May 16, 2005

FERC
888 First St, NE
Washington, DC 20426

Re: Docket CP05-130

Motion to Intervene and Protest

Public Citizen's Energy Program and Green Delaware provide this motion to intervene and protest the proposal by Dominion Cove Point LNG to apply the policy announced by FERC in *Hackberry LNG* to the 800,000 Dth/d of send-out natural gas capacity expansion at the Cove Point LNG facility. Allowing Dominion Cove Point LNG to be exempt from open season rules and cost-of-service regulations allowed by *Hackberry* is unnecessary given the following:

1. Dominion has not demonstrated that the Cove Point LNG facility would not be built *but for* the financial windfall that will arise out of the uncompetitive arrangement with Statoil.
2. Waiving market transparency rules and suspending cost-of-service regulations will harm consumers, particularly since Dominion has a track record of having poor internal controls.
3. Dominion's strong financial health precludes the necessity of the *Hackberry* subsidy.
4. Current record-high prices for natural gas provide the incentives necessary for companies to invest in LNG marine terminals, making the *Hackberry* indirect subsidy unnecessary.
5. Congress has not yet sanctioned suspending these market transparency rules.

Since suspending market transparency rules is unnecessary, and because suspending those rules would invite uncompetitive practices which will harm consumers, Public Citizen's Energy Program and Green Delaware request that Dominion's request be denied.

Public Citizen is a nonprofit, nonpartisan consumer rights organization based in Washington, D.C. with over 130,000 dues-paying individual members nationwide. Our Energy Program does extensive work at the federal and state levels to promote energy policies that best protect consumers.

Green Delaware is an environmental and public health advocacy organization based in the State of Delaware. We have a history of interest in energy policy issues. The people of the region (Delaware, New Jersey, Pennsylvania) are now contending with at least two LNG terminal proposals. The contractual arrangements for the utilization of these proposed facilities can have significant impacts on the region.

Open access requirements are essential to properly functioning natural gas markets. Waiving market transparency rules and suspending cost-of-service regulations to allow Dominion to unilaterally dictate which company receives such large volumes of natural gas invites corruption and uncompetitive business practices, which harms consumers.

FERC suggested these so-called *Hackberry* rules in 2002 as an inducement for LNG marine terminal investment. FERC's rule change came at the request of LNG project sponsors, who wanted to increase their chances of locking in high profit margins by removing constraints of tariff rate caps.

But open access and cost-of-service regulations are essential to maintain proper price transparency and ensure that companies involved in monopolistic enterprises such as LNG marine facilities do not collude, price fix or otherwise impose unfair high prices on consumers.

The relationship Dominion has with Statoil invites collusive, anti-competitive behavior that open access rules were designed to prevent. Statoil will be both the supplier of LNG from Norway to Cove Point LNG *and* the downstream deliverer of natural gas from Cove Point LNG to transmission and storage markets.

In June 2004, Dominion negotiated a 20-year contract with Statoil for the increased Cove Point LNG capacity. Under the agreement, Statoil will purchase firm LNG tanker discharge services, related transportation service, and downstream firm transportation and storage services from Dominion.

But Statoil is also controlling the supply of LNG to Dominion's Cove Point facility. Under the terms of a contract between the two companies, Statoil will deliver natural gas from Norway's Snohvit field to Cove Point. Statoil will also have an ownership interest in three of the four LNG tankers transporting the LNG from Norway's Snohvit field to Dominion's Cove Point.

It is therefore clear that Dominion and Statoil have developed a collusive, anti-competitive arrangement: Statoil cuts a deal to Dominion to deliver the LNG to Cove Point, in return for having exclusive rights over firm natural gas transportation and storage from Cove Point. And because the contracts are worked out in private, consumers are guaranteed to never see a penny in any of the "savings" enjoyed by Dominion and Statoil. While this arrangement will result in spectacular financial returns for the two companies, consumers will be guaranteed to be price-gouged.

Now, perhaps FERC will believe that Dominion needs this collusive contract, or else there would be no incentive to expand LNG capacity. But in its filing, Dominion failed to demonstrate that the Cove Point expansion would not have been constructed *but for* the suspension of open access requirements. The public interest concerns of natural gas supply and demand imbalances cannot be corrected by violating the public interest standards for just and reasonable rates and freedom from collusive, anti-competitive behavior.

In fact, Dominion's strong financials indicate that the company has no need for the windfall profit subsidy that *Hackberry* provides. Since 2000, Dominion has enjoyed cumulative net income of $4.3 billion, making it one of the most profitable companies in the energy industry over that time period. Dominion has been enjoying strong financial results due, in part, to its ability to exploit regulatory loopholes. A recent report by the State of Virginia[1] found that Dominion is sitting on as much as $680 million in "excess earnings" that, prior to deregulation, would have been returned to ratepayers.

Dominion's 10-k filed with the U.S. Securities and Exchange Commission in February 2005 documents that expansion of the Cove Point facility will be a significant factor in an increase of 2005 earnings compared to 2004:

> "Dominion believes its operating businesses will provide growth in net income on a per share basis, including the impact of higher expected average shares outstanding, in 2005. Growth factors include: continued growth in utility customers; reduced electric capacity expenses, resulting from the termination of long-term power purchase agreements; oil production growth, reflecting a full

[1] Virginia State Corporation Commission, *Staff Report: Virginia Electric and Power Company d/b/a Virginia Dominion Power, Earnings Test and Annual Information Filing Report*, Case # PUE-2003-00181, October 30, 2003, http://docket.scc.virginia.gov/

> year of Devils Tower and Front Runner operations; a contribution from the operations of three USGen power stations acquired in January 2005; **higher contribution from Cove Point operations due to expansion of the facility**; and a contribution from the Kewaunee nuclear power plant, expected to be acquired in the first half of 2005…Based on these projections, Dominion estimates that cash flow from operations will increase in 2005, as compared to 2004." [emphasis added][2]

Dominion has a shaky history of poor internal controls, making it questionable that the company is responsible enough to handle the suspension of market transparency rules. In August 2004, FERC forced Dominion to pay $5 million to settle allegations of natural gas market manipulation.[3] Dominion admitted that it shared commercially sensitive natural gas storage inventory data with their subsidiaries and favored customers.

Furthermore, a Dominion employee in November 2004 sent the wrong week's information to federal government natural gas storage data collectors, a mistake that sent natural gas prices soaring, costing the national economy as much as $1 billion.

In addition, current record high natural gas prices, additional sources of LNG supply to the U.S., and the implementation of technology that has lowered costs for liquefaction and shipping provide all the incentive for energy companies like Dominion to expand LNG capacity.

It also appears as though Congressional support for FERC's *Hackberry* rule is wavering. The House of Representatives approved the conference report of H.R. 6 on November 18, 2003. Title III, Subtitle B, Section 320 of that act would have codified FERC's *Hackberry* rule. But the Senate failed to pass energy legislation in the 108th Congress, so Congress began anew. It is important to note that language supporting FERC's *Hackberry* rule was removed during debate in the House Energy Committee in 2005, and the language was also not included in H.R. 6 that the House of Representatives passed on April 21, 2005. This shows that support in Congress for the *Hackberry* rule has waned from November 2003 to the present.

In conclusion, Public Citizen's Energy Program and Green Delaware request that Dominion's request be denied, as suspending market transparency rules is unnecessary and would invite uncompetitive practices which will harm consumers.

Respectfully Submitted,

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[2] www.sec.gov/Archives/edgar/data/715957/000119312505038704/d10k.htm
[3] www.ferc.gov/whats-new/hd-archives/2004/2004-3/08-02-04-a1.pdf