UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Dominion Cove Point LNG, LP Docket No. RP05-528-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS
SUBJECT TO REFUND AND CONDITIONS

(Issued September 1, 2005)

1. On August 2, 2005, Dominion Cove Point LNG, LP (Cove Point) filed revised tariff sheets[1] to modify its firm and interruptible transportation service (FTS and ITS) rate schedules to assess Cove Point East Project incremental compression fuel charges and, if implemented, electric power commodity charges to non-Cove Point East Project shippers for certain FTS and ITS receipts and/or deliveries on Cove Point's pipeline system. This order accepts and suspends the subject proposed tariff sheets to be effective the earlier of a date set by subsequent Commission order in this proceeding or February 1, 2006, subject to refund and to the conditions of this order.

Background

2. The Commission approved the Cove Point East Project on November 18, 2003,[2] authorizing Cove Point to construct two compressor stations, the natural gas-powered Loudoun Station and the electric-powered Pleasant Valley Station, in order to provide 445,000 Dth/d of additional firm transportation service at an incremental recourse reservation charge under its Rate Schedule FTS to customers who subscribe to this incremental service.[3] In addition, Cove Point was authorized to establish an electric power tracker in its tariff to recover Cove Point East Project incremental electric power

[1] Third Revised Sheet No. 92 and Second Revised Sheet No. 113 to FERC Gas Tariff, Volume No. 1.

[2] *Dominion Cove Point, LP*, 105 FERC ¶ 61,234 (2003).

[3] Washington Gas Light Company (Washington Gas) and Virginia Power Service Energy (Virginia Power) entered into precedent agreements for the entire 425,000 Dth/d of additional capacity under 20-year term FTS contracts. *Dominion Cove Point, LNG LP*, 105 FERC ¶ 61,234 at P 3 (2003).

costs through a reservation surcharge (initially, $0.3016 per Dth) and was authorized to charge Cove Point East Project shippers an incremental fuel retention rate of 0.30 percent to be updated annually by use of Cove Point's existing system fuel tracker.[4] Cove Point placed its Cove Point East Project facilities into service on May 1, 2005.

3. In the transmittal to the instant filing, Cove Point states that to the extent that Cove Point East customers do not fully utilize their Cove Point East capacity entitlements, Cove Point will then have the ability to accommodate additional secondary and interruptible service requests that would otherwise be unavailable absent the use of the Cove Point East compressors. However, Cove Point adds that to the extent such additional capacity requires the use of the compression facilities installed as part of the Cove Point East Project, Cove Point's current tariff is unclear whether the recovery of the compression fuel costs is limited only to the Cove Point East shippers. Cove Point now proposes to clarify that the Cove Point East compression fuel costs will be assessed to any shipper that benefits from the use of the Cove Point East compressors, and adds that this is consistent with Commission decisions providing that those responsible for the consumption of fuel should bear its cost, citing *Iroquois Gas Transmission System*.[5]

4. Specifically, Cove Point proposes to change sections 5(b)(2) and 5(b)(3) of Rate Schedule ITS of its FERC Gas Tariff to provide that any ITS gas tendered for transportation at a receipt point on the Cove Point pipeline, other than the Cove Point LNG plant, would pay the Cove Point East fuel retention rate specified on Sheet No. 12 of its tariff, in addition to the system-wide fuel retention rate. In addition, it states that, to the extent an electric commodity surcharge is implemented consistent with section 27 of the General Terms and Conditions (GT&C) of Cove Point's FERC Gas Tariff, such surcharge would also be applicable to ITS, as described above.

5. Also, Cove Point is proposing to amend sections 4(b)(3) and 4(b)(4) of Rate Schedule FTS to require existing FTS shippers to pay the Cove Point East fuel retention rate, in addition to the system-wide fuel retention rate, if the FTS shippers tender gas for transportation on a secondary basis on the Cove Point pipeline, except if gas is tendered to or from the Cove Point LNG plant. Similar to the proposal for ITS, to the extent an electric commodity surcharge is implemented consistent with GT&C section 27, such surcharge also would be applicable to FTS, as described above.

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[4] 105 FERC ¶ 61,234 at P19 and n.8.

[5] Cove Point August 2, 2005 filing at 2 (citing *Iroquois Gas Transmission System*, 102 FERC ¶ 61,129 (2003) (*Iroquois*)).

