UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Dominion Cove Point LNG, LP	Docket Nos. CP05-130-003 CP05-132-002
Dominion Transmission, Inc.	Docket No. CP05-131-002

ORDER ON REHEARING

(Issued January 4, 2007)

1. On June 16, 2006, the Commission issued an order (June 16 Order)[1] granting Dominion Cove Point LNG, LP (Cove Point LNG) and Dominion Transmission, Inc. (Dominion) the authorizations necessary to construct and operate facilities which comprise the Cove Point Expansion Project. Requests for rehearing and/or clarification of the June 16 Order were filed by Washington Gas Light Company, Statoil Natural Gas LLC, Public Service Company of North Carolina, Inc., the Public Service Commission of Maryland, KeySpan Delivery Companies, Cove Point LNG, and Dominion. As discussed below, we will grant, in part, and deny, in part, the requests for rehearing and grant, in part, and deny, in part, the requests for clarification.

Background

2. The June 16 Order approved the applications filed by Cove Point LNG and by Dominion to construct and operate facilities which comprise the Cove Point Expansion Project. This project includes the expansion of Cove Point LNG's existing LNG import terminal (Docket Nos. CP05-130-000, 001 and 002) and pipeline (Docket Nos. CP05-132-000 and 001) and Dominion's construction of new downstream pipeline and storage facilities (Docket Nos. CP05-131-000 and 001). As proposed and approved, the Cove Point Expansion Project is designed to: (a) expand the existing Cove Point LNG Terminal to increase the volumes of LNG that can be imported, stored, regasified, and delivered; (b) expand the capacity of Cove Point LNG's pipeline, the Cove Point

[1] *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006).

Pipeline; and (c) construct new downstream pipeline and expand storage facilities to provide enhanced access to firm natural gas storage capabilities and to additional natural gas markets throughout the northeastern United States.

3. In approving the Cove Point Expansion Project, the June 16 Order addressed two major issues. First, Cove Point LNG proposed to provide the expansion services to Statoil Natural Gas, LLC (Statoil) on a "proprietary" basis, with deregulated rates and services, in reliance on the Commission's policy announced in *Hackberry LNG, Inc. (Hackberry)*,[2] while continuing to operate the existing portion of the terminal on a regulated basis, with regulated services and rates for both its existing NGA section 3 import customers and section 7 peaking customers.[3] Several parties protested this aspect of the proposal, alleging that such a dual regulatory structure is anticompetitive, contrary to Commission policy and precedent that prohibit dual regulatory schemes, and possibly requiring subsidization by existing shippers. Additionally, several protests referred to a lack of Congressional support for such a scheme.[4]

4. The June 16 Order also explains that by requiring Cove Point LNG to isolate the costs between its existing services provided at cost-of-service rates and the new services, the rates for which are unregulated, and by requiring Cove Point LNG to keep separate books and accounting of the costs attributable to the proposed incremental services, the Commission can protect the existing customers. Moreover, the June 16 Order discusses that under EPAct 2005 section 311(c)(2), the Commission cannot condition authorization

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[2] 101 FERC ¶ 61,294 (2002). In *Hackberry*, the Commission announced a new, light-handed policy for the regulation of LNG import terminals under section 3 of the NGA, deciding not to impose traditional regulation on LNG import facilities' rates, tariffs, or other terms and conditions of service, including the requirement to provide service on an open-access basis.

[3] This is the first case in which an applicant proposes to provide expansion services from its LNG import facilities on a non-open access, proprietary basis while continuing to provide service at cost-of-service rates to its existing customers.

[4] Notably, this claim was made prior to enactment of the Energy Policy Act of 2005 (EPAct 2005), Pub. L. No. 109-58, 119 Stat. 594 (2005). Section 311(c) of EPAct 2005 amended section 3 of the NGA by adding a new subsection (e)(3)(B) which provides that, before January 1, 2015, the Commission shall not deny an application for authorization of an LNG terminal solely on the basis that the applicant proposes to use the LNG terminal exclusively or partially for gas that the applicant or an affiliate will supply to the facility or condition an order on the applicant's offering open-access service or any regulation of the rates, charges, terms or conditions of service.

of an LNG terminal, including a terminal expansion, on the regulation of rates, charges, terms, or conditions of service. Therefore, EPAct 2005 expressly allows for Cove Point LNG to provide service from its Cove Point LNG Terminal Expansion on a non-open access basis at unregulated rates.

5. The second issue addressed in the June 16 Order involves Washington Gas Light Company's (WGL) claim 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. In its protest and request for evidentiary hearing, WGL asserted that the Commission should deny Cove Point LNG's expansion application until such time as Cove Point LNG demonstrated that it has minimized the potential adverse impacts to WGL's infrastructure that would result from the proposed expansion's increased deliveries of regasifed LNG. The claims were strenuously disputed by Cove Point LNG, the existing LTD-1 Shippers, and Norton McMurray Corporation (Normac), the manufacturer of the seals.

6. On February 22, 2006, the Commission held a procedural conference (February 22 conference) for the purpose of allowing the parties and Commission staff to discuss the pleadings filed regarding the quality of the natural gas delivered, and proposed to be delivered, to WGL from the Cove Point LNG Terminal and the potential effects of the proposed Cove Point Expansion Project on WGL's facilities, and the procedural options for the continuing timely processing of Cove Point LNG's request to expand and modify its LNG terminal facilities. At the February 22 conference, WGL, Normac, Cove Point LNG, and the LTD-1 Shippers made oral presentations addressing the causes of gas leaks on WGL's system, as well as the potential effects of the proposed expansion on WGL's infrastructure. Commission staff followed up each presentation with questions. Written presentations and exhibits were filed, as were comments prepared subsequent to the February 22 conference in light of the conference presentations. Thereafter, on March 24, 2006, Commission staff directed data requests to WGL, Normac, and KeySpan seeking further information and clarification of matters raised in the presentations and materials from the February 22 conference.

7. The June 16 Order provides a detailed account of our staff's analysis of the substantial record in this proceeding, consisting of WGL's November 2, 2005 filing that raised the leak issue and responsive filings by Cove Point LNG and the LTD-1 Shippers, oral and written presentations at a February 22 conference, comments filed in response to the conference, and responses to staff data requests. The Commission concluded that WGL's contention that the introduction of regasified LNG caused the increased leaks on its system is based on a flawed analysis, and that other factors, namely the application of

hot tar to the 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 complained.

Requests for Rehearing and/or Clarification

8. Seven parties filed requests for rehearing and/or clarification of the June 16 Order. These parties include WGL, Statoil, Public Service Commission of the State of Maryland (MdPSC), Public Service Company of North Carolina, Inc. (PSCNC), KeySpan Delivery Companies (KeySpan), Cove Point LNG, and Dominion. The issues raised in the rehearing requests include: (i) WGL's claim of denial of due process based on the Commission's failure to provide for an evidentiary hearing and on its reliance on certain evidence; (ii) the June 16 Order's analysis and treatment of the claimed adverse effects of the revaporized LNG (WGL); (iii) the Commission's approval of the proposals without regard to the safety implications (MdPSC, WGL, KeySpan,); (iv) the reporting requirements imposed in the June 16 Order (Statoil, Cove Point LNG); (v) Cove Point LNG's rate-of-return (Cove Point LNG); (vi) Dominion's fuel tracking requirement (Dominion); and (vii) certain environmental conditions (Cove Point LNG, Dominion).

9. Motions for leave to file answers and answers to rehearing requests were filed by Cove Point LNG and Dominion, jointly (Cove Point LNG/Dominion), and by the LTD-1 Shippers on July 28, 2006 and August 1, 2006, respectively. In addition to addressing the rehearing requests of WGL, KeySpan, and MdPSC, Cove Point LNG/Dominion and the LTD-1 Shippers objected to WGL's inclusion of new pressure data in its rehearing request. On August 4, 2006, WGL, in turn, filed an answer in opposition to these motions for leave to file answers, stating that answers to rehearing requests are not permitted under the Commission's rules. Additionally, WGL states that neither answer provides any assistance to the Commission in its decision-making process, and in the case of the Cove Point LNG/Dominion answer, WGL claims this is particularly true because their answer is made up largely of unsupported and unwarranted accusations and slurs directed at WGL.

10. To the extent that WGL's rehearing request seeks to introduce new facts into the record of this proceeding, Cove Point LNG/Dominion and the LTD-1 Shippers are entitled to file an answer pursuant to Rule 213(a)(3) of the Commission's Rules of Practice and Procedure. While WGL is correct that our rules do not permit answers to request for rehearing,[5] we may, for good cause shown, waive a rule.[6] We find good cause

[5] *See* 18 C.F.R. §§ 385.213(a)(2), 385.713(d)(1).

[6] *See* 18 C.F.R. § 385.101(e).

to do so in this instance. WGL's request for rehearing challenges virtually every aspect of the June 16 Order addressing the issue of the increased gas leaks on WGL's system, and we believe that the answers do provide information that assists us in the decision-making process.[7] Accordingly, we will accept Cove Point LNG/Dominion's and the LTD-Shippers' answers to the rehearing requests.

Cost-sharing

11. WGL contends that the June 16 Order's failure to impose conditions that will ensure that WGL and other local distribution companies (LDCs) will be able safely to serve their customers forces WGL to bear a disproportionate share of the burdens associated with the proposed expansion. WGL states that this is both inequitable and contrary to Commission precedent. WGL states that is particularly unfair due to the fact that WGL has no plans to purchase any of the regasified LNG associated with the expansion of the Cove Point facilities.

12. WGL refers to two instances in which the Commission imposed on Cove Point LNG conditions to accommodate concerns over the effects of regasified LNG from its facilities. First, WGL describes the situation when Cove Point LNG's facilities were first constructed in the 1970s and several LDCs, including WGL, raised concerns regarding the interchangeability of LNG with domestic natural gas. As WGL states, the Commissions established a hearing to resolve these concerns.[8] WGL states that the Commission's solution was to require the LDCs to take appropriate remedial action to accommodate the LNG, the costs of which were to be borne by all of Columbia's customers.[9] The second instance was in the case of *Cove Point LNG Limited Partnership*,[10] involving WGL's renewed concerns over the interchangeability of LNG during the 2003 reactivation of the Cove Point LNG Terminal. WGL states in that case, the Commission imposed on Cove Point's certificate a condition limiting the heat value of the LNG, and subsequently the affected parties in that case entered into a settlement

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[7] *See, e.g.*, *KeySpan LNG, L.P.*, 114 FERC ¶ 61,065 at P 7(2006); *PSEG Power Connecticut, LLC*, 113 FERC ¶ 61,210 at P 17 (2005).

[8] Columbia Gas Transmission Corp. (Columbia), Order Accepting for Filing and Suspending Proposed Rate Increases, Consolidating Proceedings, Initiating Hearings, Denying Request to Amend Tariff and Granting Interventions, 1 FERC ¶ 61,312 (1977).

[9] *See* Columbia, Opinion No. 101, Opinion and Order Affirming Initial Decision, 13 FERC ¶ 61,102 at 61,219 (1980).

[10] 98 FERC ¶ 61,270 at 62,046 (2002).

that resolved WGL's safety concerns.[11] Finally, WGL points to the Commission's June 15, 2006 Gas Quality Policy Statement,[12] which states that, when evaluating individual applications for LNG facilities, the Commission will consider adverse impacts, compensation for negative impacts, and mitigation.[13]

13. Cove Point LNG/Dominion argue that the Commission's requirement in *Columbia* to require Columbia, as the recipient of LNG as part of its system supply, to reimburse certain LDC costs and spread them proportionally among its bundled sales customers, was based on a finding that, absent such cost-sharing, there would be undue preference or discrimination among Columbia's bundled sales customers. Cove Point LNG/Dominion contend that this concern has no relevance in the present unbundled industry structure. Additionally, Cove Point LNG/Dominion claim that costs WGL is incurring now to repair its system would not meet the test in *Columbia* that to be reimbursable, the costs must be: (1) incurred directly as a result of LNG entering the system; (2) reasonable, prudent and necessary to permit the safe utilization of LNG; and (3) of a one-time, non-recurring nature.

14. Cove Point LNG/Dominion state that the 2003 Cove Point reactivation proceeding, in which the Commission rejected Cove Point LNG's proposal to change the gas quality standards in its tariff, resulted in a comprehensive settlement between Cove Point LNG, the LTD-1 Shippers, and WGL to increase the Btu limit while establishing other detailed gas quality and interchangeability standards. Cove Point LNG/Dominion contend that here, no change in gas quality standards is being proposed.

15. Furthermore, Cove Point LNG/Dominion claim that the June 16 Order is fully consistent with the Gas Quality Policy Statement's announcement that in evaluating applications for LNG facilities, the Commission will consider adverse effects, compensation for negative impacts and mitigation. Cove Point LNG/Dominion assert that the Commission did just that when it determined that the regasified LNG from Cove Point LNG's meets the tariff quality specifications of all interconnected pipelines, and of WGL itself.

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[11] Cove Point LNG Limited Partnership, 102 FERC ¶ 61,227 (2003).

[12] Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs, 115 FERC ¶ 61,325 (2006).

[13] *Id*. at P 47.

16. Finally, Cove Point LNG/Dominion contend that Long Island Lighting Company's (LILCO) experience with leaking seals in the early 1990s has no utility as support for WGL's case. Cove Point LNG/Dominion point out that this is the only case that WGL identifies with potentially similar leak problems involving lean gas. Cove Point LNG/Dominion state that while the cause of LILCO's leaks is not clear,[14] no other LDCs who received the same lean gas experienced leak problems and LILCO fixed its own system.

Commission Response

17. WGL is correct that in *Columbia*, the Commission accepted Columbia's (the Cove Point LNG Terminal's previous owner) proposal to reimburse two of its LDC customers -- WGL and BG&E -- for certain costs they incurred to convert their facilities and their customers' appliances to accommodate regasified LNG. However, the circumstances in the 1980 *Columbia* case were quite different from those in this proceeding.

18. The *Columbia* proceeding involved Columbia's decision to introduce regasified LNG into its system for the first time in order to meet its bundled sales service obligations. As the result of Columbia's actions, certain of its customers receiving the regasified LNG were compelled to incur costs in order to adapt their systems to accommodate the new supplies. Further, the record showed that there were several measures that Columbia could have undertaken to adjust or modify the regasified LNG to make it compatible with its LDC customers' systems, but Columbia chose the method least costly to itself and its customers, which was to introduce the regasified LNG directly into its pipeline system without any adjustments or modifications on its own part and compensate its LDC customers for their required modifications.[15]

19. As Cove Point LNG/Dominion emphasize, in today's unbundled marketplace, pipeline transporters do not purchase the gas that they deliver. The gas is purchased from suppliers that are not the pipeline, and the gas is owned and tendered to the pipeline by the shippers. Therefore, pipelines must rely on the gas quality specifications in their tariffs to exercise control over the gas entering their systems. During the proceeding on the reactivation of the Cove Point LNG Terminal in 2002, Cove Point LNG and its

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[14] Cove Point LNG/Dominion state that the New York Commission attributed LILCO's leaks to three factors: (1) its couplings' overall design which allows for the extensive cold flow of its sealing gasket; (2) drier Canadian gas; and (3) the length of time the couplings had been in service.

