

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

AES Sparrows Point LNG, LLC

Docket No. CP07-62-000

Mid-Atlantic Express, LLC

Docket Nos. CP07-63-000  
CP07-64-000  
CP07-65-000

(Issued January 15, 2009)

WELLINGHOFF, Commissioner, dissenting:

The Sparrows Point Project would consist of an LNG import terminal on the Chesapeake Bay in Baltimore County, Maryland, and 88 miles of pipeline that would interconnect the terminal with three existing interstate pipelines. The Sparrows Point terminal would have the capability of receiving and unloading approximately 120 to 150 LNG tankers per year, with a proposed sendout capacity of 1.5 Bcf per day. The majority finds that the Sparrows Point Project is consistent with the public interest.

If the public benefits to be achieved from a project outweigh that project's adverse effects, then the Commission can conclude that the project is in the public interest.<sup>1</sup> I have concluded that the Sparrows Point Project is not, on balance, in the public interest. My determination is based on a number of considerations. First, an analysis of relevant factors indicates that the Sparrows Point Project is not needed to serve the energy needs of the Mid-Atlantic and South Atlantic regions.<sup>2</sup> Second, the future energy needs of these regions can be better met with alternative resources, such as domestic natural gas infrastructure and renewable and distributed energy resources. Finally, environmental and community concerns have not been fully and fairly evaluated. For these reasons, I respectfully dissent.

*Project Purpose and Need*

AES's willingness to invest, without financial subsidies, is an important indicator of market-based need for the project. Nonetheless, that fact alone is not sufficient to outweigh the unique supply and demand, environmental, and community issues presented by LNG projects.

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<sup>1</sup> *AES Sparrows Point LNG, LLC*, 126 FERC ¶ 61,019 at n.21 (2009).

<sup>2</sup> The Mid-Atlantic region includes New York, New Jersey, and Pennsylvania. The South Atlantic region includes Maryland, Delaware, Virginia, and the District of Columbia.

As to the need for the project, the Energy Information Administration (EIA) of the U.S. Department of Energy annually publishes a national and regional energy assessment for the period extending through 2030. The assessment is referred to as the Annual Energy Outlook. The majority points to the regional natural gas consumption estimates reported in EIA's Annual Energy Outlook 2006 to support its finding that there is expected to be an increase in energy demand in the regions that the Sparrows Point Project is designed to serve: an annual increase in natural gas consumption of 0.7 percent for the Mid-Atlantic region and of 1.3 percent for the South Atlantic.<sup>3</sup> However, this data is outdated. More recent data has informed my decision. In the Annual Energy Outlook 2008 and the Annual Energy Outlook 2009, EIA projects an annual increase in natural gas consumption of only 0.2 percent for the Mid-Atlantic region for the period through 2030. For the South Atlantic region, EIA's Annual Energy Outlook 2008 shows an annual *decrease* in natural gas consumption of 0.4 percent, and EIA's Annual Energy Outlook 2009 projects a 0.2 percent annual *decrease* for the period through 2030.

The majority also seems to find significance in the national energy consumption estimates included in EIA's Annual Energy Outlook 2008. EIA projects national energy consumption to increase annually by 0.7 percent through 2030. However, national energy consumption includes liquid fuels, natural gas, coal, nuclear, hydropower, and other renewables. Therefore, although the figure cited by the majority may provide an indication of a general trend in the use of all types of energy, EIA's natural gas consumption estimates have more probative value in this proceeding. In the Annual Energy Outlook 2007 and the Annual Energy Outlook 2008, EIA projects national natural gas consumption to decrease annually. Further, the Annual Energy Outlook 2009 projects an annual increase of only 0.2 percent.

On the supply side, AES has not presented any indication that it has an LNG supply source under contract. Other evidence also indicates that the United States remains the market of last resort for LNG supplies. For the period October 2007 through September 2008, existing LNG terminals in the United States are only operating at 10 percent of capacity:

<u>Facility</u>	<u>Imports (Bcf)</u>	<u>Capacity (Bcf/d)</u>	<u>Percentage</u>
Cove Point	31.7	1.0	8.7%
Elba Island	130.4	1.2	29.8%
Distrigas	164.9	1.0	45.2%
Freeport	5.8	1.5	1.1%
Lake Charles	7.3	2.0	1.0%
Sabine Pass	0.0	2.6	0.0%
Total	340.1	9.4	10.0%

<sup>3</sup> 126 FERC ¶ 61,019 at P 24 and FEIS at I-3.