Notice, Interventions and Protests

6. Public notice of the filing was issued on August 5, 2005, with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. §385.210 (2005). Pursuant to Rule 214[6] of the Commission's Rules of Practice and Procedure, all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing pipelines. Washington Gas and Atlanta Gas Pipeline Company and Virginia Natural Gas (Atlanta/VNG) filed comments in this proceeding. The LTD-1 Shippers filed a request for clarification and a protest. On August 19, 2005, Cove Point filed an answer to the comments, protest and request for clarification. Rule 213(a)(2)[7] of the Commission's Rules of Practice and Procedure prohibits an answer for a protest unless otherwise ordered by the decisional authority. We will accept Cove Point's answer because it has provided information that may assist us in our decision-making process.

7. The LTD-1 Shippers state that the Cove Point East Project arose as a result of a Stipulation and Agreement (Stipulation) dated October 9, 2002, between Cove Point, the LTD-1 Shippers and Washington Gas. The LTD-1 Shippers argue that the Stipulation prohibits Cove Point from changing the LTD-1 reservation charge to reflect any costs associated with the Cove Point East Project.[8] The LTD-1 shippers also note that the certificate order authorizing the Cove Point East Project provides that all costs associated with the project are to be recovered from the expansion shippers. The LTD-1 Shippers state that consistent with the Stipulation and the certificate order, the Commission should clarify that it is not permitting Cove Point to change the LTD-1 reservation rate as a result of this filing and to make clear that to the extent Cove Point under-recovers costs associated with the compression installed as part of the Cove Point East Project, the LTD-1 shippers may not be assessed for any part of such under-recovery.

8. The LTD-1 Shippers argue that Cove Point's filing is contrary to the intent of the Cove Point East Project certificate application and order.[9] They argue that none of the costs associated with the Cove Point East Project were intended to be assessed on Cove Point's current shippers. They argue that the Commission should not permit Cove Point to employ the tariff filing to veer from its prior representations and vary the

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[6] 18 C.F.R. §385.214 (2005).

[7] 18 C.F.R. § 385.213(a)(2) (2005).

[8] LTD-1 Shippers Protest at 4.

[9] *Dominion Cove Point LNG, LP*, 105 FERC ¶ 61,234 (2003).

understandings of the parties and the Commission about the applicability of its charges for the compression installed in association with the Cove Point East Project.

9. The LTD-1 Shippers protest that Cove Point has not demonstrated that its tariff filing is just and reasonable. They state the new tariff language would apply fuel retention and electric power costs charges generally to secondary receipts tendered to Cove Point under its Rate Schedules FTS and ITS. The LTD-1 Shippers argue that the tariff language apparently would apply these charges without regard to whether in fact Cove Point is running its compressors as a result of the tendered secondary receipts. The LTD-1 Shippers request that if the Commission decides to accept Cove Point's proposal, any order should state that Cove Point can assess only those compression charges it actually incurs as a result of the secondary receipts tendered, and direct Cove Point to make appropriate modifications to the language of its proposed tariff sheets.

10. Washington Gas supports Cove Point's tariff amendment. Washington Gas states that in no event should the Cove Point East firm subscribers be responsible for costs caused by other shippers requiring use of the compressors. In addition, Washington Gas suggests that any additional revenue received by Cove Point under this proposal should be credited to the firm subscribers of the Cove Point East Project.

11. Atlanta/VNG state that they do not object to the proposed modifications at this time. However, Atlanta/VNG state that the fuel retention and electric surcharges must be applied on a non-discriminatory basis. Atlanta/VNG submits that if the Commission approves Cove Point's proposed off-peak firm transportation service filed on July 26, 2005, in Docket No. CP05-395-000, then it should also order Cove Point to submit a revised Rate Schedule OTS to include the Cove Point East retention and electric commodity surcharge rate as proposed in this proceeding. This will ensure that Cove Point's proposal will be evenly applied to all transportation customers on the Cove Point system.

12. In its answer, Cove Point responds to the LTD-1 Shippers' request for clarification that Cove Point may not change the LTD-1 reservation rate in this proceeding by stating that Cove Point has not, and does not, propose to change the LTD-1 reservation rate here.[10]

13. Cove Point also notes that the LTD-1 Shippers seek clarification that to the extent that Cove Point under-recovers costs associated with the compression installed as part of the Cove Point East project, the LTD-1 Shippers may not be assessed for any part of such under-recovery. Cove Point responds that, assuming that the LTD-1 Shippers refer to the potential under-recovery of compression fuel costs associated with running the Cove

[10] Based on Cove Point's answer, the LTD-1 Shippers' request for clarification on this point is moot.