[15] *See Columbia*, *Initial Decision*, 10 FERC ¶ 63,065 at p. 65,503 (1980).

customers, including WGL, entered a settlement under which Cove Point LNG agreed to implement gas quality specifications that are among the most stringent in the industry. Cove Point LNG is not proposing in this proceeding to change the gas quality specifications WGL agreed to. Further, Cove Point LNG confirms that the additional regasified LNG entering Cove Point LNG's pipeline facilities as the result of this expansion project will not prevent it from complying with its tariff specifications

20. Imported LNG is gaining increasing importance as a means of meeting the nation's energy requirements, and has been a fact of life for WGL since the original Cove Point LNG Terminal was authorized in 1972.[16] When the Cove Point LNG Terminal was reactivated, WGL reached an agreement on gas quality that, in the instant proceeding, will remain unchanged. The problems WGL identified as allegedly related to the introduction of regasified LNG into its system, as discussed further below, were known to exist for decades on its system. Regardless of whether regasified LNG was the original cause of WGL's leak problems (and such is not the case, as determined in the June 16 Order and reaffirmed here), there is no explanation as to why WGL's system is not ready today to accommodate regasified LNG supplies. WGL has not shown that the expansion of the Cove Point LNG terminal will result in gas quality any different from that which it has already settled upon as acceptable. Nor has it shown why others should be responsible for upgrades to its system it believes are necessary simply for the purpose of receiving gas that meets existing tariff standards

21. The *Columbia* proceeding identified modifications on WGL's and BG&E's systems that were necessary solely as the result of Columbia's introduction of regasified LNG for the first time and provided compensation. Regasified LNG is no longer a new factor for WGL. Further, the record in this proceeding has established, as discussed below, that WGL's system would not have had an increase in leak rates after the introduction of regasified LNG if the sealing ability of WGL's couplings had not been compromised by other significant factors, namely, hot tar, age, temperature and pressure.

Safety Issues

22. WGL and MdPSC fault the Commission for authorizing the Cove Point Expansion Project without first resolving the safety concerns arising from the increased gas leaks on WGL's system that they contend are likely to arise from the increased amounts of

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[16] *Columbia LNG Corporation and Consolidated System LNG Company*, Opinion No. 662, 47 FPC 1624 (1972), *aff'd and modified*, Opinion No. 622-A, 48 FPC 723 (1972).

regasified LNG that will be delivered into WGL's system as a result of the expansion project.[17] WGL and MdPSC point out that the June 16 Order did not exclude unblended LNG as a causative factor for the leaks experienced on WGL's system.[18]

23. WGL states that, as the June 16 Order notes, "it is incumbent on the Commission to ensure that the Cove Point proposal will not result in unsafe or unreliable service adversely impacting other pipelines and their customers."[19] Yet, according to WGL, the Commission fails to meet its statutory obligation under the NGA to explain how the public interest will be served by approving Cove Point's LNG Terminal expansion without first imposing conditions that will ensure against the increased leaks on WGL's system that WGL maintains are sure to occur as a result. Moreover, WGL contends that the Commission addressed and dismissed WGL's claim concerning the effect of the low C5+ gas[20] on its system without discussing the parties' respective burdens of proof or disclosing the legal standards placed on the applicants or WGL with respect to its claim. In short, citing sections 3 and 7 of the NGA, WGL asserts that "the Commission has abdicated its own legal obligations under the NGA to guarantee safe and reliable operations."[21]

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[17] WGL contends, and it is not disputed, that because of operating conditions in the region, WGL will not be able to avoid receiving regasified LNG from the Cove Point LNG Terminal even if WGL does not purchase LNG from Cove Point, due to the fact that much of the regasified LNG is delivered to WGL by displacement.

[18] *See* 115 FERC ¶ 61,337 at P 56.

[19] *Id*., at P 54.

[20] The hydrocarbon gases that can be found in natural gas are: methane (C1), ethane (C2), propane (C3), butanes (C4), pentanes (C5), hexanes (C6), heptanes (C7), octanes (C8), and nonanes (C9+). In this proceeding, heavy hydrocarbons, or HHC, refers to the hydrocarbon components of the gas that are pentanes (C5) and heavier, or (C5+).

[21] WGL's rehearing request at p. 40. WGL cites NGA §§3, 7, 15 U.S.C. §§717b, 717f; Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,128, order clarifying statement of policy, 90 FERC ¶ 61,128, order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000); Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs, 115 FERC ¶ 61,325 (2006); Columbia Gas Transmission Pipeline Corp., et al., 1 FERC ¶ 61312 (1977); Cove Point LNG Limited Partnership, 98 FERC ¶ 61,270 (2002); and Cove Point LNG Limited Partnership, 102 FERC ¶ 61,227 (2003).

24. Cove Point LNG/Dominion maintain that contrary to WGL's assertion that the Commission "cavalierly dismissed WGL's safety issues,"[22] the Commission considered and rejected them.[23] In fact, state Cove Point LNG/Dominion, the Commission went "to tremendous lengths to consider WGL's claims and developed an extraordinary volume of record evidence on the subject."[24]

25. Cove Point LNG/Dominion state there is no basis for WGL's claim that the Commission fails to explain in the June 16 Order how it could determine that the proposed Cove Point expansion is in the public interest in light of WGL's significant safety issues. Also unfounded, according to Cove Point LNG/Dominion, is WGL's assertion that the Commission failed to explain the legal standard applied or the applicable burden of proof in its consideration of WGL's claims. On this point, Cove Point LNG/Dominion refer to "23 pages of … a well-reasoned and fully supported decision [in the June 16 Order] that WGL's claims are baseless."[25] Cove Point LNG/Dominion conclude that once safety concerns are dismissed as baseless, they should have no impact on the Commission's public interest analysis. Cove Point LNG/Dominion add that given the extent of the Commission's analysis of WGL's safety claims, any burden of proof issue is irrelevant.[26]

26. Finally, Cove Point LNG/Dominion emphasize the June 16 Order's findings that the Cove Point Expansion Project is "not inconsistent with the public interest, provided that Cove Point adheres to the safety and environmental conditions specified in

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[22] WGL's rehearing request at p. 40.

[23] Cove Point LNG identifies conclusions reached by the Commission in paragraphs 56, 58, 70, and 73 of the June 16 Order as examples where the Commission rejected WGL's claim that regasified LNG was the principal cause of the increased leaks on its system.

[24] Cove Point LNG's answer to rehearing requests at p. 3.

[25] *Id*., at p. 6.

[26] Cove Point LNG notes that in filings prior to the issuance of the June 16 Order, it argued that the burden of proof should have been with WGL, since, in substance, it was seeking a change in the existing gas quality specifications in Cove Point's tariff under section 5 of the NGA.

Appendix B to this order,"[27] and that the Commission's authorization "is consistent with new section 3(e)(3)" added to the NGA by EPAct 2005.[28] Cove Point LNG/Dominion assert that these findings in the June 16 Order render WGL's complaint that the Commission failed to mention section 3(e)(3)(A) or to analyze WGL's requested conditions in light of the new statute to be "preposterous."[29]

Commission Response

27. Initially, we disagree with WGL's assertion that the Commission erred in approving Cove Point's expansion project because it failed to explain the applicable burden of proof or legal standard applied in addressing WGL's claim concerning the increased leaks on its system. Because WGL raised safety issues, our June 16 Order rejected Cove Point LNG's and the LTD-1 Shippers' position that we should dismiss WGL's arguments either on the grounds they would be prejudiced as a result of WGL's late-filed protest[30] or because WGL's appropriate course of action is to file a complaint under NGA section 5 since, in essence, it is seeking to modify the rates, terms and conditions of pre-existing service.[31] However, after thoroughly considering the record evidence, we found that WGL's particular safety concerns do not change our conclusion that Cove Point's expansion project can be approved consistent with the public interest, since there is no scientific evidence that regasified LNG presents safety issues in a properly maintained gas distribution system and the compromised seals on WGL's system can be remedied before Cove Point's expansion project is placed in service, as discussed below.

28. We recently explained that our policy in addressing gas quality and interchangeability controversies is guided by our recognition of "the importance of encouraging rather than impeding the development of natural gas infrastructure and the

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[27] 115 FERC ¶ 61,337 at P 142.

[28] *Id*. at P 141.

[29] Cove Point LNG/Dominion answer to rehearing requests at p. 7.

[30] *See* 115 FERC ¶ 61,337 at P 50.

[31] *See Id*., at P 51. In such a case, WGL would have the burden of showing that the existing gas quality standards are unreasonable, and then of demonstrating that the standards it seeks to impose are reasonable.

movement of gas to the grid and to the ultimate consumers."[32] To that end, we strove for certainty in adopting a policy that takes a "balanced approach"[33] of ensuring a safe and reliable gas grid while at the same time providing the flexibility required to accommodate the expected increases in LNG imports. As an element of that certainty, we announced that pipelines with existing, adequate tariff provisions regarding gas quality and interchangeability may continue to rely on those tariff provisions.[34] We went on to note that '[t]o the extent a complaint is filed alleging that an existing pipeline tariff is not just and reasonable, the Commission will evaluate the complaint on its specific merits."[35]

29. As discussed above, while Cove Point LNG's expansion project will result in an increased amount of regasified LNG in the gas received by WGL, the gas will continue to meet the gas quality standards in Cove Point LNG's tariff provisions implemented pursuant to its October 2002 settlement agreement with WGL and the LTD-1 Shippers. Further, WGL acknowledges that it is already engaged in mitigation measures to control the increase in leaks and to address safety concerns associated with the Cove Point LNG Terminal's existing capacity. WGL has reduced operating pressures in Prince George's County, requested construction of a new tap on a Transcontinental Gas Pipe Line Corporation ("Transco") line to minimize deliveries of unblended LNG, and has begun to replace the facilities in the affected area. It estimates that effort will be completed by the end of 2007. The projected in-service date for Cove Point LNG's expansion facilities is not until the fall of 2008.[36] Thus, there is time for WGL to complete any remaining corrective measures that are needed on its system so that it can safely accommodate regasified LNG.

30. The safety issues raised in this proceeding will be resolved by WGL's repair or replacement of its defective couplings. What WGL continues to dispute is who should bear the burden of the costs of that effort. In view of the above considerations, we find that the public interest requires that Cove Point LNG be allowed to proceed with its

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[32] 115 FERC ¶ 61,325 at P 24.

[33] *Id*.

[34] *Id*., at PP 34, 37.

[35] *Id*., at footnotes 30, 33.

[36] According to an October 5, 2006 news release, work on the Cove Point Expansion is scheduled for completion in the fall of 2008.

expansion project to increase the availability of needed gas supplies. Therefore, WGL's and MdPSC's rehearing requests are denied.

Due Process Issues

A. Evidentiary Hearing

31. WGL contends that the June 16 Order failed to address its request that the contested issues of fact be set for hearing. WGL asserts that the dispute between its claim, supported by substantial evidence, that the increased leaks to its system were caused by increased deliveries of C5+ gas, and the assertion of Cove Point LNG, the LTD-1 Shippers and Normac that hot tar, low temperatures and increased operating pressures caused the increased leaks, cannot be resolved on the written record. WGL states that this issue can be resolved only by an evidentiary hearing that allows for full discovery and cross-examination. WGL claims that the February 22, 2006 "procedural conference,"[37] where unsworn testimony not subject to cross-examination was received into the record, was an inadequate substitute for the evidentiary hearing requested by WGL. In particular, WGL contends that "certain documents submitted in this proceeding call into question the veracity of certain parties."[38] According to WGL, its request for an evidentiary hearing is supported by NGA sections 3(e) and 7(c), as well as precedent.[39]

32. Cove Point LNG/Dominion and the LTD-1 Shippers argue that WGL was afforded ample opportunity to provide evidence in support of its claim concerning the gas leaks on its system and to challenge the record evidence against its claim. Both answers provide references to Commission and court precedent discussing the Commission's broad discretion to conduct paper hearings in NGA section 3 and section 7 authorization proceedings when the Commission determines that the material issues of fact can be resolved on a written record rather than in a trial-type hearing. Moreover, Cove Point LNG/Dominion and the LTD-1 Shippers both state that highly technical issues, such as the gas leak issues raised in this case, are particularly capable of being resolved without

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[37] We note that the notice of the conference advised the participants to be prepared to discuss their pleadings regarding the quality of the regasified LNG and its potential effects on WGL's facilities, and that WGL came to the conference prepared to offer technical information in support of its claim.

[38] WGL's rehearing request at p. 47.

[39] Citing Louisiana Ass'n of Independent Producers v. FERC (Louisiana Ass'n), 958 F.2d 1101(D.C. Cir. 1992).

resort to a trial-type hearing. In short, these parties believe that the opportunity to offer evidence in the forms of affidavits, studies, exhibits and other materials, present oral presentations, and file comments and reply comments constitutes more than adequate due process.

Commission Response

33. Although sections 3 and 7 of the NGA provide for a hearing when an applicant seeks authorizations under those respective sections, neither section 3 nor section 7 require that such hearings be trial-type evidentiary hearings. When the paper record provides a sufficient basis for resolving the relevant issues, it is our practice to provide for a "paper hearing," as we did in this case, rather than hold a formal, in-person, trial-type evidentiary hearing pursuant to Part 385, subpart E of our regulations.[40]

34. The courts have repeatedly recognized not only that "case law and the Commission's own regulations require an evidentiary hearing only when a genuine issue of material fact exists,"[41] but also that "even where there are disputed issues, FERC need not conduct such a hearing if they may be adequately resolved on the written record."[42] We are satisfied that the record before the Commission in this proceeding contains sufficient information, without resort to a formal, in-person, trial-type evidentiary hearing, to make a reasoned decision on the merits. The record upon which the conclusions reached in the June 16 Order regarding the gas leaks were based is described in detail therein.[43] That record includes a host of filings by WGL, Cove Point LNG, Dominion, and the LTD-1 Shippers, as well as filings by Normac, Maryland Peoples' Counsel, Transco, and the City of Richmond, Virginia; WGL's, Cove Point LNG's, Normac's, and the LTD-Shippers' oral presentations and the various documents in

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[40] *NE Hub Limited Partners, LP*, 83 FERC ¶ 61,043 at 61,192 (1998); *order on reh'g*, 90 FERC ¶ 61,142 at 61,437-8 (2000); *Pine Needle LNG Company, LLC*, 77 FERC ¶ 61,229 (1996).

[41] *Vermont Dept. of Public Serv. v. FERC*, 817 F.2d 127 140 (D.C. Cir. 1987).

[42] *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993); *See also*, *CNG Transmission Corp. v. FERC*, 40 F.3d 1289, 1293 (D.C. Cir. 1994); *Environmental Action v. FERC*, 996 F. 2d 401, 413 (D.C. Cir. 1993); *Alabama Power Co. v. FERC*, 993 F. 2d 1557, 1565 (D.C. Cir. 1993); *Louisiana Ass'n*. 958 F.2d at 1113-15; *Cascade Natural Gas Corp*., 955 F.2d 1412 (10th Cir. 1992).

[43] *See* 115 FERC ¶ 61,337 at P 57.

support of their presentations at the February 22 conference; comments on the February 22 conference and reply comments filed by WGL, Cove Point LNG, Normac, the LTD-Shippers, Dominion, KeySpan, MdPSC, and Maryland People's Counsel; and responses to Commission staff's data requests following the February 22 conference filed by WGL, Normac, and KeySpan.

35. In this proceeding, WGL has raised a highly technical factual issue regarding the role of the regasified LNG from the Cove Point facilities in causing gas leaks on WGL's system in Prince George's County, Maryland. Recognizing the highly technical nature of this issue, the Commission determined that it was within its area of expertise to resolve this issue based on the substantial record, described above, which included evidentiary support for the parties' respective positions. This approach is consistent with the Commission's practice in other cases in which the Commission was confronted with highly technical safety and engineering issues capable of being resolved based on expert analysis of written data and a reasoned judgment as to what the data show and, therefore, did not require an evidentiary hearing.[44] The courts have approved this practice, recognizing that the Commission need not conduct formal evidentiary hearings to resolve contested technical issues of this sort.[45]

36. During the processing of the applications in this proceeding, WGL filed a number of pleadings, together with attachments that include various data sheets and affidavits seeking to support its claim that the gas leaks it experienced on its system were caused by the introduction of regasified LNG into its system. In addition, WGL submitted an

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[44] *NE Hub*, 90 FERC at 61,438, relying on *Louisiana Ass'n, supra*. *See also Iroquois Gas Transmission System*, 54 FERC ¶ 61,103 (1991), *aff'd, Louisiana Ass'n, supra* ("a dispute over an issue of material fact which can be resolved through the presentation of additional documentary evidence, including affidavits, letters, contract and technical data will not necessitate the convening of a trial-type hearing." 54 FERC at 61,346; *Enron Power Marketing, Inc.*, 103 FERC ¶ 61,343 at P 33 (2003); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 at 61,368 (1990), *aff'd on reh'g*, 53 FERC ¶ 61194 at 61,688 (1990); *El Paso Natural Gas Co*., 47 FERC 61,139 at 61,405 (1989).

