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By Docket Room at 2:03 pm, Mar 06, 2012

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF	**)**	
	)	**FE DOCKET NO. 11-128-LNG**
DOMINION COVE POINT LNG, LP	**)**	

Riverkeeper Coalition Rebuttal to Applicant Response

Pursuant to 10 C.F.R. § 590.304 the undersigned Riverkeepers (herein 'Riverkeeper Coalition') request leave to rebut Dominion Cove Point LNG (DCP)'s Response to their Comments in Opposition. The Assistant Secretary retains discretion to admit supplemental protests under the aforementioned section and, as explained below, should exercise that discretion here. The Riverkeeper Coalition's reply is contained within this document.

I. Riverkeeper Coalition Rebuttal to DCP's Response

DOE/FE's rules provide generally for procedures concerning the filing of replies, protests, and comments concerning applications, while also providing significant discretion to DO/FE in determining whether a reply, protest, or comment may be included within proceedings. *See generally* 10 C.F.R. § 304. Notably, the Riverkeeper Coalition does not wish to intervene pursuant to 10 C.F.R. § 302, nor file a reply pursuant to 10 C.F.R. § 303.

Rather, the Riverkeeper Coalition submits this supplemental protest to DOE/FE to rebut clear misstatements of law and facts alleged in DCP's reply. Allowing this rebuttal as a supplement to the Coalition's initial comments in opposition will not cause any harm to the applicant's interests as we are not seeking to intervene at the DOE/FE licensing stage. More relevant, as DOE/FE must determine whether LNG export is in the "public interest" 15 U.S.C. § 717b, and whereas that determination necessarily entails a clear understanding of the legal mechanisms and facts at hand, we offer this concise rebuttal to inform DOE/FE's decisionmaking and ask that the Assistant Secretary exercise that substantial discretion to add this rebuttal to the record.

II. DCP's Proposal Still Fails the Public Interest Standard

Throughout its previous comment letter the Rivekeeper Coalition repeatedly offered studies rebutting DCP's claimed economic benefits. Those studies presented evidence demonstrating that: DCP's proposal lacks economic competitiveness due to market and supply volatility; that exporting natural gas will increase domestic natural gas and electric prices – actions not in the public interest; that export will induce increased unconventional gas production - which will have significant, unevaluated environmental and economic impacts; and that a balancing of the equities weighed strongly in favor of denying.

DCP did not effectively rebut these claims. Among other unconvincing arguments, DCP points to a 2011 study from the consultant group Deloitte, which argues – contra to the vast majority of other evidence – that exports at 6 bcf/d from the Gulf Coast would raise domestic city prices by only 1.7%. DCP Response at 21. As a preliminary matter that study, issued prior to the EIA studies noted in our previous comments, cannot rebut EIA's more recent determinations. More to the point, DCP's argument is that DOE/FE should believe their studies and not the EIA's: such argument is unpersuasive. Moreover, and of specific concern, DCP utterly fails to offer any substantive response to Riverkeeper Coalition's detailed examination of environmental impacts that authorization of DCP's proposal would incite, instead stating simply that NEPA issues are "irrelevant." DCP Response at 25. Unfortunately for DCP, this response ignores the Natural Gas Act's consideration of issues relevant to the public interest such as environmental impacts.

A. DCP's Response Fails to Consider Environmental Impacts

The Supreme Court has held that "public interest" determinations by DOE/FE concerning natural resource use should entail discussion of all relevant issues to the public's many interests, including "preserving reaches of wild rivers and wilderness areas, the preservation of anadromous fish, … and the protection of wildlife. *Udall v. Federal Power Comm'n*, 387 U.S. 428, 450 (1967). The Court again reiterated the relevance of environmental considerations in Natural Gas Act determinations by stating that the public interest considers "conservation" and "environmental concerns" in *NAACP v. FPC*. *NAACP v. FPC*, 425 U.S. at 670 n.4 &6.

Obviously implementing these directives, DOE/FE's regulations require applicants to provide information detailing the "potential environmental impact of the project," and to update this information "as the status of any environmental assessments change." 10 C.F.R. § 590.202(b)(7). In other words, environmental impacts are of vital importance to a public interest analysis.

Although Riverkeeper Coalition detailed such obligations in its previous comments, DCP's reply proves that it fails to see this point. Indeed, DCP devotes zero effort to rebutting the significant impacts to land, air and water, instead maintaining those impacts are solely relevant under NEPA. DCP Reply at 25-6. Even more odd, DCP quotes its previous application to claim that LNG export has environmental benefits relevant to the public interest, yet otherwise insists such environmental impact discussions are irrelevant. DCP cannot have it both ways.

Put simply, DCP has failed to perform the requisite examination of the serious environmental impacts arising from unconventional natural gas production, consequences of significant proportions. Likewise, DCP has failed to prove that in balancing economic benefits and increased production, that the former outweigh the latter. Because the record is devoid of any information rebutting the reasonably foreseeable and significant environmental impacts the proposed project will entail, and because there still remains no showing that economic benefits of export outweigh the definite and discrete consequences of unconventional gas production and export, DOE/FE should deny DCP's proposal.

B. Any Determination of DCP's Application Requires an EIS Analyzing the Impacts of Unconventional Gas Production and Foreseeable Increases

DCP argues that "a detailed NEPA analysis of issues associated with Marcellus Shale production… is not appropriate in the environmental review of [its] project." DCP's self-effacing argument that upstream production –which its application clearly states as a "basic benefit" – DCP Application at 35, should be excluded doesn't hold the proverbial cup of water.