Furthermore, Wood Mackenzie Limited (WML) conducted a study assessing the availability of LNG in the global market.<sup>4</sup> WML reports that exporting countries are delaying liquefaction facilities due to concerns about their own increasing demand for gas, rising exploration and production costs, environmental pressures, and geopolitical issues. Another indication that the U.S. may have difficulty attracting LNG supply is the growing gap between the number of countries importing and exporting LNG. Shell Gas and Power estimates that by 2012, importing countries will increase from 17 to 29, but the number of exporting countries will only increase from 15 to 18.<sup>5</sup>

We are already seeing market signals that are consistent with these findings that LNG supply capacity is struggling to keep pace with international demand. Korea Gas Corp recently agreed to buy LNG for the 2010 to 2012 period for \$20 per MMBtu.<sup>6</sup> Meanwhile, the construction of certain Commission-certificated LNG projects is being delayed because of the current market conditions in the LNG industry, including the delay in development of liquefaction facilities overseas.<sup>7</sup>

### *Project Alternatives*

The FEIS provides no analysis of domestic natural gas infrastructure and renewable and distributed energy resources as alternatives. An examination of the evidence leads to the conclusion that these sources of energy supply are reasonable, environmentally preferable alternatives for serving the future energy needs of the Mid-Atlantic and South Atlantic regions.

#### *Domestic Natural Gas Infrastructure*

A recent study by Navigant Consulting, commissioned by the American Clear Skies Foundation, indicates a 50 percent increase in estimated U.S. natural gas reserves as compared to estimates made as little as two years ago. The increase is attributable to new technology that makes economical the recovery of unconventional natural gas.<sup>8</sup> With regard to the Mid-Atlantic and South Atlantic regions, natural gas

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<sup>4</sup> *Seller's Market for LNG Set to Last*, Wood Mackenzie, April 2007.

<sup>5</sup> *LNG: Demand Opportunities and Supply Challenges*, A presentation by Shell Gas and Power at the EIA 2008 Energy Conference (April 7, 2008).

<sup>6</sup> *See*

[http://www.downstreamtoday.com/News/Articles/200807/Korea\\_Gas\\_To\\_Pay\\_Record\\_Price\\_for\\_Indone\\_12056.aspx](http://www.downstreamtoday.com/News/Articles/200807/Korea_Gas_To_Pay_Record_Price_for_Indone_12056.aspx).

<sup>7</sup> *See* Corpus Christi's Request for Extension of Time dated March 20, 2008, and Ingleside Energy Center's Request for Extension of Time dated January 17, 2008.

<sup>8</sup> *North American Natural Gas Supply Assessment*, Navigant Consulting, Inc. prepared for the American Clear Skies Foundation, July 4, 2008 at 14 and 15.

from the Marcellus shale has significant potential as a reliable, domestic, cost-effective source of natural gas supply. Navigant Consulting estimates the mean recoverable reserve amount at 31.2 Tcf, with maximum recoverable reserves of 262 Tcf and gas-in-place of 1,500 Tcf.<sup>9</sup>

A noteworthy advantage of the Marcellus shale is its proximity to the markets in the Mid-Atlantic and South Atlantic regions. The Marcellus shale extends through much of the Appalachian basin, with the core area running through Pennsylvania and parts of West Virginia, Ohio, and New York. The effective delivery of Marcellus shale gas could be accomplished with expansion of pipeline and storage infrastructure in the region. For example, Columbia Gas has proposed to expand its storage facilities in Ohio, in part, to facilitate access to increased production in the Appalachian basin.

Environmental considerations also make domestic gas via new pipeline infrastructure preferable to imported LNG. At full capacity, the Sparrows Point Project would receive 150 LNG tankers per year, or approximately 12 tankers per month. Year after year, these LNG tankers would continually traverse 124 miles up the Chesapeake Bay to the terminal and 124 miles back. In contrast, construction of domestic infrastructure is a one-time intrusion.

#### *Renewable and Distributed Energy Resources*

The FEIS is dismissive of the commenters' request that the Commission take a harder look at renewable resources as an alternative to the Sparrows Point Project.<sup>10</sup> Without analysis, the FEIS reaches the conclusion that the projected energy needs of the Mid-Atlantic and South Atlantic regions cannot be met by alternative energy sources, whether such resources are considered individually or as a portfolio.<sup>11</sup>

The evidence leads to a contrary conclusion. Each state included in these two regions has established a renewable portfolio standard (RPS), which requires a percentage of energy sales to come from renewable energy resources:

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<sup>9</sup> *Id.* at 38.

<sup>10</sup> FEIS at 3-4.

<sup>11</sup> FEIS at 3-3 and 4.

<u>State</u>	Target	
	<u>RPS</u>	<u>Date</u>
Maryland	20%	2022
Pennsylvania	18%	2022
Delaware	20%	2019
New Jersey	22%	2020
New York	25%	2013
Virginia	12%	2020
District of Columbia	20%	2020 <sup>12</sup>

The enactment of RPS laws encourages a diversified portfolio of energy resources that contains, at a minimum, the target percentage of renewable energy.