[45] *See Louisiana Ass'n*, 958 F.2d at 1113, *Exxon Co., USA v. FERC*, 182 F.2d 30, 47 (D.C. Cir.1999). In *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 128 (D.C. Cir. 1982), the court acknowledged that the Commission also has broad discretion to decide whether to hold an evidentiary hearing to address alleged factual allegations raised by the parties ("we consider first the Commission's refusal to conduct a formal evidentiary hearing on the issues . . . . At the outset we note that the Commission's decision on such matters is generally discretionary.")

original and revised copy of the ENVIRON Report.[46] WGL actively participated at the February 22 conference, at which it made an oral presentation and provided additional new technical data and information. Following the conference, WGL submitted comments to bolster its position and rebut the positions of other parties. Clearly, WGL was given more than ample opportunity to offer written and oral evidence, submit written arguments in support of its position and in rebuttal of other evidence, and submit such technical evidence, reports or analysis as it deemed necessary or appropriate to test, criticize and illuminate flaws in the record evidence offered by others prior to the Commission's disposition of this case. Moreover, our staff was actively involved in the development of the record of this proceeding, as evidenced by the questions it posed during the February 22 conference and in data requests that followed the conference. The highly technical engineering issues involving the respective roles of the various causative factors for the gas leaks on WGL's system were "capable of being solved on the basis of an analysis of the conflicting data and a reasoned judgment as to what the data shows."[47] Since there was no need for a trial-type hearing to resolve any issues of material fact, we find that the paper hearing conducted in this proceeding was appropriate and the record more than adequate to support the determinations made in the June 16 Order. Therefore, we conclude that this process fully satisfied WGL's due process rights and we deny WGL's request for rehearing.

B. <u>Unsworn Testimony</u>

37. WGL argues that the Commission is required to hold an evidentiary hearing in a case where motive, intent, or credibility are at issue and there are disputes over past occurrences,[48] and that the Commission's failure to establish hearing procedures was a clear violation of due process and an abuse of discretion.

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[46] The purpose of the original ENVIRON Report, also referred to herein as the July 2005 ENVIRON Report, was to investigate and identify the principal contributors of the increase in gas leaks on WGL's system. Dr. Loftus was the principal from ENVIRON responsible for the investigation and conclusions in this report. The revised copy of the ENVIRON Report, also referred to herein as the April 2006 ENVIRON Report, included National Gas Technologies Center's (NGTC) studies and findings showing that variations in both temperatures and C5+ concentrations would have an impact on leak rates on test couplings that were leaking in the field.

[47] *Louisiana Ass'n*, 958 F.2d at 1113.

[48] *Citing Exxon Co., U.S.A. v. FERC*, 182 F.3d 30, 46-47 (D.C. Cir. 1999); *Iroquois Gas Transmission System, L.P*. 52 FERC ¶ 61,091 at 61,368 (1990).

38. In particular, WGL asserts that the Commission was in error to rely so heavily on the unsworn testimony of Mr. Glenn McMurray, Normac's president, in finding that the application of hot tar to the couplings was a significant causative factor for the gas leaks experienced by WGL. WGL contends that Mr. McMurray had a clear interest in claiming that the leaks were the result of WGL's installation procedures rather than due to a flaw in the quality or design of the Normac seals.[49] Further, WGL contends that not only is Mr. McMurray a biased witness, but that many of the documents offered into the record by Normac challenge the credibility of much of his testimony. Additionally, WGL states that Mr. McMurray's claim that Normac received a cardboard mold from WGL in the 1960s was clearly a statement that begged cross-examination in light of the fact that Mr. McMurray had no personal knowledge of that fact and because WGL has no record of using cardboard molds to apply hot tar or of providing such a mold to Normac.

39. WGL also claims that it should have had the opportunity through discovery or cross-examination to challenge the findings in the Naeve Study[50] that Normac offered into the record at the February 22 conference. According to WGL, this study was offered to show that the Normac seals' "margin of safety" was destroyed by WGL's application of hot tar to the couplings, yet Mr. Keith L. Naeve, who conducted the study, was not present at the conference. WGL contends that the Naeve Study is "so riddled with error as to be meaningless."[51] Moreover, WGL complains that it was not given the opportunity to comment on the final Naeve study, which was filed after post-conference comments were due.

40. In their answers, Cove Point LNG/Dominion and the LTD-1 Shippers argue that Mr. McMurray's credibility was not a central element of the Commission's rejection of WGL's claim that the increased leaks on its system were caused by the low C5+ content of the regasified LNG. The LTD-1 Shippers add that cross-examination is not usually necessary where the issues involve technical fact; here, WGL had two months to provide

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[49] As an example, WGL asserts that it would have been useful to cross-examine Mr. McMurray regarding his claim at the February 22 conference that Normac's seals have an 800% "margin of safety." WGL claims that the meaning of that statement is unclear, yet the Commission apparently finds that statement to be persuasive. *See* 115 FERC ¶ 61,337 at P74.

[50] WGL refers to tests conducted by Naeve & Associates, Inc., on behalf of Normac, involving the effect of exposure of coupling seals to hot tar.

[51] WGL's rehearing request at p. 49.

technical information that refuted Mr. McMurray's presentation at the February 22 conference.

Commission Response

41. WGL asserts, incorrectly, that the Commission based its decision regarding the connection between the application of hot tar and leaks largely on Mr. McMurray's presentation at the February 22 conference and on the conclusions reached in the Naeve study. The Naeve study results and Mr. McMurray's presentation at the February 22 conference were consistent with and supported by other record evidence, including WGL's own memoranda,[52] Dr. Peter Loftus's work in the July 2005 ENVIRON Report, as well as his testimony in the *AES Ocean Express, LLC v. Florida Gas Transmission Company* (*AES v. FGT*) proceeding in Docket No. RP04-249-001.[53] The June 16 Order discusses in detail this other evidence and its significance in leading the Commission to find that WGL's use of hot tar as a method of corrosion protection was a significant contributing factor resulting in the increased leaks on WGL's system.[54]

42. We are not persuaded that WGL was denied adequate due process because it did not have the opportunity to cross-examine Mr. McMurray. The Commission is well aware of the fact that Mr. McMurray had an interest in defending the quality of Normac's seals. The Commission is also aware that Mr. McMurray could not have had personal knowledge regarding WGL's use of cardboard molds in the 1960s. However, Mr. McMurray's testimony was highly technical in nature. As such, it was susceptible of being challenged by WGL through the presentation of contrary technical evidence, and as discussed above, WGL had ample opportunity to present convincing rebuttal evidence. Moreover, as discussed below, WGL's use of cardboard molds is well documented from evidence other than Mr. McMurray's statements at the conference. On this point we agree with Cove Point LNG's assessment that Mr. McMurray's motive and credibility are

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[52] *See* memoranda dated March 8, 1966 and May 6, 1968, *AES v. FGT* Exhibit nos. LNG-86 and LNG-88.

[53] 115 FERC ¶ 63,009 (2006).

[54] *See* 115 FERC ¶ 61,337 at PP 83-87.

not central issues that required examination in a trial-type hearing.[55] Finally, as is discussed in detail *infra*, we agree with WGL that there are some problems with the procedures employed in the Naeve tests. However, we also explain at length the record evidence other than the Naeve test results that demonstrates the adverse effects from the application of hot tar on Normac couplings. For the above reasons, rehearing is denied.

C. Evidence from AES v. FGT

43. WGL claims that the Commission has violated WGL's due process rights by permitting the use of testimony from an entirely separate proceeding without providing an opportunity for cross-examination and without seeking WGL's consent. Specifically, at the February 22 conference, the LTD-1 Shippers filed certain portions of the transcript from the hearing in *AES v. FGT*, consisting of certain testimony of Dr. Loftus, author of the ENVIRON Report. The LTD-1 Shippers claim that this testimony disproves WGL's assertions regarding the affect of low C5+ on gas leaks.[56] WGL states that since it was not a party in *AES v. FGT*, it did not have the opportunity to undertake discovery, cross-examine witnesses, or file testimony in that proceeding. Moreover, states WGL, Commission staff allowed the LTD-1 Shippers to file the partial *AES v. FGT* transcript into the record without affording WGL an opportunity to review the transcript or object to its submission. To make matters worse, states WGL, the Commission has relied upon this evidence in the June 16 Order.[57]

44. WGL cites the Commission's recent decision in *ANR Pipeline Co. (ANR)* [58] in support of this claim. WGL states that in *ANR*, the Commission recognized the use of pre-filed testimony and exhibits that have not been subject to cross-examination gave rise

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[55] Cove Point LNG cites *Iroquois Gas Transmission System, L.P*, 54 FERC ¶ 61,103 at 61,346 (1991) where the Commission responded to a similar claim stating that "credibility assessments and the need for cross-examination were not essential in the resolution of disputes over the issues in this case. A trial-type hearing, providing for cross-examination, was not necessary to reach determinations on the purely technical issues discussed at the [settlement] hearing, since those issues could have been resolved easily without resort to the type of credibility determinations necessary when the demeanor of the witness is at issue or when the dispute is over a past occurrence."

[56] *See* 115 FERC ¶ 61,337 at P 75.

[57] *See* 115 FERC ¶ 61,337 at P 85.

[58] 116 FERC ¶ 61,002 at P 45 (2006).

to due process concerns. However, the Commission found that the due process concerns were alleviated since no party objected to the use of this pre-filed testimony and exhibits.[59] In this case, according to WGL, the Commission has permitted the use of testimony from an entirely separate proceeding without providing an opportunity for cross-examination and without seeking the consent of the affected parties. WGL asserts that the Commission's claim that WGL has had the opportunity in this proceeding to explain or rebut evidence from *AES v. FGT* is in error.[60] While WGL states that it has rebutted some of the *AES v. FGT* documents filed by the LTD-1 Shippers,[61] WGL contends that unless it can undertake discovery or cross-examination, it will be unable to effectively refute Dr. Loftus's testimony provided months ago in a proceeding to which it was not a party. Thus, asserts WGL, its due process rights have been violated by the Commission's reliance on this testimony. Consequently, WGL asserts that the Commission must strike the evidence from *AES v. FGT*.

45. Cove Point LNG/Dominion dispute that WGL was denied due process because it had no opportunity to undertake discovery or cross-examine witnesses, either in *AES v. FGT* (in which WGL was not a party) or in the present case. Cove Point LNG/Dominion argue that this claim is groundless, since the evidence in question consisted of the testimony of WGL's own expert, Dr. Loftus, testifying with respect to WGL's July 2005 ENVIRON Report and WGL's own internal documents. The LTD-1 Shippers contend that WGL was well aware of the potential damage to its position in this proceeding from the cross-examination of Dr. Loftus in *AES v. FGT*, and it had ample time and opportunity in the present proceeding to address the impact of that evidence.

Commission Response

46. The evidence WGL complains of consists of excerpts of Dr. Loftus's testimony, particularly his testimony on cross-examination, in *AES v. FGT*, a proceeding involving

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[59] *Id*., at P 54.

[60] *See* 115 FERC ¶ 61,337 at note 72.

[61] Specifically, WGL states that in its data response it provided copies of internal documents used by Dr. Loftus in reaching the conclusions contained in the July 2005 ENVIRON Report. According to WGL, those documents show that WGL began experiencing leaks when Normac changed the composition of the seals in its couplings, and that when Normac was unable to fix the flaws, WGL stopped purchasing couplings from Normac in about 1966. *See* WGL's response to data request no. 18. WGL states that the June 16 Order ignored this response.

the issue of the interchangeability of regasified LNG delivered by FGT to various LDCs in Florida, together with materials obtained from Dr. Loftus through discovery in that proceeding consisting of documents from WGL's own files relating to leaks on WGL's system. Dr. Loftus testified in *AES v. FGT* on behalf of People's Gas System and several other Florida LDCs seeking to establish the potential for gas leaks on their systems as a result of low C5+ regasified LNG. In the June 16 Order, the focus of testimony excerpts from *AES v. FGT* involved the cross-examination of Dr. Loftus on the subject of his July 2005 ENVIRON Report, which was filed as an exhibit during his direct testimony in that proceeding.[62]

47. We consider without merit WGL's claim that without the opportunity to undertake discovery or cross-examination regarding Dr. Loftus's *AES v. FGT* testimony, particularly his testimony on cross-examination which undermined his direct testimony in that proceeding, it was unable to meaningfully refute that testimony. Although offered as an exhibit in *AES v. FGT*, the July 2005 ENVIRON Report was prepared by Dr. Loftus, at the direction of WGL, as a result of ENVIRON's investigation of the causes of increased gas leaks on WGL's system that are the subject of this proceeding. Consequently, WGL did not need to avail itself of discovery or cross-examination of Dr. Loftus to rehabilitate the value of that report to WGL's position in this proceeding. WGL submitted an appropriate explanatory statement from Dr. Loftus himself in an effort to address or clarify his testimony in *AES v. FGT*. [63] Moreover, nothing impeded

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[62] As noted above, the July 2005 ENVIRON Report was prepared by Dr. Loftus at the request and expense of WGL for the purpose of supporting its claim that the increased leaks on its system were caused by the low C5+ gas coming from the Cove Point LNG facilities. In *AES v. FGT*, to determine appropriate gas quality and interchangeability standards to accommodate the introduction of regasified LNG into FGT's system, Dr. Loftus testified on behalf of LDCs and based his analysis in the July 2005 ENVIRON Report assessing the cause of compression coupling leaks on WGL's system. 115 FERC ¶ 63,009 at P 22. The Administrative Law Judge found that the ENVIRON Report presented by Dr. Loftus was entirely discredited to the extent it may have assigned major blame for the leakage on WGL's system to the introduction of regasified LNG. *Id.* at P 214. The Commission concluded in *AES v. FGT* that Dr. Loftus's testimony and ENVIRON Report were of little value other than to suggest that increased leakage occurring on systems in which LNG or other dry gas is introduced is a comparably infrequent phenomenon and that, probably, it is attributable to factors other than the mere change in gas composition, including, at least, the presence of defective seals and large swings in seasonal temperatures. *Id*. at P 217.

[63] We note that while on one hand, WGL complains that Normac did not offer Dr. Naeve, author of the Naeve study, at the February 22 conference, Dr. Loftus was also

(continued…)

WGL's ability to address the significance of any of its own documents identified or discussed in Dr. Loftus's testimony. Finally, WGL had ample time and opportunity to consider the potential impact of the LTD-1 Shippers' evidence from *AES v. FGT*. The LTD-1 Shippers first drew *AES v. FGT* into this proceeding when, almost two months prior to the February 22 conference, it specifically claimed that flaws in the July 2005 ENVIRON Report were established in that case.[64] WGL was served with the materials on February 23, 2006, and had ample opportunity to address them in their comments following the February 22 conference, as well as in response to the March 24, 2006 data requests from our staff.

48. Additionally, WGL's reliance on *ANR* is misplaced. In *ANR*, the Commission's concern over the use of record evidence that had not been subjected to cross-examination arose in a proceeding which had been set for hearing under subpart E of the Commission's Rules of Practice and Procedure.[65] In hearings under subpart E, as opposed to the typical paper hearings in certificate proceedings, the Commission's rules specifically provide that a participant may "conduct such cross-examination as may be necessary to assure the true and full disclosure of the facts."[66] In *ANR*, the ALJ certified a settlement to the Commission of a matter set for hearing under subpart E of the Commission's Rules of Practice and Procedure. In doing so, the ALJ found that the record for consideration consisted only of comments on the settlement, together with affidavits attached to those comments, thereby excluding pre-filed testimony and exhibits which, being filed prior to the hearing, had not been subjected to cross-examination in the *ANR* proceeding. Upon an unopposed motion of one of the parties to consider the pre-filed testimony and exhibits and the agreement by all parties that the Initial Decision could be omitted, the Commission considered the entire record, including the pre-filed testimony and exhibits. In that regard, WGL is correct that the Commission noted that its Rule 602(h)(2)(iii) , which governs the submission of contested settlement offers in which there are genuine issues of fact, originally contained a requirement that "parties

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absent from the conference. Instead, another principal at ENVIRON, Charles Benson, attended the conference in order to answer questions.

