of the effect on human health from gas leaks on WGL’s system is necessary in this proceeding because the Pier Reinforcement Project will not cause any leaks on WGL’s facilities. As it did in its answer to WGL’s original protest, Cove Point asserts that WGL’s arguments that the Pier Reinforcement Project will add a greater volume of gas to WGL’s system and cause damage to its facilities relies on a chain of unproven and implausible theories.⁷ Cove Point states that, WGL’s contrary argument notwithstanding, Cove Point’s application in this proceeding clearly explains that no additional volumes of gas beyond those already authorized will enter the WGL system as a result of the Pier Reinforcement Project. Cove Point states that with its existing pier it can already achieve the level of authorized send-out volumes from the terminal, and that it can currently operate at full capacity. Moreover, Cove Point emphasizes, although the Commission has determined that regasified LNG is not the

⁷ See July 16 Order, 128 FERC ¶ 61,037 at P 18.

primary cause of leaks on WGL's system, the Commission nevertheless has limited the volumes of regasified LNG that may be introduced into WGL's facilities to the level authorized prior to the Cove Point Expansion proceeding. Thus, Cove Point does not intend to increase the volume of regasified LNG that will be introduced into WGL's facilities and, indeed, may not do so.

Discussion

12. In insisting that the Pier Reinforcement Project will add more regasified LNG to its system, WGL misconstrues the nature and capabilities of the project. The July 16 Order explained that Cove Point desires to increase the size of its pier simply to enable the safe docking, discharge, and departure from the pier of larger LNG vessels. We found that the project is in the public interest because the larger pier will provide LNG shippers with greater flexibility in acquiring and scheduling vessels from a variety of supply sources from around the world. The ability to bring in larger ships to its terminal will allow Cove Point to become more competitive for LNG supplies. As even WGL acknowledges, this could benefit consumers by having a potentially positive impact on the cost of imported LNG. Not approving this project would reduce customers' supply choices and impede a competitive market.⁸

13. Enlarging the pier will not increase the storage capacity of Cove Point's LNG terminal or the terminal's send-out capability. Nor will it alter the amount of regasified LNG that is authorized to be delivered into WGL's local distribution system. As we pointed out in our July 16 Order in this proceeding, our October 7, 2008 order on remand in the Cove Point Expansion proceeding specifically limits the volume that can be delivered into the WGL system from Cove Point to the volume allowed before the Cove Point Expansion. Cove Point can introduce no additional volumes of regasified LNG into WGL's facilities as a result of our recent authorizations.⁹

14. Because the Pier Reinforcement Project will not increase the amount of regasified LNG authorized to be delivered into WGL's system beyond the amount that has already been shown to be appropriate in the Cove Point Expansion Project orders, approval of the Pier Reinforcement Project cannot increase the potential level of leaks which might occur on WGL's system or have a negative impact on human health as a result of such leaks.

⁸ See *Transcontinental Gas Pipe Line Company*, 128 FERC ¶ 61,255, at P 27 (2009); and *Maritimes & Northeast Pipeline, L.L.C.*, 125 FERC ¶ 61,159, at P 27; *rehearing denied* at 126 FERC ¶ 61,119, at P 24 (2009).

⁹ The Commission stated in the order on remand that it expected to be able to remove this restriction at some point in the future, noting the WGL had begun implementing remedial steps to resolve the leakage problem.

Issues arising from Cove Point's operation of its terminal at its currently-authorized capacity are not before us in this proceeding. Nevertheless, as discussed above, in the Cove Point Expansion Project proceeding, we addressed at length WGL's claim that regasified LNG has damaged its pipeline facilities, and found that the leaks WGL has experienced were caused primarily by factors other than vaporized LNG, and that these leaks would not occur on a properly maintained system. While WGL disagrees with this assessment, the reviewing court has affirmed our determination.

15. The National Environmental Policy Act of 1969¹⁰ does not require that the Commission discuss all potential impacts in exhaustive detail. Only effects that are likely, foreseeable, or reasonably foreseeable need be discussed. The terms likely and foreseeable apply to a type of environmental impact that a person of ordinary prudence would take into account in reaching a decision.¹¹ In the July 16 Order we found that the Pier Reinforcement Project will have no likely or reasonably foreseeable impact on WGL's distribution system or on human health. For the reasons set forth above, we affirm that finding here.

16. We reiterate that the responsibility for the safety of WGL's system ultimately rests with WGL. As we noted in the July 16 Order in this proceeding, the Commission has no jurisdiction or ability to ensure that WGL and other local distribution companies can safely accommodate gas volumes transported by facilities authorized and regulated by the Commission.¹² In addition, we have explained that it is generally unreasonable for the Commission to impose restrictions on the operations of its jurisdictional entities in an effort to accommodate the idiosyncratic gas quality needs of individual shippers.¹³

¹⁰ 42 U.S.C. § 4321 et seq.

¹¹ *Sierra Club v. Marsh*, 976 F.2d 763, 767-68 (1st Cir. 1992); *Islander East Pipeline Co.*, 100 FERC ¶ 61,276, at 62,118 (2002).

¹² 128 FERC 61,037 at P 20.

¹³ See *Dominion Cove Point, LNG, LP*, 126 FERC ¶ 61,036 at P 49 and *Transcontinental Gas Pipe Line Company*, 128 FERC ¶ 61,255 at P 27.

The Commission orders:

WGL's request for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.