

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
Greenbelt Division**

DOMINION ENERGY COVE POINT LNG, LP,

*Plaintiff,*

v.

BOARD OF APPEALS OF  
CHARLES COUNTY, MARYLAND, *et al.*,

*Defendants.*

CASE NO. 8:18-cv-00873-PJM

**DOMINION ENERGY COVE POINT LNG, LP'S  
MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR A TEMPORARY STAY**

Dominion Energy Cove Point LNG, LP ("DECP"), by counsel, moves this Court to temporarily stay this action. The grounds for this Motion are stated below.

**INTRODUCTION AND RELEVANT BACKGROUND FACTS**

As reported in the media,<sup>1</sup> DECP and its parent company, Dominion Energy, Inc., are working with representatives from the Mount Vernon Ladies Association to explore possible alternatives for the interstate natural gas compressor facilities that are the subject of this case. If a suitable alternative is found, and any necessary regulatory approvals, including that from the Federal Energy Regulatory Commission ("FERC"), are obtained, then the compressor facilities would not be constructed at the Charles Station site at issue, and this action would be moot. Therefore, in the interest of judicial economy and avoidance of unnecessary expense by the

---

<sup>1</sup> *E.g.*, Teo Armus, *Dominion may move the compressor it planned to build across from Mount Vernon*, The Washington Post, July 3, 2018, [https://www.washingtonpost.com/local/md-politics/dominion-says-it-will-look-for-new-site-for-planned-natural-gas-facility/2018/07/03/ddaa82a6-7ec7-11e8-bb6b-c1cb691f1402\\_story.html?utm\\_term=.2b59f8bdf68f](https://www.washingtonpost.com/local/md-politics/dominion-says-it-will-look-for-new-site-for-planned-natural-gas-facility/2018/07/03/ddaa82a6-7ec7-11e8-bb6b-c1cb691f1402_story.html?utm_term=.2b59f8bdf68f) (last accessed Aug. 3, 2018).

parties, DECP moves this Court to temporarily stay this action while the efforts to reevaluate alternatives are being explored. Counsel for DECP has discussed the relief sought herein telephonically with counsel for Defendants The Board of County Commissioners of Charles County, Maryland and The Board of Appeals of Charles County Maryland, and they expressed no opposition to the proposed relief.

The two motions pending before this Court – DECP’s motion for partial summary judgment and a motion to intervene by Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. and nine individuals (collectively, the “Movant Intervenors”) – have been fully briefed and this Court has set oral argument on those motions for 10:00 a.m. on September 24, 2018 (ECF No. 37). No pretrial scheduling order has been entered. Therefore, there is no scheduled required litigation activity in this case until oral argument on September 24. To prevent the need for any unnecessary work by the Court or the parties in preparation for oral argument, DECP moves to temporarily stay this action pending further order of this Court. To ensure that any such temporary stay is not inappropriately indefinite, DECP proposes the following conditions for reevaluating the stay:

- By no later than August 31, 2018, DECP shall file with this Court a status report describing the current status of any potential relocation of the compressor facilities at issue, and stating whether, and to what extent, it believes that the stay should continue, together with supporting grounds for any requested continuation of the stay.
- By no later than September 10, 2018, the Defendants may file with the Court any response or objection they may have to DECP’s status report and proposal for any continuation of the stay.
- As promptly thereafter as reasonably possible, and prior to the scheduled September 24, 2018 oral argument, the Court will issue an Order describing whether and to what extent the case may continue to be stayed, together with any conditions or other requirements

that the Court may deem appropriate to promote judicial economy and avoid prejudice to the parties.

If, at such time, the Court deems it appropriate to continue the stay, DECP would propose that the Court follow a similar process as described above to reevaluate the stay – DECP submits a status report 30 days later, the Defendants submit a response within 10 days thereafter, and the Court decides whether and to what extent to continue the stay.

### **ARGUMENT**

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Maryland v. Universal Elections, Inc.*, 729 F.3d 370, 379 (4th Cir. 2013) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)). As this Court has observed, “[a] trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.” *Cunningham v. Homeside Fin., LLC*, Civ. No. MJG-17-2088, 2017 U.S. Dist. LEXIS 197712, at \*3-4 (Nov. 30, 2015) (quoting *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979)).

In considering a motion to stay, the Court “must weigh competing interests,” *Landis*, 299 U.S. at 255, by applying the following three factors:

- (1) the interests of judicial economy;
- (2) hardship and equity to the moving party if the action is not stayed; and
- (3) potential prejudice to the non-moving party.

*Cunningham*, 2017 U.S. Dist. LEXIS 197712, at \*4 (citing cases). The Court must also ensure that the stay is not “immoderate” and “limit the scope of the stay within a reasonable time frame.” *Id.* (quoting *Landis*, 299 U.S. at 257).