[64] *See* December 28, 2005, LTD-1 Shippers' response to KeySpan's request for an evidentiary hearing.

[65] 18 C.F.R § 385, Subpart E (2006).

[66] 18 C.F.R. § 385.505. Additionally, Rule 385.506(a), 18 C.F.R. § 385.506(a), provides that "any witness submitting written testimony must be available for cross-examination, as provide in this subpart."

have an opportunity to avail themselves of their right with respect to the presentation of evidence and cross-examination of opposing witnesses."[67] However, WGL fails to also acknowledge that the Commission went on to note that the rule had been revised to eliminate that requirement, and in its place provide that "the Commission may decide the merits of contested settlement issues, if the record contains substantial evidence upon which to base a reasoned decision."[68] The Commission emphasized that in its final rule making this change, it had explained that substantial evidence pertains to the quality of the evidence; evidence elicited through cross-examination of witnesses may not be necessary.[69] For these reasons, we deny WGL's rehearing request.

Technical Gas Leak Issues

49. WGL claims that the Commission, in approving the Cove Point Expansion Project, selectively analyzed the record evidence to reach a conclusion that temperature, hot tar, and pressure, rather than LNG, are the substantial causes of increased leaks in Prince George's County, Maryland. WGL claims that the June 16 Order ignores the most salient point -- that revaporized LNG was the only one of these factors that is unique to the region and to the time period with the increase in leak rates. It follows, WGL claims, that the low C5+ LNG is the most significant, if not the primary, cause of the leaks in Prince George's County.

50. The Commission concluded in the June 16 Order that "[I]t is clear that any shrinkage due to the desorption of C5+ was small, particularly when compared to other contributing factors, as discussed below, and would not have caused any increase in leak rates on WGL's system in the absence of those other more significant contributing factors, namely, the application of hot tar, increase in operating pressure and a decrease in temperatures."[70] The Commission therefore concluded that the increase in leak rates in Prince George's County was due to the combined effects of temperature, pressure and to

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[67] *See* 115 FERC ¶ 61,002 at n 51.

[68] Rule 602(h)(2)(iii). The Commission determined in Order No. 578 that the requirement for an opportunity to present evidence and cross-examine opposing witnesses would be subsumed within the requirement for substantial evidence. *See* 115 FERC ¶ 61,002 at n. 51.

[69] *See* 115 FERC ¶ 61,002 at fn 51, *citing Alternative Dispute Resolution*, Order No. 578, *Statutes and Regulations*, Regulations Preamble January 1991-June 1996, ¶ 31,018 at 31,334 (April 12, 1995) Docket No. RM981-12-000.

[70] 115 FERC ¶ 61,337 at P 73.

a lesser degree, low concentrations of C5+, on seals rendered "marginal" as a result of the application of hot tar.

a. Effect of Reduced C5+ Levels

51. WGL asserts that in view of the fact that reduced C5+ is the only factor unique to WGL's system in Prince George's County where the increased leaks occurred, the Commission cannot justify its conclusion in the June 16 Order that factors other than the reduced C5+ levels found in LNG are the significant causes of the increase in leaks. WGL accuses the Commission of ignoring record evidence in order to reach a preferred result contrary to its obligation to engage in reasoned decision-making.

52. WGL claims that its evidence demonstrates that temperature and pressure are relatively constant throughout its system and that hot tar was applied to couplings outside Prince George's County; yet while there were no unusual increases in leak rates outside Prince George's County, the leak rates in Prince George's County following the reactivation of the Cove Point LNG Terminal increased 16-fold. Since the receipt of low C5+ gas is the only factor unique to WGL's system located in Prince George's County, WGL asserts that low C5+ gas is the only factor that logically can explain the increased leak rates. Moreover, states WGL, it is only logical to conclude that increased deliveries of LNG will increase the leak rates throughout all parts of WGL's system that contain mechanical couplings.

53. In their answer to WGL's request for rehearing, Cove Point LNG/Dominion assert that WGL has failed to demonstrate that regasified LNG causes properly installed seals to leak. In fact, state Cove Point LNG/Dominion, according to WGL's own evidence, specifically the July 2005 ENVIRON Report, "properly installed seals exposed only to re-vaporized LNG would function well for decades."[71] Cove Point LNG/Dominion conclude that even looking uncritically at WGL's evidence in its most favorable light, WGL could only show that the low C5+ content of regasified LNG could slightly affect the leak rates in seals that were already leaking as a result of other factors.

[71] July 2005 ENVIRON Report at p. 33.

Commission Response

54. The Commission agrees with Cove Point LNG/Dominion that the decrease in C5+ in the re-vaporized LNG would not have adversely affected WGL's system if a subset of the compression couplings had not been compromised during the installation process. We are convinced that the ability of the elastomer seals within a subset of compression couplings had been compromised by WGL's application of hot tar as a method of corrosion protection. In the July 2005 ENVIRON Report, Dr. Loftus discusses the effects of 400°F hot tar application on Normac compression couplings. The report states that "(i)t is therefore possible that excessive amounts of hot tar surrounding the coupling could provide a large enough thermal pulse to raise the seal temperature excessively."[72] Dr. Loftus also agreed that the application of hot tar led to degradation in the ability of a coupling to seal.[73] Further, Dr. Loftus agreed that if the temperature of the elastomer were to reach 400°F, the elastomer would be a "gooey mess."[74] While there is no evidence that the temperature of the seals on the WGL system ever approached the 400°F range, Dr. Loftus admitted that exposing the elastomers to high temperatures would accelerate age-related stress relaxation, creep and cold flow.[75] The result is that the elastomers would be compromised, which would reduce the ability of the elastomer seal to prevent leaks. Dr. Loftus agrees with WGL's internal memorandum that demonstrates that the application of hot tar could have aged the elastomer seals an equivalent of 30 years in a matter of minutes.[76] As a result of the degradation of the couplings ability to seal, one small change to the system, such as a pressure, temperature and change in C5+ concentration, could have caused the increase in leak rates. Dr. Loftus's findings are consistent with the Commission's determination in the June 16 Order.

55. As discussed in the June 16 Order, the Commission concluded that the evidence in the record clearly demonstrated that application of hot tar had compromised a subset of

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[72] *AES v. FGT* ex. no. LNG-83 at p. 12.

[73] *AES v. FGT* Tr. at 1142:8-11.

[74] *Id.*, at Tr. 1371:1-13.

[75] *Id.*, at Tr. 1371:24-25; Tr. 1372:1-2.

[76] *Id.*, at Tr. 1380:7-13.

couplings which were sealing only "marginally."[77] The Commission also concluded, based upon the evidence in the record, that the increase in leak rates on WGL's system was not caused primarily by the low concentration of C5+ in the re-vaporized LNG, but instead, that other factors, including the application of hot tar, operating pressures and colder temperatures, had a greater impact on leak rates.[78] Further, the Commission concluded that fluctuation in C5+ as a possible contributor to the leaks on WGL's system cannot be ruled out. However, when the leak rates of the low C5+ test gas was compared to leak rates associated with changes in temperature and the unintended de-pressurization and re-pressurization of the test couplings, the Commission concluded that changes in leak rates resulting from the changes in gas composition are relatively small when compared to those occasioned by the other contributing factors mentioned above.[79]

b. <u>Temperature Changes</u>

56. WGL states that the Commission's conclusion in the June 16 Order that temperature decreases are a more significant causative factor than reductions in C5+ has no factual support. First, WGL points out that temperatures in Prince George's County do not differ from temperatures in the remainder of WGL's system. Second, WGL claims that the Commission misconstrues the significance of NGTC tests[80] by relying on those tests to support the proposition that a 20 degree change in temperature has a greater impact on leak rates than a change in gas composition. According to WGL, the NGTC tests "simply confirm that decreases in temperature increase the speed at which gas escapes leaking couplings . . . . The NGTC tests did not analyze the combined effect of temperature and low C5+ gas on leak rates."[81]

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[77] WGL's own consultant, Dr. Loftus agrees that the "seal population in general contains a subset that is sealing marginally". In support of this position, Dr. Loftus states that "this is evidenced by the normal rate of seal leaks in all parts of the WGL network, including those which have not been exposed to LNG." (July 2005 ENVIRON Report at p. 33).

[78] 115 FERC ¶ 61,337 at P 56.

[79] *Id*.

[80] NGTC's findings were included in the April 2006 ENVIRON Report.

[81] WGL's rehearing request at p. 24.

Commission Response

57. To support its conclusion that the introduction of re-vaporized LNG in August 2003 was responsible for the increased leaks on its system, WGL relies on the findings of the July 2005 ENVIRON Report which concluded that there were three contributing factors: aging seals, a change in gas composition (low C5+), and a temperature decrease.[82] Claiming that its entire system functions under the same operating conditions and pressures, experiences the same temperature changes, with couplings of the same age which were installed using the same installation practices (including the application of hot tar), WGL concludes that the only change to its system, namely, the introduction of re-vaporized LNG, caused the increased leak rates. However, as discussed in the June 16 Order and restated in this order, the Commission believes that the record evidence clearly shows that other factors played a more prominent role leading to the increase in leak rates.

58. The Commission's determination that temperature had a greater impact than the change in C5+ concentration can be substantiated by evaluating a piece of evidence submitted by WGL in its December 29, 2005 "Answer To Motion For Summary Disposition of Dominion Cove Point, LNG and Dominion Transmission Inc." In Attachment A, titled "New Leak 2002-2004," WGL provides a graph that shows the number of leaks, on a monthly basis, experienced by WGL in three operating area, one of which is the Prince George's County area. The information included in this graph clearly shows that the there was no increase in leak rates, which ranged from about 100 to 200 per month in August 2003 through December 2003. The graph also shows that for the period of October 2003 through July 2003, the same operational area experienced leaks ranging from about 100 to about 275 per month. According to the graph, during the months of January and February 2004, the leak rates did increase by about two to three time the previous winter high of about 275 leaks per month and then, after February 2004, the leak rates fell back down to historical levels until the next heating season of 2004-2005, at which times the leak rates again rose significantly. Therefore, it was only when the winter temperatures decreased across its system that WGL experienced the increase in leak rates.

59. As discussed in more detail below, the NGTC study is the only test conducted on behalf of WGL for the purpose of examining the impacts of changes in temperature and changes in concentration of C5+ on leak rates. NGTC also tried to determine if the addition of C5+ would remediate the increase leak rates in the Prince George's County area. The results of the NGTC tests show that, while holding both C5+ concentrations and pressure constant, a decrease in temperature will increase the leak rates of sample

[82] July 2005 ENVIRON Report at p. 35.

couplings. The results also show that, while holding both the temperature and pressure constant, a decrease in C5+ concentration will also increase the leak rates of sample couplings. When comparing the effects that a change in C5+ and temperature had on the mechanical couplings, NGTC concludes that a change in temperature of 20°F "had larger impact on leak rates than did the change of gas composition."[83] As noted in the June 16 Order, when "the effects of C5+ concentrations are compared with the effects of temperature, the Commission concludes increase in leak rates attributed to the change in C5+ concentration is equivalent to increase in leak rates due to about a 4 to 5° F change in temperature."[84] These results clearly support the Commission's conclusion that the change in temperature will have a greater impact on leak rates than a change in C5+ concentrations.

c. **Hot Tar**

60. WGL challenges the June 16 Order's finding that the application of hot tar is a more significant cause of the increased leaks than reduction in C5+ on three grounds. First, WGL argues that the "margin of safety" theory offered by Mr. McMurray at the February 22 conference does not explain why WGL's couplings that had been exposed to hot tar began to experience increased leaks only after being exposed to regasified LNG**.** WGL states that the "margin of safety" theory also fails to consider that couplings from Dresser, which make up about 75 percent of the compression couplings installed on its system, also were coated with hot tar during installation. WGL claims that the Dresser couplings did not experience problems until receipts of re-vaporized LNG were increased. WGL argues that despite Normac's evidence that its couplings were "damaged" due to the hot tar, there is no record evidence that Dresser couplings were also damaged.

61. Second, WGL claims that the only "evidence" that WGL used cardboard molds came from Mr. McMurray holding up a cardboard mold at the February 22 conference and claiming that Normac obtained the mold from WGL in the 1960s. WGL maintains that it found no evidence of cardboard molds in couplings in Prince George's County that it has repaired or rehabilitated. Third, WGL contends that the Commission ignored WGL's post-conference comments in which it pointed out several significant flaws in the Naeve test commissioned by Normac. WGL lists those flaws to include: (1) the failure to disclose the vintage or design of the coupling used; (2) the application of "significantly" more hot tar to the coupling than is used in the field; (3) the measurement

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[83] WGL's April 18 data response, FERC/WGL 1.4.6 of 34, Attachment A, April 2006 ENVIRON Report.

[84] 115 FERC ¶ 61,337 at P 72.

of the temperature inside the coupling's metal housing, which is not indicative of the temperature within the coupling; (4) the 450°F temperature of the hot tar used was in excess of the recommended 400°F; and (5) the use of a cardboard mold to hold the hot tar to the coupling.[85] Based on these flawed procedures, WGL disputes the results of the Naeve test. For these reasons, WGL claims that the June 16 Order's finding regarding hot tar is arbitrary, capricious, not the result of reasoned decision-making, and not based on substantial evidence.

Commission Response

62. Throughout this proceeding, WGL has maintained that the exclusive cause of the increase in leak rates experienced in the Prince George's County area was the introduction of re-vaporized LNG. In support of its position, WGL relies on the July 2005 ENVIRON Report which concludes that the spike in leaks was caused by three primary contributing factors: aging seals; a change in gas composition (primarily gas with low C5+ concentrations); and a temperature decrease.[86] WGL contends that all the identifiable contributing factors, including the application of hot tar, except the introduction of re-vaporized LNG, were experienced by its entire system.[87] Since the introduction of re-vaporized LNG is the only contributing factor that is unique to the Prince George's County area and that is the only part of WGL's system to experience an increase in leak rates, WGL concludes that the cause of the increase in leak rates is due solely to the re-vaporized LNG.[88]

63. WGL installed mechanical compression couplings from the 1950s through about 1971.[89] After an expansion project in the 1960s, WGL's own employees noted an increase in leak rates experienced on the pipeline system, long before the introduction of

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[85] WGL's rehearing request at pp. 29-31. As discussed *infra*, WGL disputes the use of cardboard molds and maintains that there is no evidence that molds were used during the installation of the compression couplings on its system.

[86] July 2005 ENVIRON Report at p. 2.

[87] WGL's rehearing request at pp. 12-13.

[88] *Id.*, at p. 13.

[89] WGL's April 18 data response no. 13.

re-vaporized LNG.[90] These leaks were identified as originating from the Normac compression couplings. In an attempt to replicate the problem experienced in the field, WGL's employees conducted several tests with new and existing Normac and Dresser compression couplings to determine if they could isolate the cause of the increase in leak rates. The record is clear; after application of hot tar on the Normac compression couplings, the seals leaked. One such test clearly shows that the application of hot tar reduced the sealing force or "torque" dramatically, from about 87 ft-lbs to about 20 ft-lbs.[91] This large reduction in sealing force allowed the WGL employees to loosen the compression couplings by hand. Based upon these tests, WGL suspended the use of Normac compression couplings pending further tests of new formulations of the elastomer seals.[92] However, WGL did not replace any of the installed compression couplings that had not leaked, even though they had been exposed to hot tar.[93]

64. WGL states in their April 18 data response that during the 1960s and 1970s it only replaced the compression couplings that were leaking.[94] WGL explains that the other compression couplings continued to "provide a gas tight seal"[95] and, therefore, were not replaced. However, WGL does not explain how it knew that the balance of the compression couplings were providing a "gas tight seal." It is apparent that WGL assumed that if there were no leaks reported by customers, then the compression couplings were operating properly and providing a "gas tight seal."[96] The Commission believes that this action left potentially compromised compression couplings in place on WGL's distribution system. The Commission believes that WGL's decision to leave the compromised compression couplings in place on their system is the genesis of WGL's leak problem. For the last 30 or more years, these seals aged to a point where even

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[90] *AES v. FGT* ex. nos. LNG-86 and LNG-88

[91] *Id*., LNG-86

[92] WGL's April 18 data response No. 13.