The "letter and spirit of NEPA," 10 C.F.R. § 1021.101, is to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b). By focusing the agency's action on the environmental consequences of its proposed action, NEPA "ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed and the die otherwise cast." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). For this very reason DOE/FE must undertake the study requisite to create an environmental impact statement examining the "environmental impacts of the proposed action." 16 U.S.C. § 4334(C)(i).

Thus, just as DOE must consider upstream environmental impacts in its public interest determination, so too, it must analyze and disclose these impacts in the NEPA analysis that will support its final determination. Therefore projects, like DCP's proposal, that enable resource extraction activities to expand upstream logically must fully analyze those "reasonably foreseeable" impacts in the NEPA framework here. *See, e.g.*, *Northern Plains Resource Council v. Surface Transportation Board*, - F.3d -, 2011 WL 6826409 (9th Cir. 2011) at *10; Coalition Protest Comment at 31.

Increases in unconventional shale gas production are "reasonably foreseeable" in light of the Marcellus and Utica shale plays approximate to DCP's location. Indeed, DCP specifically notes that it is "especially well position[ed] to export gas production from the Marcellus Shale … as well as the very promising Utica Shale." DCP Application at 9. DCP goes so far as to point out that these plays are a major justification for its application. *Id*, *see also* at 21-23. If granted, DCP's export terminal "will help support development of the Utica Shale" *Id*. at 24, such plays being of "significant importance" to "the export of LNG from the Cove Point LNG terminal." *Id.* at 23. Clearly, upon the basis of DCP's own application, consideration of upstream production and its impacts are of vital relevance to determination of whether that application is in the public interest.

Of great concern is DCP's assertion that FERC "almost certainly will not undertake a comprehensive review of Marcellus Shale drilling impacts as part of its NEPA review." DCP Response at 27. If DCP's assertion is true, and FERC will not review the reasonably foreseeable impacts of production and production increases related to DCP's proposal, the logical corollary is that DOE/FE may not depend upon such latter, contingent NEPA analysis. The timing of an EIS

is critical. NEPA regulations mandate that an EIS must be commenced "as close as possible to the time the agency is developing or is presented with a proposal." 40 C.F.R. 1502.5. An EIS must be prepared "early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made." Andrus v. Sierra Club, 442 U.S. 347, 351-52 n.3 (1979) (quoting 40 C.F.R. 1502.5 and 1502.2(g). More to the point, an EIS' hard look must entail consideration of "every significant aspect of the environmental impact of a proposed action." *Vt Yankee Nuclear Power Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 553 (1978). Without question the aforementioned impacts must be considered; if FERC does not consider those impacts as lead agency here, then DOE/FE must.

DCP cites a recent FERC decision to support its arguments; however, that case is not relevant as it is distinguishable. *Central New York Oil and Gas Company*, *LL*, 127 FERC ¶ 61,104 (2012) concerned NEPA duties of FERC in the context of a proposed pipeline within the Marcellus shale region. Riverkeeper Coalition disagrees with the holding in that case, however, it is not relevant here for the following reasons. First, FERC's holding was based upon its characterization of the pipeline as possessing a non-causal relationship to increased shale gas production. *Id.* at ¶ 91. Conversely, DCP's application largely touts the project's potential to increase shale gas production. *See* DCP Application Ex 3 at 2 (alleging profit from upstream-related expenditures). Second, DCP argues that other agencies have authority of permitting concerning upstream activities and therefore those activities have no place within DOE/FE's analysis. DCP Response at 27. DCP's assertion is both irrelevant and incorrect. Should DOE/FE authorize DCP's proposal, shale gas production will increase as a causal response, as DCP repeatedly states. The contra is also true: should DOE/FE deny DCP's proposal, shale gas production and related impacts will not occur. Not only is increased shale gas production 'reasonably foreseeable' here, but such production would also be causally related to authorization of DCP's proposal.

The reality is that DCP has fundamentally misunderstood NEPA duties and constraints of the law. DOE/FE's own binding regulations, multitudes of on-point rulings from federal courts, and the specific decisions of *Vermont Yankee* and *Northern Plains*, noted *supra*, specifically require that any determination of DCP's proposal can only occur after a full EIS is performed. That study must necessarily involve a hard look at the effects of increased gas production linked to the instant proposal, including the cumulative impacts of those harms interacting with other projects and proposals. Regardless of *Central New York*'s merits that case is not relevant to DOE/FE's analysis of DCP's proposal. DO/FE must conduct an EIS and thus appraise itself "of the disruptive environmental effects that may flow from [its] decisions at a time when [it] retain[s] a maximum range of options." *Conner v. Burford*, 848 F.2d 1441, 1446 (9th Cir. 1986).

C. Conclusion

DOE/FE possesses a record showing that LNG exports will raise gas prices, cause significant economic harm, create far lesser – and temporary - job growth than the applicant claims, and come with an enormous price-tag entailing serious, long-term, and widespread environmental

impacts. While well-couched, DCP's response to Riverkeeper Coalition's comments in protest of its application fail to effectively rebut any of our salient conclusions. Further, DOE/FE must undertake a proper NEPA analysis prior to any determination of DCP's proposal as required by law. It is incumbent upon DOE/FE to decide, based on the record before it and necessary environmental analysis, the propriety of DCP's export proposal. The Riverkeeper Coalition reasserts that DCP's proposal is not, and rationally cannot, be in the public interest.

Respectfully submitted,

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