In *Cunningham*, this Court stayed a civil action under the Telephone Consumer Protection Act (“TCPA”) in light of separate proceedings pending in the D.C. Circuit over the validity of certain Federal Communications Commission (“FCC”) regulations that were relevant to the plaintiff’s TCPA claim. Judge Garbis stayed the case pending resolution of the D.C. Circuit proceedings on the ground that a stay was unlikely to be prejudicial to the non-moving party, “could reduce the burden of litigation on both parties,” and “promote the efficient use of judicial resources.” *Id.* at \*5. The Court also explained that the D.C. Circuit’s ruling would “directly affect this case, either by having a dispositive effect on the claims or at least by focusing discovery,” and that because “the D.C. Circuit Court has the exclusive jurisdiction to review the FCC ruling, 28 U.S.C. § 2342(1), its ruling will be binding.” *Id.*

A similar situation exists here. As previously noted, DECP is reevaluating options for alternatives to constructing the compressor facilities at the Charles Station site that is the subject of this case. If an alternative is found, and DECP obtains any necessary permission from FERC,<sup>2</sup> then the facilities will not be constructed on the Charles Station site, making this action moot.

The two pending motions before this Court have been fully briefed, no scheduling order has been issued, and nothing is required to be done in this case until the oral argument scheduled for September 24, 2018. Thus, temporarily staying this case will not prejudice any party, but would promote judicial economy and avoid unnecessary burdens on the parties and Court in preparing for argument on the pending motions. Those factors fully support the stay that DECP has requested. *Cunningham*, 2017 U.S. Dist. LEXIS 197712, at \*4. In addition, DECP’s

---

<sup>2</sup> FERC has exclusive jurisdiction under the Natural Gas Act over the “siting, construction, or operation” of interstate natural gas compressor stations and related facilities. *Dominion Transmission, Inc. v. Town of Myersville Town Council*, 982 F. Supp. 2d 570, 579 (D. Md. 2013).

proposed procedure described above on page 2, ensures that any stay is not “immoderate” and will be limited to a “reasonable time frame.” *Id.*

### **CONCLUSION**

WHEREFORE, DECP respectfully requests this Court to issue an Order temporarily staying this action, subject to the following conditions for reevaluating the stay:

- By no later than August 31, 2018, DECP shall file with this Court a status report describing the current status of any potential relocation of the compressor facilities at issue, and stating whether, and to what extent, it believes that the stay should continue, together with supporting grounds for any requested continuation of the stay.
- By no later than September 10, 2018, the Defendants may file with the Court any response or objection they may have to DECP’s status report and proposal for any continuation of the stay.
- As promptly thereafter as reasonably possible, and prior to the scheduled September 24, 2018 oral argument, the Court will issue an Order describing whether and to what extent the case may continue to be stayed, together with any conditions or other requirements that the Court may deem appropriate to promote judicial economy and avoid prejudice to the parties.

Dated: August 3, 2018.

\_\_\_\_\_  
/s/  
Arthur E. Schmalz (Fed. Bar No. 20359)  
HUNTON ANDREWS KURTH LLP  
2200 Pennsylvania Ave., NW  
Washington, DC 20037  
Telephone: (202) 955-1977  
Fax: (202) 778-2201  
aschmalz@huntonak.com

*Counsel for Dominion Energy Cove Point LNG,  
L.P.*

-and-

Harry M. Johnson, III (*pro hac vice*)  
HUNTON ANDREWS KURTH LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219  
Telephone: (804) 788-8784  
Fax: (804) 343-4538  
pjohnson@huntonak.com

*Counsel for Dominion Energy Cove Point LNG,  
L.P.*

**CERTIFICATE OF SERVICE**

Pursuant to Local Rule 102(1)(c), I certify that, on August 3, 2018, a copy of the foregoing was sent by email to counsel for the Defendants:

Jessica S.B. Andritz, Esq.  
Associate County Attorney II  
Office of the County Attorney  
200 Baltimore Street  
La Plata, Maryland 20646  
[AndritzJ@charlescountymd.gov](mailto:AndritzJ@charlescountymd.gov)  
*Counsel for Defendant Board of County  
Commissioners of Charles County, Maryland*

Thomas M. Meachum, Esq.  
Carney, Kelehan, Bresler, Bennett &  
Scherr, LLP  
10715 Charter Drive, Suite 200  
Columbia, MD 21044  
[tmm@carneykelehan.com](mailto:tmm@carneykelehan.com)  
*Counsel for Defendant Board of Appeals  
of Charles County, Maryland,*

and a copy was also sent by email and regular mail to counsel for the Movant Intervenors<sup>3</sup>

Sean R. Day  
7474 Greenway Center Dr. Ste. 150  
Greenbelt, MD 20770-3524  
[Sean@DayInCourt.Net](mailto:Sean@DayInCourt.Net)  
*Attorney for Movant Intervenors*

/s/  
\_\_\_\_\_  
Arthur E. Schmalz (Bar No. 20359)  
HUNTON ANDREWS KURTH LLP  
2200 Pennsylvania Ave., NW  
Washington, DC 20037  
Telephone: (202) 955-1977  
Fax: (202) 778-2201  
[aschmalz@huntonak.com](mailto:aschmalz@huntonak.com)  
*Counsel for Dominion Energy Cove Point LNG,  
L.P.*

-and-

Harry M. Johnson, III (*pro hac vice*)  
HUNTON ANDREWS KURTH LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219  
Telephone: (804) 788-8784  
Fax: (804) 343-4538  
[pjohnson@huntonak.com](mailto:pjohnson@huntonak.com)  
*Counsel for Dominion Energy Cove Point LNG,  
L.P.*

---

<sup>3</sup> The Movant Intervenors' motion to intervene, which DECP has opposed, remains pending and unresolved.