[93] *Id*.

[94] *Id*.

[95] *Id*.

[96] *Id*.

WGL's own expert, Dr. Loftus, described the degraded seals as functioning "marginally."[97]

65. WGL did not experience an increase in leak rates in August 2003 when re-vaporized LNG was first introduced to its distribution system.[98] It was only when the winter-time temperatures were experienced, in December 2003, that the leak rates increased in the Prince George's County area.[99] Dr. Loftus concedes that the introduction during August 2003 of re-vaporized LNG, which does cause relatively minor shrinkage in the seals, did not increase WGL's leak rates. He notes that the increase in leak rates was first experienced in about December 2003, and that leak rates returned to approximately normal levels in March 2004. A similar pattern was observed the following heating season, with an increase in leaks being reported from November 2004 to March 2005.[100] Dr. Loftus conceded that the decrease in temperature during the 2003-04 and 2004-05 winter heating seasons was the "straw that broke the camel's back,"[101] leading to increased leak rates in the Prince George's County area.

66. WGL's leak rate data indicates that if the temperature in the Washington, DC area had remained constant throughout the year, the leaks on its distribution system would have remained fairly constant. The same would be true for operating pressures or gas compositions. Therefore, a change in any of these factors could be pointed to as being the "last straw." However, it must be noted that incidences of leaks were not first experienced on WGL's system in the winter of 2003; the leaks started in the 1960s with the application of hot tar, which was shown, by WGL's own employees, to have a detrimental affect on the seals' ability to retain adequate sealing force to prevent leaks.[102]

67. The record is clear that the compression coupling seals were damaged during the installation process which included the application of hot tar as a corrosion retardant.

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[97] July 2005 ENVIRON Report at p. 2.

[98] WGL's Answer to Motion for Summary Disposition of Dominion Cove Point LNG, L.P. and Dominion Transmission Inc., Attachment A "New Leaks 2002-2004."

[99] *Id*.

[100] July 2005 Environ Report p. 6; *AES v. FGT* ex. no. LNG-83 at p. 12.

[101] AES v. FGT Tr. at 1165, Lines 8-11.

[102] *AES v. FGT* ex. nos. LNG-86 and LNG-88.

Re-vaporized LNG was the last change to an already compromised system. Results from a third party laboratory, NGTC, demonstrate that fluctuating pressure and temperatures had a greater impact on leak rates than did the lack of C5+ in re-vaporized LNG.[103] The NGTC results confirm the Commission's determination that the change in gas compositions associated with the re-vaporized LNG was not a major contributor to the increase in leaks rates on WGL's system.

68. Support for this position is provided by an examination of the attempts by WGL and NGTC to eliminate the leaks in the compression couplings by changing the gas composition. WGL installed a hexane plant at Gardiner Road, the receipt point on Cove Point LNG's system, to increase the level of C5+ in the gas stream. If the increased leak rates in Prince George's County were due primarily to the reduction in C5+, this should have resolved the problem; however, it did not.[104] Similar attempts by NGTC to stop the leaks with the injection of C5+ were unsuccessful.[105] These failed attempts support our determination that the decrease in C5+ from the introduction of re-vaporized LNG was not a major contributor to the problem of leaks on WGL's system.[106]

69. According to WGL, hot tar was applied to all of the mechanical couplings, manufactured by both Normac and Dresser, throughout its system over 40 years ago. WGL claims that there is no record evidence that supports a conclusion that the Dresser couplings were "damaged" due to the hot tar.[107] WGL claims that the Dresser couplings did not experience problems until receipts of re-vaporized LNG were increased in 2003.[108] The Commission does not believe that the record supports WGL's claim that the Dresser couplings were not damaged due to the hot tar. In a memo dated March 16, 1966, WGL conducted tests with both Normac and Dresser couplings.[109] In this test, both Normac and Dresser couplings lost pressure after the application of hot tar. During

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[103] NGTC – April 2006 ENVIRON Report.

[104] WGL's April 18 data response at p. 6.

[105] *See* NGTC testing in April 2006 ENVIRON Report.

[106] *See* 115 FERC ¶ 61,337 at P 70.

[107] WGL's rehearing request at p. 32.

[108] Id.

[109] WGL's April 18 data response, FERC/WGL 1-18.3 of 58, Attachment A.

the course of the test, the amount of torque maintained by the couplings fell to 42 ft-lbs and 20 ft-lbs, for Dresser and Normac, respectively. According to the July 2005 ENVIRON Report, elastomer seals will experience compression stress relaxation or a loss in stress with time when compressed in a coupling.[110] This effect, Dr. Loftus says, will cause a decrease in the sealing force over time.[111] Therefore, if all couplings were treated identically, the older the coupling is, the larger the reduction in sealing force or torque.

70. Although the decrease in sealing force due to the application of hot tar experienced by the Dresser coupling was not as large as that experienced with the Normac coupling, the Dresser coupling was clearly adversely affected by the hot tar. In addition, examination of a document that WGL provided in its response to the March 24 data request demonstrates that there may be other problems associated with the Dresser couplings. WGL includes an undated document from Mike Hagan labeled as "Cut & Paste Notes."[112] In this document, Mr. Hagan claims that the Normac couplings were "proven" defective by WGL's Materials Testing personnel in the late 1960's and early 1970s. Mr. Hagan states that neoprene, which was used by both Normac and Dresser for years, "does not expand after it contracts or tightened." According to the notes, Mr. Hagan claims that Dresser apparently changed to "Buna-N", a different formulation for the elastomer seals, and corrected their "problem," or leaking issue. Mr. Hagan also claims that some of the leaking couplings repaired in 2003-04 are "not just Normacs." Mr. Hagan states that according to Karl Gunther, another WGL employee, there are probably still many defective Dressers couplings on WGL's system that were installed from a period of about 1957 through 1963, before Dresser changed elastomer formulations and "corrected their problem."[113] Mr. Hagan states that some of the couplings being repaired are not manufactured by Normac. He states that when he accompanied repair crews to three different 2-inch leaks earlier in the week (no date provided), the leaking couplings ended up being manufactured by Dresser.[114]

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[110] *AES v. FGT* ex. no. LNG-83, at p.16.

[111] *Id*.

[112] WGL's April 18 data response, FERC/WGL 1.2.1 of 114.

[113] *Id*.

[114] *Id.*, FERC/WGL 1.2.2 of 114, Attachment A.

71. The Commission believes that the "Cut & Paste Notes" document confirms that WGL should expect to find leaking Dresser couplings that have neoprene seals. The Commission concludes that the problems inherent with using neoprene, coupled with the use of hot tar by WGL during the installation process, will result in some of the Dresser couplings experiencing increased leak rates.

72. Before addressing our oversight in not specifically responding to WGL's concerns regarding the Naeve test, we believe that it is important to look at the design and manufacturing process in order to better understand the effects of heat on the seals. At the February 22 conference, Mr. McMurray discussed the process of manufacturing a seal or "gasket" and what happens to the seal after the introduction of additional heat from the application of hot tar. Mr. McMurray stated that during the manufacturing process, control of the chemistry, time, pressure and temperature must be maintained.[115] To make the seal, the material must contain the proper blend of rubber compounds in order to meet the design properties of the final product. Mr. McMurray explained that Normac designs its seals to "spring back" or have the ability to expand to their original shape after being compressed.[116] The material is placed in a mold and processed under a specified pressure, temperature and time in order to yield the final product.[117] Mr. McMurray claimed that Normac's design specifications call for heating the mold to 360°F for 15 minutes and 10 seconds to get the desired engineered results.[118] Mr. McMurray contended that subjecting the seal to additional heat from the application of hot tar while under pressure in the tightened coupling will change the design by possibly "re-molding" the seal.[119] The introduction of additional heat though the process of applying hot tar, Mr. McMurray claims, will have a detrimental effect on the seal. Mr. McMurray contends that the additional heat will accelerate the degradation of the seal and cause it to fail.[120]

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[115] February 22 conference, Tr. at p.80, Lines 15-25.

[116] *Id*. at p. 81, Lines 1-7.

[117] *Id*.,at p. 81, Lines 8-10.

[118] *Id*., at p. 81, Lines 22-25; Tr. 82, Lines 1-3.

[119] *Id*., at p.84, Lines 1-5.

[120] *Id*., at p. 84, Lines 11-15.

73. The Naeve study presents the results of the first and only test conducted by any party in this proceeding in order to examine the effects of hot tar on elastomer seals. The purpose of the test, as conceived by Normac, was to assist in the investigation of gas leaks from Normac compression couplings installed on WGL's system.[121] Mr. Naeve, the individual responsible for conducting and reporting the results of the tests, described the test procedures in the report. The Naeve test included two 2-inch Normac compression couplings which were mounted on an 18-inch length of 2-inch diameter pipe. A temperature probe, or thermal couple, was placed directly on the top side of the elastomer seal in order to record the temperatures experienced by the elastomer seal. With molds attached to hold the hot tar, one coupling was subjected to tar heated to 450°F and left outside in 20°F weather with a "significant wind blowing" to cool, and the other to tar heated to 395°F and taken inside in a 63°F building to cool. Time and corresponding temperature readings were recorded for about an hour. The results of the test show that both samples had maintained temperatures in excess of 212°F, the temperature that Normac states will severely compromise the seal,[122] in excess of 40 minutes each. The Naeve study concluded that the tested installation practices subjected the coupling to "significantly elevated temperatures for an extended period of time," which "could clearly have an affect on the performance of the gasket."[123]

74. WGL has not conducted any tests to either verify or refute the results of the Naeve study. WGL has only disputed the procedures and testing environment used during the Naeve study to reach its conclusions.[124] Without conducting any test,[125] ENVIRON eliminated the effect of hot tar application as a possible contributor because this practice of corrosion protection was used throughout WGL's system.[126] However, we note that ENVIRON did recognize that the "excessive temperatures" caused by the application of hot tar onto a coupling could lead to a reduction in sealing force.[127]

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[121] Attachment 1, included in Normac's presentation at the February 22 Conference, Tr. P85, L2-8.

[122] Normac's presentation at the February 22 Conference, Tr. P84; 16-19.

[123] *Id*., Attachment 1.

[124] WGL's rehearing request at pp 29-31; WGL's April 18 data response No. 9.

[125] *AES v FGT* Tr. at pp. 1144, 17-18.

[126]February 22 conference Tr. at 38:16-25; 39:1- 4.

[127] July 2005 ENVIRON Report at p. 12.

75. The Commission agrees with WGL that there are some problems with the tests conducted by Naeve. First, the Naeve study does not disclose the vintage of the coupling used in testing. The effects of hot tar will depend upon the vintage and type of elastomer used. The Naeve study should have included this information. Second, the temperature was only measured on the top side of the elastomer seal. The Commission agrees that another temperature probe should have been placed underneath the elastomer seal. This additional temperature probe would have, at the very least, provided confirmation that the temperatures were both measured and recorded accurately. Lastly, the Commission agrees that the temperature of the hot tar may have dissipated more quickly in actual practice in the field, due to the length of steel pipe on either side of the coupling, which would have acted similar to a heat sink. The use of a piece of steel pipe longer than the 18-inch pipe used during the test would have avoided this concern.

76. The Commission, however, does not agree with WGL that: (1) 450°F was not representative of the temperatures of hot tar used in installation; (2) the test should not have used a cardboard mold to hold the tar in contact with the coupling; and (3) the consultant applied "significantly" more hot tar than what is used in the field.

77. The Naeve study included two tests, one that used 450°F hot tar and another that used 395°F hot tar. Even if the Commission rejects the results from the 450°F test, the second test, with tar heated to 395°F, shows the same result. The seals in both tests experienced temperatures far in excess of 212°F for at least 40 minutes.[128] Acknowledging that additional steel pipe would have assisted in reducing the temperature, the Commission believes that the elastomer seals would have still been in contact with temperatures in excess of 212°F. While we do not know how long the elastomer seal would have been subjected to such temperatures under field conditions, we find the Naeve study results sufficient to support our finding that the application of hot tar had a detrimental effect on Normac couplings' ability to seal.

78. WGL still claims that the evidence in this proceeding shows that WGL used "mesh" or "tar paper" during the installation of compression couplings on its pipeline system.[129] WGL states that the use of mesh or tar paper during the installation of compression couplings requires substantially less hot tar during the application process for corrosion protection.[130] WGL contends that it has not found evidence of the use of

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[128] The Commission notes that WGL acknowledges the fact that another test was performed using hot tar at 395°F in Footnote No. 37 on page 30 of its rehearing request.

[129] WGL's rehearing request at p. 28.

[130] WGL's April 18 data response no. 9.

cardboard molds during the repair and rehabilitation program in Prince George's County.[131] As a result, WGL claims that the Naeve test does not accurately represent the installation process that takes place in the field because significantly more hot tar was applied to the couplings.

79. At the February 22 conference, Mr. McMurray provided a cardboard mold that he claims was supplied to Normac by WGL during the 1960s in order to solve the leak issues.[132] This cardboard mold was duplicated by Mr. Naeve in order to conduct the tests and reach his conclusions in the Naeve report. However, WGL still claims that it has not found evidence of the use of cardboard molds.[133] WGL claims that since it did not use the cardboard molds for the application of hot tar, the amount of tar used in the Naeve test was significantly more than WGL contends was used in the field. However, we find that the record evidence does not support WGL's claims. According to WGL's own internal memorandum, the tests conducted by WGL's employees clearly stated that "molds" were used during the application of hot tar.[134] The Commission believes that there is enough evidence in the record to support the finding that WGL used cardboard molds during the application of hot tar on the couplings. Coupled with the results from WGL's tests from the 1960s, the Commission has sufficient evidence to demonstrate the adverse effects from the application of hot tar on Normac couplings without the results from the Naeve test.

d. <u>Increased Operating Pressures</u>

80. WGL contends that the June 16 Order's conclusion that increased operating pressures in Prince George's County are a more significant cause of the increased leaks than reductions in C5+ is erroneous because: (a) accurate pressure data shows no increase in operating pressure; (b) pressures in Prince George's County do not differ from those in other areas on WGL's system; and (c) the NGTC incident is irrelevant. As a result, WGL states that the June 16 Order's conclusion regarding pressure is arbitrary, capricious, not the result of reasoned decision-making, and not based on substantial evidence.

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[131] WGL's rehearing request at p. 28.

[132] February 22 Conference, Tr. p. 83, Lines 1-3.

[133] WGL's rehearing request at p. 28.

[134] *AES v. FGT* ex. nos. LNG-86, LNG-88 and FERC/WGL 1-18.15 of 58, Attachment A.

81. Specifically, WGL claims that the Commission relied on inaccurate pressure data (albeit data provided by WGL) to conclude that its system experienced an increase in leak rates as a result of an increase in pressure on the "Kettering System," recorded by the Forestville telemeter, in the Prince George's County area.[135] WGL states that the Commission's finding that the pressure was increasing on this portion of the system was based upon unreliable telemetering data provided by WGL in response to Commission staff's March 24, 2006 data request showing that the average monthly pressures for Forestville were 60.1 and 59.4 psig for June and July 2003, respectively.[136]

82. However, WGL states that after the issuance of the June 16 Order, it reviewed the information that it had provided to the Commission and determined that: (1) the Forestville telemeter was "not producing reliable data during much of 2003,"[137] and (2) it had "inadvertently omitted telemeter data from 2003 to 2004." Consequently, WGL included in its rehearing request an affidavit from Douglas Staebler ("Third Staebler Aff."), a WGL employee, to explain how pressures are measured on WGL's system and to provide accurate pressure data.

83. Mr. Staebler states that pressures on WGL's system are monitored using two devices. Electronic Pressure Recorders ("EPRs") record the operating pressure at district regulator stations on WGL's high pressure systems. Mr. Staebler states that the regulating stations are the receipt points for the distribution system. The telemetering devices, such as Forestville, are stand-alone devices that measure pressure at various locations downstream of the EPRs. Mr. Staebler claims that since the telemetering devices are downstream of the EPRs and regulating stations, the pressures experienced by the telemetering devices cannot exceed the pressure at the EPRs.