In addition to renewable energy resources, a comprehensive portfolio analysis of alternatives should assess distributed resources such as energy efficiency, demand response, combined heat and power, and waste heat recovery. Consistent with that approach, the Commission should account for states' energy efficiency resource standards (EERS), which aim to reduce or flatten electric load growth through energy efficiency measures. States in these regions have adopted aggressive energy consumption and peak demand reduction goals that coincide with the in-service date of the Sparrows Point Project:

<u>State</u>	Energy	<u>Date</u>	Peak	<u>Date</u>
	<u>Consumption</u>		<u>Demand</u>	
	(MWh)		(MW)	
Maryland	15%	2015	20%	2015
Pennsylvania	3%	2013	4.5%	2013
New Jersey	20%	2020	5,700	2020
New York	15%	2015		

Delaware and Virginia have adopted somewhat different approaches. Delaware designates energy efficiency, distributed generation, and demand response as priority resources before new generation. Virginia targets a 10 percent reduction from 2006 sales levels by 2022 through energy efficiency and demand response.<sup>13</sup>

In summary, these alternative energy resources represent incremental capacity with which these states intend to meet their future energy demand. The majority has not

<sup>12</sup> See <http://www.ferc.gov/market-oversight/mkt-electric/overview/elec-ovr-rps.pdf>.

<sup>13</sup> See <http://www.ferc.gov/market-oversight/mkt-electric/overview/elec-ovr-eeeps.pdf>. Virginia and Pennsylvania allow for energy efficiency measures to count toward meeting the above-noted RPS goals.

adequately considered the impact of these state policies in its analysis of alternatives to the Sparrows Point Project.

### *Adverse Environmental Impacts*

The Sparrows Point Project requires the dredging of a 44 foot deep and 650 foot wide channel to allow the LNG tankers to access the terminal. The dredging operations would generate 3.7 million cubic yards (CY) of contaminated sediment. With a dredging season of 243 working days, AES anticipates that dredging will last 24 months. The initial dredge material would be transported by 10 to 14 work scows to a processing facility. Processing will not eliminate the contaminants. While dredging and processing would proceed at a rate of 10,000 CY per day, transportation of the processed dredge material (PDM) off-site would progress at a rate of 5,000 CY per day. AES expects 220 truck trips a day to haul the PDM off-site. Thus, the PDM stockpile would be totally removed in 31 months, or 11 months after dredging ceased.

Commenters have raised concerns with the handling of the dredge material. The issues include the impact of hundreds of trucks on the road system and the ultimate disposition of the PDM.<sup>14</sup> AES has not identified the ultimate destination for the PDM. Contaminated material has been used for abandoned mine reclamation in Chester County, Pennsylvania; landfill grading and capping in Brooklyn, New York; brownfields redevelopment projects in Jersey City and Woodbridge Township, New Jersey; and landfill closure projects in Linden, New Jersey, Brooklyn, New York, and Westwood, New Jersey. However, none of these reuse projects was larger than 600,000 CY. Thus, the scale of the transport and disposition of the PDM from the Sparrows Point Project would far exceed any prior application.

### *Community Concerns*

I also find it noteworthy that several Senators and Members of Congress have written to the Commission with respect to this project since the issuance of the FEIS in early December. For example, Members of Congress from Pennsylvania joined Senators Specter and Casey in requesting that the Commission provide an additional 60 days for public comments on this project. In support of that request, the members of the Pennsylvania delegation noted that affected constituents had expressed concerns that the FEIS "is simply too complex to be fully understood and commented on" in a 30-day period.<sup>15</sup>

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<sup>14</sup> See, e.g., Comments of David A.C. Carroll, Director of Sustainability, Baltimore County Government (June 8, 2008).

<sup>15</sup> Docket Nos. CP07-62-000, *et al.*, Letter from Senator Specter, *et al.*, to Chairman Kelliher, Dec. 18, 2008.

Similarly, Members of Congress from Maryland recently joined Senators Mikulski and Cardin in asking the Commission to delay action on this project. The members of the Maryland delegation expressed concern that by scheduling this matter for our January 2009 open meeting, the Commission moved too quickly and “against the wishes of many citizens of Maryland, the Governor, the Baltimore County Executive, and Members of the Congressional delegation.”<sup>16</sup>

In light of the complexity of the issues associated with LNG projects, the broad-based involvement of the affected communities, the outstanding permitting requirements, and the 169 certificate conditions to be satisfied, I believe that a 60-day extension for public comment is not unreasonable.

### *Conclusion*

AES’s willingness to invest, without financial subsidies, is an important indicator of market-based need for the project. As stated above, however, that fact alone is not sufficient to outweigh the unique supply and demand, environmental, and community issues presented by LNG projects. Based on my consideration of all of these factors, I conclude that the Sparrows Point Project is not in the public interest.

For this reason, I respectfully dissent from today’s order.

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Jon Wellinghoff  
Commissioner

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<sup>16</sup> Docket Nos. CP07-62-000, *et al.*, Letter from Senator Mikulski, *et al.*, to Chairman Kelliher, Jan. 13, 2009.