Point East compressors, the LTD-1 Shippers' request for clarification goes too far. Cove Point argues that if an LTD-1 Shipper transports gas on a secondary or interruptible basis that is made possible by the new compressors, the LTD-1 Shippers should bear compression fuel costs just like any other shipper.

14. In regard to the LTD-1 Shippers' argument that the compression fuel costs should be charged only on non-Cove Point East transportation when the projects' compressor stations actually run, Cove Point responds that their views ignore the fact that secondary firm and ITS shippers benefit from the availability of the compression even when it is not used because it increases certainty in the scheduling process. Cove Point argues that absent the availability of the Cove Point East compressors, Cove Point would need to evaluate secondary and ITS nominations based on the activity of all shippers on the system; thus no threshold could be established since it would change daily even potentially every nomination cycle. Moreover, Cove Point states that when the compression is not used, no costs will be included in the relevant trackers, so ultimately, the increased scheduling certainty provided to all transportation customers does not cost them anything.

15. Cove Point notes that Washington Gas, one of the Cove Point East shippers, generally supports the proposed change and states that in no event should the Cove Point East subscribers be responsible for costs caused by other shippers requiring use of the compressors. Cove Point states that this scenario could occur absent the proposed tariff changes, *i.e.*, Cove Point could run the compressors for secondary firm or interruptible transportation service requested by a non-Cove Point East shipper with the costs borne exclusively by the Cove Point East shipper.

16. Cove Point notes that Washington Gas suggests that to the extent a transportation rate is charged to a shipper who is not a Cove Point East subscriber, Cove Point should credit the revenues received to the firm subscribers of the Cove Point East Project. Cove Point states that there is no merit to Washington Gas's revenue crediting idea, and that the use of FTS capacity for secondary point transportation does not result in any incremental revenue for Cove Point. Cove Point argues that there is no incremental recovery of variable costs since Cove Point's current commodity rate is zero.

17. Finally, Cove Point notes that Atlanta/VNG raises the issue of the interrelationship of Cove Point's filing here with its proposal to implement new Rate Schedule OTS as described in Cove point's application pending in Docket No. CP05-395-000. Cove Point agrees that OTS service should be treated the same as FTS service in this case, and proposes to include language mirroring the proposal here for FTS in Rate Schedule OTS when it is implemented. Cove Point states that it would support a Commission order that so requires.

Discussion

18. We agree that any service rendered non-Cove Point East Project shippers with the Cove Point East Project Loudoun gas-powered compressors justifies assessing such shippers the Cove Point East Project fuel retention attributable to such use. The LTD-1 Shippers reference to the statement in the November 18, 2003 certificate order regarding the recovery of costs is misplaced. There the Commission stated:

> All of the costs of the Proposed Cove Point East Project will be recovered only from the shippers who subscribe to this incremental service. The Project will not rely on any subsidization from existing customers.[11]

19. The Commission's reference to "costs of the Proposed Cove Point East Project" referred to the capital costs to construct the project facilities, which costs are recovered on an incremental basis from the Project shippers through an incremental reservation charge. The ongoing cost of fuel of the Project is to be recovered in incremental fuel retention rates from the shippers who use the capacity produced by the Cove Point East Project compressors. That will generally be the Project shippers. Consistent with Commission policy, however, provided that no subsidization of the Project occurs, other non-Project, existing shippers who benefit from their use of the compression provided by the Project compressors should bear the cost of the incremental fuel used by those compressors to provide the service.[12]

20. However, we find that the LTD-1 Shippers have raised a legitimate concern that Cove Point's proposal automatically allows it to assess non-Cove Point East Project shippers the Cove Point East Project fuel retention charge for FTS service at alternate receipt points and for all IT service without a showing that such service must necessarily be rendered, and in fact is rendered by reason of the operation of the Cove Point East Project gas-powered compressors, without subsidization of the Cove Point East Project by existing shippers. Non-Cove Point East Project FTS customers currently pay reservation charges providing them with the right to use available alternative receipt points on Dominion Cove Point's system without additional charge. Further, they currently pay a 0.0 percent fuel retention charge for system fuel use.[13] Accordingly, non-Cove Point East Project FTS customers should not automatically bear additional charges merely as a result of utilizing their existing flexible point rights. Cove Point has not shown that an existing FTS shipper's flex to an alternate receipt point would require

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[11] 105 FERC 61,234 at P 21 (2003).