84. Mr. Staebler explains there are several situations that could create data gaps from their monitoring equipment. Some of these possible situations are: (1) the equipment could be out of service; (2) data can be lost or corrupted during transmission using wireless modems or analog phone lines due to outages and communication errors;

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[135] WGL's rehearing request at p. 32. The Commission determined that the average pressures on WGL's 50 psig high pressure Kettering System increased from October 2000 to October 2003. *See* 115 FERC ¶ 61,337 at P 98.

[136] WGL's April 18 data response, Attachment 1.14. In the June 16 Order, the Commission makes note of the increasing yearly pressures for the Forestville telemeter which increased from 48 psig in 2000 to 53.1 psig in 2003. *See* 115 FERC ¶ 61,337 at P 98.

[137] Third Staebler Aff. at P12.

(3) pressure data is archived on computer servers which can also experience network outages and fail to archive transmitted data; and (4) electrical power to pressure monitoring equipment can be interrupted and prevent proper operation.[138] Mr. Staebler also states that pressure monitoring data can be unreliable. As explained by Mr. Staebler, unreliable data can result from equipment no longer calibrated correctly, communication errors due to interference during transmission, maintenance activities on the equipment, electrical power surges, or even equipment failure.[139]

85. In order to verify the accuracy of the data, WGL uses two methods to verify the telemetering data.[140] Mr. Staebler explains that WGL will compare the pressure data from telemeters in the same vicinity, which should show equivalent readings, in order to check for anomalies. Also, WGL can compare the pressure data from the telemeter devices with the EPRs. Because of the location of the EPRs, WGL claims that the pressure data, as recorded by the EPRs, will represent the highest possible pressure on the system.

86. Through Mr. Staebler, WGL explains why the pressure data it provided in response to Commission Staff's data requests was inaccurate. WGL claims that due to the "short period of time" it had to provide a response to the Commission, WGL provided "raw pressure data."[141] WGL also claims that the omission of data from 2003 to 2004 was "inadvertent."[142] WGL states that the omission of the 2003 to 2004 data resulted from its failure to obtain data from another data base that WGL claims contains pressure data. In order to correct the errors in the pressure data supplied to the Commission, WGL submitted pressure data recorded by EPRs in Prince George's County. In addition, WGL provided revised data for the telemetering devices. WGL claims that this new pressure data demonstrates that the average annual operating pressures within the Kettering System are maintained at about 50 psi.[143] According to WGL, the new pressure data shows not only that the pressure information upon which the June 16 Order's findings

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[138] *Id*., at P 8.

[139] *Id*., at P 7.

[140] *Id*. at P 8.

[141] WGL's rehearing request at p.32, fn 38.

[142] *Id*., at fn 39.

[143] *Id*., at p. 34.

were based was unreliable, but also that WGL has not experienced a significant upward trend in pressure on the Kettering system or any other system within Prince George's County, contrary to the June 16 Order's conclusion. Thus, states, WGL "it is highly unlikely that changes to operating pressures in the Prince George's County Affected Area was the cause of significantly increased rate of leaks experienced by mechanical couplings in that area."[144]

87. Cove Point LNG/Dominion and the LTD-1 Shippers argue that under Commission policy and precedent, WGL's Third Staebler Affidavit should be rejected by the Commission as untimely and prejudicial; otherwise, they claim, to allow this new evidence would render the June 16 Order a "moving target."[145] The LTD-1 Shippers claim that this new evidence, even if considered, would not change the June 16 Order's decision to unconditionally approve the Cove Point Expansion Project, given all the other evidence pointing to other significant causative factors and ruling out low C5+ as a principal cause of the leaks experienced by WGL. Moreover, Cove Point LNG/Dominion and the LTD -1 Shippers argue that other parties would be prejudiced by the administrative delay and disruption caused by allowing this new evidence, particularly when WGL should have been able to provide correct pressure data at a much earlier time in the authorization process. For these reasons, state Cove Point LNG/Dominion, the Commission generally "will accept new evidence in a rehearing request *only* if 'based on matters not available for consideration by the Commission at the time of the final decision or order.'"[146]

Commission Response

88. Although it is our general practice not to accept new evidence in a rehearing request, the new evidence contained in WGL's rehearing request potentially affects the outcome of the conclusions we reached in the June 16 Order regarding the safety issues raised by WGL. As such, we are not inclined to reject this evidence out of hand because

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[144] WGL's rehearing request at p.34, quoting Third Staebler Affidavit at P 9.

[145] The LTD-1 Shippers cite *New York Independent System Operator, Inc*., 112 FERC ¶ 61,283 at P 35, n. 20 (2005); *see also*, *Ocean State Power II*, 69 FERC ¶ 61,146 (1994) ("The Commission generally will not consider new evidence on rehearing, as we cannot resolve issues finally and with any efficiency if parties attempt to have us chase a moving target." 69 FERC at 61,548).

[146] Cove Point LNG/Dominion's answer to rehearing requests at p.14, *quoting Trans Alaska Pipeline System*, 67 FERC ¶ 61,175 at 61,531 (1994).

it comes after the issuance of our order. Any prejudice to the applicants arising from any slight delay in resolving the rehearing issues pales when compared to the consequences of failing to fully examine the safety issues in this case. Moreover, our decision that a trial-type hearing was not necessary to resolve the technical safety issues in this case is predicated on our ability to develop an adequate record in a paper hearing to support the determinations on these technical issues. We will, accordingly, accept the new evidence contained in the Third Staebler Affidavit, attached to WGL's rehearing request. As discussed below, our staff analyzed the new information offered in the affidavit in light of WGL's arguments in its rehearing request regarding the significance of such new evidence.

89. WGL's new EPR pressure data shows that the Forestville 50 psi high pressure system had an increase in operating pressure of about 2 percent from 2000 through 2003. This increase in operating pressure is less than the 10 percent increase that was shown by the pressure data supplied by WGL in its response to Commission staff's data request from its Forestville telemeter.[147] Although, the increase is smaller than originally calculated, the Commission is still convinced that an increase in pressure could have had an adverse effect on leaks rates.

90. WGL maintains that changes in operating pressure did not have an impact on leak rates; however, this statement is contradicted by WGL's own actions. During the spring of 2005, WGL decreased the operating pressure in the affected area and later restored normal operating pressures in October 2005 in order to accommodate the winter seasonal load requirements. WGL states that this action was taken to reduce the amount of gas escaping from its system.[148] Unfortunately, WGL was unable to quantify, through measurement, the reduction in the amount of gas leaking from its system.[149]

91. WGL's new evidence fails to convince the Commission that pressure was not a contributing factor to the increased leaks rates in Prince George's County. As part of the additional pressure data submitted in its rehearing request, WGL provided additional average monthly pressures for seven EPRs within the Kettering System. The Commission believes that the stability reflected in these "average" monthly pressures is misleading. As with all pipeline systems, WGL's system is subjected to daily fluctuations in pressure due to uneven hourly deliveries which are associated with

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[147] *See* WGL's April 18 data response at p. 6.

[148] *Id*., at p. 33.

[149] *Id*.

varying demand in the market area.[150] Based upon variability in demand requirements, the "average monthly pressures" do not reveal the range of potential pressure fluctuations that WGL's system would experience throughout the day. It is these pressure fluctuations that the Commission believes contributed to the increase in leak rates, particularly after the couplings' ability to seal had been compromised to the point of only sealing "marginally." Therefore, the Commission rejects WGL's claim that pressure was not a contributing factor in the increased leaks rates on its system in Prince George's County.

92. In the April 2006 ENVIRON Report, NGTC conducted several tests. The purposes of these tests were to investigate the effectiveness of C5+ injection in increasing sealing force in order to eliminate leaks in couplings which were removed and identified by WGL as leaking, and to establish a relationship between the data obtained on leak rates from complete couplings and the data on material volume changes in tests conducted by Polymer Solutions Incorporated.[151] NGTC stated that to conduct the studies, it would "monitor the leak rate from a set of couplings under controlled temperature and pressure conditions and for specified gas compositions." For one test, NGTC varied the temperature with constant gas composition, and for the second test, NGTC varied the gas composition with a constant temperature. In each test, NGTC held the pressure constant.[152]

93. While NGTC was conducting one of its tests, one set of the sample couplings lost pressure and had to be re-pressurized. Upon re-pressurizing the sample couplings, NGTC states that the leak rates were different, three samples increased (one jumped from 33.2 to 56.7 liters per hour), four decreased and one was unchanged.[153] The results show that for these test couplings, the increase in leak rates by far exceeded the decrease in leak rates. NGTC concedes that it is "plausible that very small deformations of the seal under changing pressure can lead to a change in leak effective area, especially in small leaks."[154] NGTC also states that "without further data from the field, it is not possible to correlate the pressure transients and mechanical disturbances experienced by the test

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[150] *Id*., at p. 32.

[151] WGL's April 18 data response, FERC/WGL 1.4.4 of 34, Attachment A.

[152] Id.

[153] Id.

[154] Id.

couplings in the lab with any such transients or disturbances which could be experienced in the field."[155]

94. As discussed in the June 16 Order, the NGTC studies show that effects of re-pressurization and de-pressurization can result in a change in leak rates even at the same pressure.[156] The Commission believes that the change in leak rates, under controlled conditions, engendered by changes in operating pressures, albeit unintended, should have prompted NGTC and WGL to conduct additional tests. However, this was not done. NGTC stated that without further data from the field, it could not conduct these tests. The Commission believes that tests conducted by NGTC on behalf of WGL were incomplete and that the effects of varying pressures on leaks rates should have been tested.

95. If there was only one cause for the increase in leak rates, and that one cause was removed from the system, the logical result would be that the leaks would be eliminated. However, as shown by WGL and NGTC, changing one contributing factor, such as introducing additional C5+ into the gas stream, did not eliminate the leaks. NGTC's tests, in the controlled environment of a laboratory, concluded that the addition of C5+ into re-vaporized LNG reduced the leak rates of the couplings; however, NGTC was unable to eliminate the leaks.[157] WGL experienced the same result out in the field. WGL installed and connected a hexane plant to its system for the sole purpose of introducing additional C5+ into re-vaporized LNG in order to eliminate the leaks in its system.[158] To date, WGL has not provided any evidence to the Commission that this method of mitigation has been successful. These attempts to reduce the leak rates should have worked if the only cause of the increased leak rates in Prince George's County was the introduction of re-vaporized LNG; but they did not work in either the laboratory or in the field.

96. Based upon these results, the Commission stands by its determination that hot tar, and other contributing factors (such as age, temperature and pressure), had compromised a subset of couplings on WGL's system to the point of only sealing "marginally". If the

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[155] Id.

[156] 115 FERC ¶ 61,337 at P 94.

[157] WGL's April 18 data response, FERC/WGL 1.4.31 of 34.

[158] *Id*., at p. 6.

sealing ability of the couplings had not been compromised, WGL's system would not have had an increase in leak rates after the introduction of re-vaporized LNG.

e. LILCO Experience

97. WGL claims that the Commission failed to consider the LILCO experience and the LILCO study,[159] which demonstrate that reductions in C5+ cause leaks of couplings in the absence of hot tar and significant pressure changes and in temperatures similar to (or lower) than those experienced on WGL's system. WGL contends that LILCO's experience with leaking couplings in 1992 after the introduction of low C5+ Canadian gas fully supports WGL's conclusion that re-vaporized LNG caused the increase in gas leaks in Prince George's County.[160] WGL claims that the omission of any discussion of the LILCO study from the June 16 Order demonstrates that the Commission chose to ignore evidence that is contrary to the Commission's determination in the case.

98. WGL states that LILCO, like WGL, had installed compression couplings on its pipeline system. According to WGL, in January 1992, LILCO began to receive Canadian gas, which was low in C5+, into its system from Iroquois Gas Transmission System (Iroquois) in Suffolk County, New York. In February 1992, WGL reports that LILCO began to receive an increase in gas-leak calls. WGL states that during LILCO's investigation, LILCO discovered that the gas leaks were originating from the couplings in the area of the receipt of Canadian gas supplies from Iroquois. WGL claims that this experience is similar to WGL's experience with leaks in the winter of 2002-03, except that LILCO did not apply hot tar for corrosion protection. WGL believes that the increase of leaks on LILCO's system is strong evidence that the receipt of low C5+ re-vaporized LNG is the cause for the increased leaks in its Prince George's County service area.

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[159] The "LILCO Study" includes two reports from Lucius Pitkin, Incorporated, a consulting firm. The reports attempt to ascertain the reason(s) behind the increase in leak rates reported by LILCO in 1992. These two reports were filed in this proceeding on April 3, 2006, by KeySpan, formerly Long Island Lighting Company, or "LILCO" in response to the Commission's March 24 data request. KeySpan requests that the reports be treated as privileged and confidential pursuant to section 388.112 of the Commission's regulations since the reports contain proprietary analysis, conclusions and recommendations.

[160] WGL's rehearing request at p. 37.

Commission Response

99. WGL's argument that the leaks on LILCO's system were caused solely by the low C5+ Canadian gas is unconvincing. According to documents and test results submitted by Normac, the increase in leaks on LILCO's system occurred because the "steel nut was not drawn to it's maximum torquing design during the initial make up of the fitting which could cause the low gasket pressure".[161] More simply stated, during the installation process of the compression couplings, LILCO did not apply enough torque to the compression cup-style nut in order to prevent possible cold flow of the gasket which could lead to leaks.

100. WGL relies on selected facts from the LILCO studies, which were filed by KeySpan as "privileged and confidential," to help support its case that re-vaporized LNG, low in C5+ concentrations, was the sole cause of the increased leak rates experienced by WGL in the Prince George's County area. However, these reports do not tell the entire story. Documents provided by Normac in response to the Commission Staff's March 24 data request provide additional insight as to the causes of the increased leak rates experienced by LILCO.

101. Based upon tests conducted by Normac in 1992 on a ¾-inch coupling sample from LILCO, Normac stated that it was able to determine the cause of the increased leak rates on LILCO's system.[162] According to Normac's tests, the couplings were not tightened to the design maximum torque during the installation of the fitting.[163] The Normac report states that the design maximum torque had to be applied because of the "cup" type of elastomer seal used in the coupling.[164] Also, Normac's tests did not find evidence of "dry gaskets, or cracking or shrinking."[165] Therefore, Normac claimed that the improper installation of the coupling lead to the LILCO leaks.[166]

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[161] Normac's April 3, 2006 data response, DR No. 2 NM008 – 010.

[162] *Id*., at NM008.

[163] *Id*., at NM008, NM009, NM010.

[164] *Id*., at NM008, NM010.

[165] *Id*., at NM022, NM023.

[166] A second Normac memoranda dated January 4, 1993, documents that another test of a ¾" Guardian coupling from LILCO was conducted. This test yielded the same results as the December 29, 1992 test. *See* NM010.

(continued…)

102. In correspondence dated May 11, 1992, David H. Bettinghaus, Normac's National Sales Manager, discussed some of the specifics regarding the couplings installed on the system with Michael R. Zerella of LILCO. Mr. Bettinghaus stated that the elastomer seals in the compression couplings were not Normac's regular line of couplings.[167] Instead, the couplings installed by LILCO in the early 1950s were Guardian couplings, a low-cost alternative to Normac's standard fittings.[168] Mr. Bettinghaus recommended that replacement of the couplings was a preferred method of remediation due in part to the elastomer seals used in these Guardian couplings. Mr. Bettinghaus implied that the blend of Styrene-Butadiene rubber and natural rubber used in the Guardian couplings, which was "state-of-the-art" in the 1950's, was inferior to Buna-N, the material of choice for elastomer seals in 1992.[169] It was Mr. Bettinghaus' belief that either replacement of the couplings or relining was a more sound practice for LILCO to solve their leaking coupling problems.[170] Mr. Bettinghaus did not recommend "re-tightening" the compression couplings as this method of remediation will prove to be a "short term solution to a long term problem."[171]

103. The other documents submitted by Normac summarize phone conversations with a Mr. Wayne Gracie, who was working for an insurance company investigating the LILCO gas leaks.[172] Based upon the notes provided by Normac, Mr. Gracie noted that the

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[167] *Id*., at NM023.

[168] In an August 25, 1993 letter from Normac to the State of New York Dept. of Public Service, Mr. John L. Whitney clarified the origin of the gaskets used in the Normac compression couplings. The gaskets were not manufactured by Normac, but by Guardian Manufacturing Co. The gasket molds obtained by Guardian from Normac never had the Normac name removed. *See Id*. Normac stopped selling Guardian gaskets because of quality problems. *See* NM002 and NM003.

[169] May 11, 1992 Letter, NM022.

[170] *See* NM022.

[171] *Id*.

[172] In his November 10, 1993 telephone call to Normac, Mr. Gracie stated his belief "LILCO was looking for someone to defray cost of the replacement of service lines since the public service commission would not grant a rate increase." Normac's April 3 data response, NM026.

increase in leaks looked like it was an "installation error" and that would be his recommendation to the insurance company.[173] Mr. Gracie noted that LILCO was wrong to think that they only purchased from Normac in the 1950s, as Dresser couplings were also removed from the system. Out of eight samples sent to Lucius Pitkin for testing, Mr. Gracie stated, three were Dresser.[174] Mr. Gracie reported that some of the samples had very low "brake torque of 10 to 17 ft-lbs."[175] Mr. Gracie also confirmed Normac's tests by concluding that the leaks could be eliminated by re-tightening the couplings.[176] Therefore, Mr. Gracie believes that the leaks were a result of an installation problem.[177]

104. The "LILCO Study" falls short of meeting WGL's claim that it will "fully support the conclusion that receipt of low C5+ gas causes gas leaks."[178] As in the case of WGLs' system, it would appear that a subset of couplings on LILCO's system, due to age, winter temperatures and improper installation, were either incapable of preventing gas leaks or on the verge of failure. As a result, when LILCO's system received low C5+ Canadian gas from Iroquois, the leak rates on LILCO's increased. Based upon the information in the public record, the Commission can only conclude that the low C5+ Canadian gas was a possible contributing factor and clearly not the sole cause of the increased leaks on LILCO's system.

Interchangeability

105. According to KeySpan, the June 16 Order failed to address directly the concerns raised by it and others that the Cove Point Expansion Project would result in the physical delivery of LNG to entities that had not previously received it and that certain end-users might be adversely impacted by changes in the composition of the gas they will be receiving. KeySpan asserts that the June 16 Order merely determined that because the regassified LNG must meet the Cove Point LNG's gas quality standards, existing customers will not be adversely affected. This conclusion, states KeySpan, falls far short

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[173] *Id*.

[174] *Id*.

[175] Id.

[176] Normac's April 3 data response, at NM031.

[177] *Id*., at NM026 and NM031.

[178] WGL's rehearing request at p. 37.

of the Commission's findings in the Gas Interchangeability Policy Statement, also issued on June 16, 2006,[179] that changes in gas composition could have adverse impacts on existing end-use applications.

106. Cove Point/Dominion claim that KeySpan previously raised this issue only with respect to Dominion's application in Docket No. CP05-131. Cove Point LNG/Dominion state that as the Commission recognized, the incremental gas supply from the Cove Point Terminal must comply with the gas quality and interchangeability standards of all interconnecting pipelines. Therefore, Cove Point LNG/Dominion contend that KeySpan's concerns should be addressed in a complaint proceeding, as explained in the Gas Quality Policy Statement.

Commission Response

107. We deny KeySpan's rehearing request. Confronted with WGL's specific allegations that the introduction of additional quantities of regasifed LNG into its system would pose significant safety risks in the form of increased gas leaks, the Commission was compelled to examine WGL's claim to ensure that approval of the Cove Point Expansion Project would not result in unsafe or unreliable service. The Commission determined, after a thorough analysis of the substantial record addressing that claim, that the safety risks alleged, *i.e.*, gas leaks at mechanical couplings on those portions of WGL's system that received regasified LNG from the Cove Point facilities, were caused primarily as a result of seals compromised by the application of hot tar, increased pressures and decreased temperatures.

108. KeySpan seeks to parlay this proceeding into an expanded examination of any adverse impacts on third parties that might arise as a result of changes in gas composition arising from the expansion of the Cove Point facilities. KeySpan raises no specific concerns, but instead insists that the Commission should require Cove Point LNG and Dominion "(1) . . . to analyze, assess and identify the changes in the composition of gas that the applicants will deliver as a result of the expansion, the geographical area that will receive the increased deliveries of such gas, and the adverse impacts on end use applications that are likely to be experienced as a result of such deliveries, and (2) condition the certificates issued in this proceeding on the agreement of the applicants to mitigate any adverse impacts on third parties that may arise as a result of changes in the gas composition arising from the expansion of the Cove Point facility.[180] KeySpan

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[179] *Natural Gas Interchangeability*, Docket No. PL04-3, 115 FERC ¶ 61,325 (2006).

[180] KeySpan's rehearing request at p.1.

contends, mistakenly, that the *Gas Quality Policy Statement* dictates that such examination and condition be imposed.

109. The Commission issued its *Gas Quality Policy Statement* as a statement of generic policy "to provide direction for addressing gas quality and interchangeability concerns as well as to provide guidance to individual companies that have concerns about these issues."[181] We also stated in the *Gas Quality Policy Statement* that pipelines with existing tariff provisions which adequately characterize interchangeability limits may continue to rely on their existing tariff, noting that "to the extent a complaint is filed alleging an existing pipeline tariff is not just and reasonable, the Commission will evaluate the complaint on its specific merits."[182] To require the type of examination that KeySpan seeks would impede rather than encourage the development of natural gas infrastructure and the movement of gas to the grid ands to ultimate consumers.

Revenue Reporting Requirements

a. FERC Form Nos. 2 and 11

110. Cove Point LNG and Statoil seek rehearing of the Commission's denial of Cove Point LNG's request for a limited waiver of the revenue reporting requirement associated with FERC Form Nos. 2 and 11 in conjunction with the expansion of its LNG import terminal. Cove Point LNG asserts that waiver of these reporting requirements is consistent with the Commission's implicit acknowledgement in *Hackberry* and other market-based rate projects that parties would be prevented from establishing market-based rates if they were required to disclose revenues. Cove Point LNG states that the policy adopted in *Hackberry* has been codified through EPAct 2005 and that it specifically applies to LNG terminal expansion projects. Statoil more specifically asserts that denying this request was contrary to the Commission's statutory obligation to provide confidentiality to the terminal expansion arrangements, as set out in section 311(c)(2) of EPAct 2005.

111. Cove Point LNG states that the Commission did not identify a continuing regulatory need for reporting revenues in connection with the proposed expansion project. According to Cove Point LNG and Statoil, all the cost data as well as throughput and determinant data needed to protect against undue discrimination and subsidization will be available because Cove Point LNG agreed to provide all associated cost data in accordance with 18 C.F.R. Part 201 and to maintain books and records required by the

[181] 115 FERC ¶ 61,325 at P 2 (2006).

[182] *Id*., at P 37, n. 33.

Uniform System of Accounts. These parties also contend that the Commission discounts the claimed need for confidentiality by wrongly assuming that the revenue data reported in the Form Nos. 2 and 11 is information that is already required to be reported by Cove Point LNG's corporate parents in their Securities and Exchange Commission's Form 10K. According to Cove Point LNG, the revenue information in a Form 10K is presented in connection with the gross, overall revenues of the parent companies; there is no separate breakdown of revenues associated with the Cove Point LNG terminal.

Commission Response

112. In denying Cove Point LNG's request for a limited waiver of revenue reporting for its terminal expansion in its FERC Form Nos. 2 and 11, [183] we explained, among other things, that our accounting and reporting rules require the maintenance of books and records and the preparation and filing of financial statements for the entire jurisdictional entity. Also, we stated that the Commission has consistently denied requests for waiver of its accounting and reporting requirements in cases where the reporting entity has both cost-based and market-based operations within the same reporting entity.[184] Under the requirements of sections 8 and 10 of the NGA, all natural gas companies must maintain their books and records and report financial information to the Commission in accordance with prescribed rules and reporting standards. These rules and standards require maintenance of books and records and preparation and filing of financial statements for the entire jurisdictional entity. The entire jurisdictional entity includes all non-utility business activities of that entity, as well as utility functions that are market-based rate regulated. Additionally, the reporting of financial information related to the entire jurisdictional entity provides cost-based customers and the Commission with the financial information necessary to determine whether or not market-based services using the expansion facilities are being subsidized. For these reasons it is not possible to waive the accounting and reporting requirements in Parts 201 and 260 for only part of the operations of a natural gas company.

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[183] Pursuant to section 260.1 of the Commission's regulations, 18 C.F.R. § 260.1, FERC Form No. 2 must be for each year filed on April 18 of the subsequent year. Pursuant to section 260.3 of the Commission's regulations, 18 C.F.R. § 260.3, FERC Form No. 11 is required to be filed quarterly on February 14, May 15, August 14, and November 14.

[184] *See* 115 FERC ¶ 61,337 at P 144, *citing Hackberry LNG Terminal, L.L.C.*, 101 FERC ¶ 61,294 at P67-68 (2002); *PECO Energy Co.*, 88 FERC ¶ 61,330 at p 62,020-021 (1999); *Transok*, 97 FERC ¶ 61,362 at p. 62,683 (2001).

113. In the June 16 Order, we also explained that an income statement prepared without including all revenues earned by an entity would be misleading and incomplete. To illustrate, in simplistic terms, if an entity prepared an income statement showing only partial revenues from its operations of $100 and total company expenses of $150, it would report a loss of $50. While, if that same entity reported its total company revenues for the period of $200 and the same total company expenses of $150, it would report net income of $50, rather than a fictional loss of $50. Cove Point LNG has not provided a reasoned argument as to why its FERC Form No. 2 financial statements would not be misleading and incomplete if only part of its revenues were reported. As required by the June 16 Order and reaffirmed here, Cove Point LNG must maintain separate books and records related to the expansion facilities.

114. Additionally, Cove Point LNG and Statoil assert that the waiver of the revenue reporting requirement associated with the FERC Form No. 2 in conjunction with the expansion of its LNG import terminal is consistent with the Commission's policy first applied in *Hackberry* and codified by EPAct 2005. These parties further assert that the Commission's denial is contrary to its statutory obligation to provide confidentiality to the terminal expansion arrangements as set out in section 311(c)(2) of EPAct 2005. Cove Point LNG is incorrect that the Commission's waiver of tariff and rate schedules in *Hackberry* and other proceedings was an acknowledgement that confidentiality regarding revenues is necessary in order for companies to enter into market-based rate agreements. Rather, the Commission's waiver of tariff and rate schedules was simply an acknowledgement there was no regulatory need in those cases to require tariffs and rate schedules.[185] Further, while section 311(c)(2) of EPAct 2005 provides that the Commission shall not condition an order on regulation of "schedules or contracts related to rates, charges, terms, or conditions of service of the LNG terminal," nothing in EPAct 2005 suggests that LNG terminals are guaranteed confidentiality regarding their revenues. Accordingly, for the above reasons we deny Cove Point LNG and Statoil's rehearing request concerning our denial of a limited waiver of reporting revenues for its terminal expansion in its FERC Form Nos. 2 and 11.

b. <u>NGA Section 4 and 5 Proceedings</u>

115. The June 16 Order requires that Cove Point LNG maintain books and records in conformance with section 154.309 of the Commission's regulations, "Incremental Expansions," and that such information be in sufficient detail that the data can be identified in statements required to be filed in any future rate proceeding.[186] Thus, the

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[185] *See Hackberry, LNG*, 101 FERC ¶ 61,294 at P 23 (2002).

[186] 115 FERC ¶ 61,337 at P 109.

June 16 Order required Cove Point LNG to file revenue information in future rate cases. Cove Point LNG and Statoil contend that this requirement that Cove Point LNG produce revenues associated with the expansion of its LNG import terminal during any subsequent NGA section 4 or 5 proceeding is contrary to the confidentiality assured under section 311(c)(2) of EPAct 2005. Statoil argues that on rehearing the Commission should find that EPAct 2005 requires that the Commission allow Cove Point LNG to keep terminal expansion revenue confidential during any subsequent NGA section 4 or 5 case. Statoil further contends that the Commission erred in concluding that revenue information associated with the Cove Point LNG terminal expansion is necessary to prevent cost subsidization by existing shippers at the LNG import terminal. Statoil argues that the Commission did not explain why it believes revenue is needed to determine the rate subsidy issue, explaining that it will still be required to provide all revenue information associated with its cost-based services. Statoil argues that the Commission and interested parties will have access to expansion cost and billing determinant data with such data tracked and maintained in separate books. Therefore, argues Statoil, any potential efforts to shift costs or extract other subsidies from existing shippers will be readily apparent. Statoil contends that the revenue associated with the terminal expansion simply is not needed to ensure protection of existing shippers.[187]

116. Statoil claims that Commission has the discretion to protect the energy consuming public through a broad range of mechanisms without having to require the production of revenues associated with the expansion of Cove Point LNG's import terminal.[188] By requiring the disclosure of this revenue information, Statoil asserts that "the Commission failed to strike a proper balance between its dual statutory mandates in EPAct 2005 to, on the one hand, protect consumers and, on the other hand, provide confidential treatment for the rates, charges, terms, and conditions of service for the expansion of an LNG port terminal in accordance with the Commission's *Hackberry* policy."[189]

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[187] Statoil proposed two alternative approaches for disclosing revenues in the event the Commission does not grant rehearing. Statoil's approaches involve treating the terminal expansion revenue information on a confidential basis in all section 4 and 5 proceedings. As indicated below, the Commission is granting rehearing. Accordingly, Statoil's alternative approaches need not be addressed.

[188] Citing Federal Power Commission v. Texaco, Inc., 417 U.S. 380, 388 -89 (1974); Ashland Exploration, Inc. v. Federal Energy Regulatory Commission, 631 F.2d 817, 823 - 24 (D.C. Cir 1980); Southern Natural Gas Co., 14 FERC ¶ 61,480 (1981).

[189] Statoil's rehearing request at p. 2.

Commission Response

117. The June 16 Order found that Commission policy requires the proper assignment of costs to the shippers receiving incremental service so that the project can proceed without subsidies from existing customers.[190] To ensure that existing customers are protected from paying for an incremental project such as Cove Point LNG's expansion, the Commission requires that separate books and records be maintained so that parties during a NGA section 4 proceeding have the opportunity to evaluate the proposed allocation of costs.[191] Although the Commission granted Cove Point LNG's proposal to provide the expansion services on a proprietary basis, with deregulated rates and services, in reliance on the Commission's policy announced in *Hackberry*, Cove Point LNG's existing facilities are operated pursuant to cost-of-service rate treatment which requires Commission review. The Commission has additional responsibilities. EPAct 2005 section 311(c)(2), which amended section 3(e)(4) of the NGA, dictates that an LNG terminal such as Cove Point LNG which also offers service to customers on an open-access basis shall not result in the subsidization of expansion capacity by existing customers, or undue discrimination against existing customers as to their terms or conditions of service at the facility.

118. While the Commission needs to ensure that the proper cost allocation has been made such that the existing customers are not subsidizing the deregulated incremental expansion facilities, the Commission concludes that this objective can be ensured without requiring Cove Point LNG to file revenue information for its deregulated facilities' services as a matter of course in all section 4 proceedings. Therefore, the Commission will grant a limited waiver which will apply only to the revenue information for a section 4 proceeding. Cove Point LNG shall be required to provide all other information required in the schedules and exhibits specified in section 154.309 of the Commission's regulations to determine that the proper allocation of costs has been made between the facilities under cost-of-service rates and the deregulated incremental expansion facilities.[192] Further, because revenue information may be necessary in a future section 4

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[190] 115 FERC ¶ 61,337 at P 109.

[191] *Id*., at P 110.