[12] *See Iroquois, supra,* 102 FERC ¶ 61,131 at 61,350.

[13] Fifth Revised Sheet No. 10 of Cove Point's tariff reflects 0.0 percent fuel retention rates for FTS and ITS service.

additional compression from the Cove Point East Project compressors. The same concern regarding automatic collection of the Cove Point East Project fuel retention rate applies as well to IT service since IT capacity can be available using existing, *i.e.*, non-Cove Point East Project, capacity. Cove Point must provide additional support for its proposal and, at a minimum, must revise its proposed tariff language to reflect the foregoing limitation on the right to assess non-Cove Point Project shippers such additional fuel retention charges.

21. Accordingly, the proposed changes to section 4(b)(3) of Rate Schedule FTS and section 5(b)(2) of Rate Schedule IT are accepted and suspended, subject to Dominion Cove Point filing additional support for such charges with a full explanation of how and in what circumstances it plans on applying its proposed charges, including examples and supporting documentation showing why service for non-Cove Point East Project shippers can only be provided by the Cove Point East Project compressors and does, in fact, come from the incremental use of from the Project compressors. Cove Point must demonstrate that its proposal will not result in subsidization of the Cove Point East Project by non-Project shippers and will not result in an over recovery of fuel costs. Further, Cove Point must file revised tariff revisions to provide that Cove Point East fuel retention charges may be assessed to non-Cove Point East Project shippers only for FTS service at alternate receipt points and for IT service if, and to the extent, such services are rendered solely because of the operation of the Cove Point East Project Loudoun gas-powered compressors. Further, Dominion Cove Point must file tariff revisions to establish procedures requiring it to provide notice to the non-Cove Point East Project shippers that their proposed services will be available only by reason of additional capacity provided by the Cove Point East Project Loudoun compressors and will be subject to such additional fuel retention charges. However, acceptance of the foregoing required tariff revisions will be subject to the outcome of the Commission’s review of the explanations and support Cove Point must file as directed above.

22. The proposed changes to section 4(b)(4) of Rate Schedule FTS and section 5(b)(3) of Rate Schedule ITS are rejected as premature and, therefore, unnecessary at this time in that Dominion Cove Point currently has no Cove Point East Project electric commodity surcharge in effect or on file with the Commission.[14] Cove Point is directed to refile to remove these proposed provisions.

[14] Such rejection is without prejudice to the filing of a fully supported proposal if Cove Point establishes such a commodity surcharge, provided that such proposal must be consistent with the rulings in this proceeding so that such charges would be assessed only with respect to services provided with capacity provided by the incremental Cove Point East Project electric compressors without subsidization of the Project by existing shippers.

23. Washington Gas' proposal that any additional revenue be credited to firm shippers is denied. Cove Point retains gas for fuel and does not asses a monetary charge, so there are no revenues to credit. Cove Point's fuel tracker is recalculated on a yearly basis and volumes retained from non-Cove Point East Project shippers will be factored into the calculation of the next year's surcharges.

24. Finally, Atlanta/VNG's request to direct Dominion Cove Point to submit a revised OTS Rate Schedule, if the instant proposal is approved, should be raised in Docket No. CP05-395-000 where it is currently pending and will not be addressed here.

Suspension

25. Based on a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept the referenced tariff sheets for filing, and suspend their effectiveness for the period set forth below, subject to the conditions in this order.

26. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.[15] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[16] Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the tariff sheets for five months, and permit the tariff sheets to take effect the earlier of a date set by subsequent Commission order in this proceeding or February 1, 2006, subject to refund.

The Commission orders:

(A) Cove Point's revised tariff sheets are accepted to be effective the earlier of a date set by subsequent Commission order in this proceeding or February 1, 2006, subject to refund and to the conditions of this order.

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[15] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

[16] *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(B) Within 30 days of this order, Cove Point must file the explanations, support, and revised tariff revisions as directed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.