[192] The Commission declines to grant Cove Point LNG's and Statoil's rehearing request not to provide terminal expansion revenue for section 5 proceedings. This request is overly broad and premature, since a determination of whether to provide the terminal expansion revenue in a section 5 proceeding will depend on the specific facts and circumstances in a given section 5 proceeding.

proceeding (*e.g.*, to allocate operating and overhead between affiliates as required by the *Massachusetts*[193] cost allocation formula), Cove Point LNG is required to maintain the necessary revenue information. If parties in a future section 4 proceeding seek such revenue information to determine the proper allocation of costs, Cove Point LNG may request confidential treatment of such information under the Commission's regulations at sections 388.107(d) and 388.112. The Commission therefore grants Cove Point LNG's and Statoil's rehearing request on the filing of revenue information in a section 4 proceeding, subject to the conditions noted above. Cove Point LNG is required to maintain such information in the event it is necessary in a future proceeding to determine that the proper allocation of costs has been made for operating and overhead costs between affiliates.

Cove Point Pipeline's Recourse Rates

119. Cove Point LNG contends that the Commission should not have required Cove Point LNG to revise the proposed recourse rate to reflect the current Commission-approved rate of return for the Cove Point Pipeline. Alternatively, Cove Point LNG contends that the Commission should clarify that Cove Point LNG can use a recourse rate that reflects the pre-tax return components that are determined in its current rate case proceeding.

120. Specifically, Cove Point LNG argues that the Commission erred in requiring it to revise the proposed recourse rate for transportation service to reflect its current Commission approved 13 percent rate of return and pre-tax return of 16.23 percent, as opposed to the proposed rate of return on equity of 15 percent and pre-tax return of 18.27 percent. Cove Point LNG acknowledges that the Commission generally uses a pipeline's existing approved capital structure and rate of return for establishing an initial rate for mainline expansions, but submits a different approach is justified in this case. Cove Point LNG contends that its proposal to provide 800,000 Dth per day of incremental transportation capacity is analogous to a new interstate pipeline; therefore it is appropriate to use different equity components recognizing the risks faced by interstate pipelines serving LNG import terminals and providing the incentive to invest in infrastructure to deliver imported supplies to United States markets. Cove Point LNG further contends that its existing rate of return, which was decided almost five years ago in the rate case which reactivated the Cove Point terminal, does not reflect the current environment in which the Cove Point Pipeline operates. Cove Point LNG argues that its requested rate of return cannot be rejected simply because it is not identical to the higher

[193] The unmodified Massachusetts formula is derived from *Midwestern Gas Transmission Co.*, 32 FPC 993 (1964), *modified*, 44 FPC 721 (1970).

rate of return levels that have been accorded to other interstate pipelines constructed to serve new LNG plants.

121. Alternatively, Cove Point LNG contends that if the Commission does not grant rehearing and use the proposed 15 percent rate of return for the transportation recourse rate, it requests that the Commission clarify that Cove Point LNG can use the pre-tax return components determined in its current rate proceeding filed on June 30, 2006, in Docket No. RP06-417-000. Cove Point LNG argues that the recent rate case contains more up-to-date data and information that will support a higher and more reasonable rate of return by the time the expansion project is placed into service.

Commission Response

122. As Cove Point LNG acknowledges in its rehearing request and as stated in the June 16 Order, Commission policy provides that the rates be designed based upon the existing rate of return.[194] Contrary to Cove Point LNG's assertion, such a finding applies to incremental projects such as the proposed incremental transportation service that will be provided for Statoil. Consistent with this policy, in the same June 16 Order, Cove Point LNG's affiliate, Dominion, who is also providing incremental transportation service for Statoil, proposed a rate of return based upon its existing Commission approved return on equity of 13.70 percent.[195] Cove Point LNG's proposed return on equity treatment is not only inconsistent with the Commission's rate of return policy for certificate applications for expansion and incremental projects,[196] it is also inconsistent with the treatment afforded its affiliate, Dominion, who will be providing similar transportation service using its existing return on equity. Further, the proposed 15 percent return on equity is well outside the zone of reasonableness for return on equity as determined recently in the *High Island Offshore* and *Kern River* cases, where the Commission found that the discounted cash flow analysis for a proxy group of four companies ranged from 10.53 to 13.51 percent for *High Island* and 8.94 to 13.62 percent

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[194] 115 FERC ¶ 61,337 at P 132 and n. 120.

[195] *Id*. at P 139.

[196] *Texas Eastern Transmission, LP*., 99 FERC ¶ 61,383 at 62,625 (2002); *Kern River Gas Transmission Co.*, 98 FERC ¶ 61,205 at 61,721-22 (2002); *Northwest Pipeline Corp.*, 98 FERC ¶ 61,352 at 61,499 (2002); *Kern River Gas Transmission Co.*, 95 FERC ¶ 61,022 at 61,056 (2001); *Trailblazer Pipeline Co.*, 95 FERC ¶ 61,258 at 61,903 (2001); *Transcontinental Gas Pipe Line Corp*., 93 FERC ¶ 61,241 at 61,788 (2000); *Algonquin Gas Transmission Co*., 87 FERC ¶ 61,262 at 61,990 (1999).

for *Kern River*.[197] Cove Point LNG's proposed 15 percent return on equity is excessive given the Commission's recent allowed rate of return on equity and market conditions.

123. However, the Commission will grant Cove Point LNG's request that it be permitted to design its rates based on the rate of return to be determined in its pending general rate case proceeding, Docket No. RP06-417-000, which is subject to a hearing before an Administrative Law Judge.[198] The pending rate case is the appropriate forum to determine Cove Point LNG's rate of return applicable to its existing operations. Although the facilities in this proceeding will not be placed into service during the test period in the Docket No. RP06-417-000 proceeding, the rate of return determined in that proceeding will be more reflective of Cove Point LNG's current operations and is more proximate to the time when the facilities are projected to be placed into service during the third quarter of 2008. Therefore, Cove Point LNG will be required to revise its recourse rates based upon the rate of return, debt component, and capital structure determined in its pending NGA section 4 rate proceeding in Docket No. RP06-417-000. Cove Point LNG should file the revised recourse rates and work papers supporting the incremental rate for Statoil within 30 to 60 days prior to the facilities being placed in service.[199]

Fuel Tracker

124. Dominion contends that the Commission erred in requiring that fuel be tracked separately for the proposed transportation service for Statoil and requests that the Commission remove this condition from the June 16 Order. Dominion contends that because existing customers will continue to pay the current system-wide fuel retention rate and given Dominion does not have a fuel tracking provision in its FERC tariff and cannot change the level of fuel retention between rate cases, there is no need or justification to require it to separately track fuel for the expansion service. Dominion further argues that it is unable to separately track fuel for an individual customer as requested by the Commission because it operates a reticulated web-like system without straight line contract paths assigned to shippers. Dominion argues that its existing

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[197] *High Island Offshore System, L.L.C.*, 110 FERC ¶ 61,043 at P 150-153, *order on rehearing*, 112 FERC ¶ 61,050 (2005); Kern River Gas Transmission Co. ,Opinion No. 486, 117 FERC ¶ 61,077 at P 153 (2006).

[198] *Dominion Cove Point LNG, LP*, 116 FERC ¶ 61,110 (2006).

[199] To the extent that a Commission decision in Cove Point LNG's pending rate case in Docket No, RP06-417-000 has not been made by the time the pipeline facilities are placed into service, Cove Point LNG is required to use its previously approved 13 percent rate of return on equity authorized in the June 16 Order.

customers are not at risk to pay increased fuel cost associated with the expansion because Dominion is not proposing any changes to the existing system-wide fuel retention rate and that if it proposes any revisions, it will bear the burden of demonstrating that such an adjustment is just and reasonable.

Commission Response

125. The Commission's intent in the June 16 Order concerning Dominion's fuel costs with regard to the transportation service for Statoil was to protect Dominion's existing customers who will not be receiving the use of service and therefore should not pay the substantial fuel costs associated with the provision of service to this one customer. To provide the proposed transportation service, Dominion will be increasing by five percent the total horsepower on its system, which will result in increased fuel to operate the compressors for the incremental service. The existing customers will not be affected because they will continue to pay the existing system-wide fuel costs until Dominion files a section 4 rate proceeding, at the earliest in 2010.[200] In that proceeding Dominion will bear the burden of showing that such a fuel use adjustment is just and reasonable. Further, Dominion is required to submit an annual fuel informational filing that details its system gas requirements.[201] While the Commission prefers that Dominion separately track the fuel for incremental service to Statoil to ensure that the existing customers are not adversely affected, the Commission recognizes that Dominion has a reticulated web like system which makes it difficult to track molecules of gas to fully comply with the June 16 Order.[202] Therefore, the Commission will grant Dominion's rehearing request and modify the June 16 Order by eliminating the requirement that Dominion track the fuel used at each of the compressor stations to provide service for Statoil. However, we will require Dominion during any proceeding to adjust its fuel retention rate to fully support any change in the system rate to ensure that the existing customers are not subsidizing the incremental service to Statoil.

Requirement for Rate Filing or Revenue Study After Three Years

126. PSNC contends that the June 16 Order failed to require that Cove Point LNG demonstrate, after three years, that the proposed expansion of the LNG facility has not resulted in subsidization by existing customers, degradation of service to existing

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[200] *Dominion Transmission, Inc*., 111 FERC ¶ 61,285 (2005).

[201] *See* Second Revised Sheet No. 1120 of Dominion's FERC Gas Tariff, Third Revised Volume No 1.

[202] *Dominion Transmission, Inc*., 95 FERC ¶ 61,316 at p 62,083 (2001).

customers, or undue discrimination against existing customers. PSNC acknowledges that while it is true that actual costs and volumes cannot be known until after the Cove Point LNG expansion goes into service, those costs will be ascertainable if Cove Point LNG were required to make a NGA section 4 rate filing within three years of the in-service data of the expansion facilities. PSNC argues that if the Commission does not require Cove Point LNG to file a section 4 rate case, then the Commission should require a full cost and revenue study to be filed at the end of three years after commencing service.

Commission Response

127. The Commission in the June 16 Order established measures to protect Cove Point LNG's existing customers from subsidizing the proposed service for Statoil. The Commission required Cove Point LNG to keep separate books and records of the costs attributable to incremental service to ensure that Cove Point LNG does not shift any costs to existing customers, thereby protecting such customers.[203] Requiring the pipeline to isolate costs and keep separate books and records to protect the existing customers from subsidizing the incremental project is consistent with Commission policy.[204] The Commission reiterates its finding in the June 16 Order that it has implemented sufficient measures to protect Cove Point LNG's existing customers by authorizing incremental rates and requiring separate books and records so that customers can question the proposed rate treatment when Cove Point LNG files a rate case which reflects the proposed service for Statoil. Since sufficient measures are in place to protect Cove Point LNG's existing customers from cross-subsidization, the Commission will deny PSNC's request to require the filing of a section 4 rate proceeding or cost and revenue study within three years of the in-service date of the expansion facilities.[205] If PSNC is concerned that it is being unduly discriminated against because of the proposed expansion and service for Statoil, it can file a complaint against Cove Point LNG.

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[203] 115 FERC ¶ 61,337 at P 109.

[204] El Paso Natural Gas Co., 104 FERC ¶ 61,303 (2003); Texas Eastern Transmission, L.P., 101 FERC ¶ 61,120 (2002); Iroquois Gas Transmission System, L.P., 100 FERC ¶ 61,275 (2002); East Tennessee Natural Gas Co., 98 FERC ¶ 61,331 (2002); Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 at pp. 61,746-47 (1999); Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (2000); Order Further Clarifying Statement of Policy, 92 FERC ¶ 61,094 (2000).

[205] *See Trunkline LNG Co. v. FERC*, 194 F.3d 68 (D.C. Cir. 1999).

Clarification of Environmental Conditions

a. Environmental Condition No. 22 – Juniata River Crossing

128. Dominion requests that the Commission modify environmental condition no. 22 to clarify that all of the requirements imposed in that condition shall apply only if Dominion cannot complete a horizontal directional drill (HDD) crossing of the Juniata River. Specifically, Dominion suggests that lines 8-9 of condition no. 22 be modified to read as follows: "In addition, Dominion shall not begin an open cut crossing of the Juniata River **until**: . . . ."

129. Dominion is correct that environmental condition no. 22 applies only in the event that Dominion cannot complete an HDD crossing of the Juniata River. Consistent with that intent, we will modify the language of environmental condition no. 22 as suggested by Dominion. Accordingly, lines 8-9 of environmental condition no. 22 are modified to read: "In addition, Dominion shall not begin an open cut crossing of the Juniata River **until**: . . . ."

b. Environmental Condition No. 28 –Right Whale Protective Measures

130. Cove Point LNG states that environmental condition no. 28's requirement that Cove Point LNG incorporate NOAA Fisheries' guidelines concerning right whale protective measures into its Terminal Use Agreement with LNG ship operators fails to take into account the fact that a NOAA Fisheries' rulemaking proceeding to develop rules on right whale protective measures is currently underway. Consequently, Cove Point LNG states that NOAA Fisheries guidelines on right whale protection might change or might not even be adopted by NOAA Fisheries and environmental condition no. 28 should be amended to require that the Terminal Use Agreement with LNG ship operators incorporates any right whale protective measures that are adopted in the NOAA final rule rather than the current guidelines.

Commission Response

131. Because a final rule has not been issued by NOAA Fisheries, and to be consistent with previous approved LNG projects with similar requirements imposed by the Commission, the requirements of environmental condition number 28 will stand. We acknowledge that NOAA Fisheries may change its guidelines regarding protective measures for the right whale. If a final rule is issued by NOAA Fisheries, the Commission staff could reinitiate consultation to change the method of mitigation or protective measures (in consultation with NOAA Fisheries and the applicant), which

could result in amending the applicant's Terminal Use Agreement with LNG ship operators.

Corrections to the June 16 Order

132. The June 16 Order, at paragraph 11, lists the new facilities for which Cove Point LNG seeks authorization to construct. The list includes "Three emergency generators." Cove Point LNG's application also listed "Three emergency generators," but it was subsequently clarified through data responses and discussions with Commission staff that Cove Point LNG was seeking authorization to construct and operate two, rather than three, emergency generators. Accordingly, the list of proposed facilities should be corrected in Paragraph 11 to reflect that Cove Point LNG is seeking authorization for "Two emergency generators."

133. At paragraph 24, line 7, the June 16 Order includes a figure of 9,600,000 which is described as the "annual throughput." The correct reference should be to "annual billing determinants" rather than annual throughput. Line 7 of paragraph 24, therefore, should be corrected to read as follows: ". . . determinants based on 800,000 Dth per day and annual billing determinants of 9,600,000 Dth.

134. The June 16 Order, at paragraph 28, footnote 15 at line 11, should contain the word "protection" following "over pressure." Consequently, line 11 of footnote 15 should be corrected to read as follows: ". . . over pressure protection under its Part 157 blanket certificate authorization but that such construction … ."

135. The description of the Wolf Run Compression Station in Lewis County, West Virginia, appearing in the "Storage" discussion of paragraph 28 needs to be corrected. The second paragraph of the "Storage" section at line 5, currently reads" ". . . Dominion will add one 3,550 hp gas fired, reciprocating engine/compressor unit." Dominion is proposing two 1,775 hp engines, rather than a single, larger engine. Accordingly, line 5 should be corrected to read as follows: "First, Dominion will add two 1,775 hp gas fired reciprocating engine/compressor units to the Wolf Run Compressor Station . . . ."

136. In paragraph 28, footnote 17, line 2, "Northwest" should be changed to "Northeast."

137. Paragraph 31 contains a description of the open season and storage and transportation services that Dominion will provide under the proposed expansion in Docket No. CP05-131-000. Line 9 should be corrected to reflect the storage and transportation services that Dominion will provide. Specifically, paragraph 31, line 9 should be corrected to read as follows: "rate schedules GSS-E and FT."

138. Paragraph 48, line 6 currently references section 2.5 of Rate schedule LTS-1." That should be corrected to read: "section 2.5 of Rate Schedule LTD-1."

The Commission orders:

(A) WGL's, MdPSC's, KeySpan's, and PSCNC's requests for rehearing of the June 16 Order are denied, as discussed in the body of this order.

(B) Dominion's request for rehearing is granted, and Statoil's and Cove Point LNG's requests for rehearing of the June 16 Order are granted in part and denied in part, as discussed in the body of this order.

(C) Dominion's request for clarification is granted and Cove Point LNG's request for clarification is denied, as discussed in the body of this order.

(D) The June 16 Order is corrected as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.