

120 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Dominion Cove Point LNG, LP

Docket No. CP06-469-001

ORDER DENYING REHEARING AND CLARIFICATION

(Issued September 4, 2007)

1. In an order issued April 23, 2007 (April 23 Order), the Commission, under section 3 of the Natural Gas Act (NGA), authorized Dominion Cove Point LNG, LP (Cove Point) to construct and operate facilities Cove Points calls the Post-CPX Send-Out Project at Cove Point's existing LNG terminal in Maryland.¹ Specifically, the Commission authorized Cove Point to construct three spare liquefied natural gas (LNG) send-out pumps, two supplemental heaters to be used as an alternate heating source for heat vaporizers, and related electrical infrastructure improvements.
2. Public Service Company of North Carolina (North Carolina) filed a timely request for rehearing and/or clarification of certain aspects of the April 27 Order. Cove Point filed an answer to North Carolina's request for rehearing and clarification. Although the Commission's rules do not permit answers to requests for rehearing,² we may, for good cause shown, waive a rule.³ We find good cause to do so here in order to help develop a more complete record and clarify the issues in this proceeding.
3. For the reasons discussed below, the Commission denies North's Carolina's requests for rehearing and/or clarification.

¹ *Dominion Cove Point LNG, LP*, 119 FERC ¶ 61,079 (2007).

² 18 C.F.R. § 385.213(a)(2) (2007).

³ 18 C.F.R. § 385.101(e).

Background

4. Cove Point owns and operates an LNG import terminal near Lusby, in Calvert County, Maryland, and the Cove Point Pipeline, which extends approximately 87 miles from the terminal to interconnections with several interstate pipelines in Loudon County, Virginia. The LNG terminal and pipeline were authorized in 1972. LNG shipments to Cove Point ended in 1980 and the facilities were used only to provide a small amount of interruptible transportation through the Cove Point Pipeline until 1994, when the facilities were reactivated and adapted for the purpose of storing domestic natural gas during the summer for use at peak times during the winter.⁴

5. Cove Point currently provides open-access 10-day, 5-day and 3-day firm peaking services under Rate Schedules FPS-1, FPS-2, and FPS-3, respectively, and provides firm and interruptible transportation services under Rate Schedules FTS and ITS.⁵ The FPS customers receive transportation service on the Cove Point Pipeline on an unbundled basis under Rate Schedule FTS.⁶

6. In 2001, the Commission authorized⁷ Cove Point to construct new facilities and to reactivate and operate existing facilities to recommence importing LNG, and to provide LNG Tanker Discharging (LTD) services for shippers importing LNG under Rate

⁴ *Dominion Cove Point LNG Limited Partnership*, 68 FERC ¶ 61,377 (1994), *reconsideration denied*, 69 FERC ¶ 61,292 (1994).

⁵ Under the FPS rate schedules, the customer may inject domestic gas for storage as LNG during an injection season from April 16 to December 14, which gas is later vaporized and redelivered during a withdrawal season from December 15 to April 15.

⁶ The FPS customers are Washington Gas Light Company, Public Service Company of North Carolina, Inc., Virginia Natural Gas Inc., and Atlanta Gas Light Company.

⁷ *Dominion Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043 (2001), *order on reh'g*, 97 FERC ¶ 61,276 (2001), *order on reh'g*, 98 FERC ¶ 61,270 (2002).

Schedules LTD-1 and LTD-2.⁸ As part of that authorization, the Commission approved a settlement (2001 Settlement) that established initial rates for the new LTD customers and lower rates for the existing FPS and FTS customers.

7. In 2003, the Commission authorized Cove Point to construct and operate two new compressor stations on the Cove Point Pipeline to provide additional west-to-east firm transportation capacity.⁹ In November 2004, the Commission authorized Cove Point to place into service a fifth LNG storage tank, with a capacity of 2.8 Bcf, that was approved in the 2001 reactivation orders. As a result of that expansion, the LNG import terminal currently has a total storage capacity of 7.8 Bcf and 1.0 MMDth a day of peak send-out capacity.

8. On June 16, 2006, the Commission authorized Cove Point to begin a major expansion of its LNG terminal and its downstream transportation infrastructure (CPX Project).¹⁰ The CPX Project facilities authorized by the Commission included two additional LNG storage tanks, each capable of storing 160,000 cubic meters of LNG. The authorized facilities, when in service, will increase send-out capability by 800,000 Dth a day and storage capacity by approximately 6.8 Bcf. After expansion, the Cove Point LNG terminal will have storage capacity of 14.6 Bcf and a send-out capability of 1.8 MMDth a day.

9. In another order also issued on June 16, 2006, the Commission authorized Cove Point to refurbish and reactivate two waste heat vaporizers (Vapor Reactivation Project) originally authorized at the Cove Point terminal in the 1970's.¹¹ The Vapor Reactivation Project has been completed and the refurbished waste heat vaporizers were placed in service on December 22, 2006. That project enables Cove Point to provide an additional 250,000 Dth per day of firm send-out capability during off-peak periods to ensure that

⁸ The LTD service consists of the receipt of LNG from tankers, the temporary storage of LNG, and the vaporization of LNG and delivery of natural gas to points along the existing Cove Point Pipeline. The LTD-1 shippers are Shell NA LNG LLC, BP Energy Company, and Statoil Natural Gas LLC.

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

¹⁰ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006), *order on reh'g*, 118 FERC ¶ 61,607 (2007).

¹¹ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,336 (2006), *order denying reh'g and clarification*, 118 FERC ¶ 61,006 (2007).

Cove Point would be able to deliver up to its current peak-day capability of 1.0 MMDth per day on a year-round basis. The additional send-out capacity from the Vapor Reactivation Project is allocated to the existing LTD-1 shippers under an incremental send-out quantities (ISQ) service.

10. Shortly after it filed its application for the CPX Project described above, Cove Point and its LTD-1 customers entered into an agreement in May 2005 (LTD-1 Settlement) relating to additional and expanded services contemplated for the LNG terminal and the Cove Point pipeline.¹²

11. In the April 23 Order at issue here, the Commission authorized construction of supplemental heaters and related facilities that will provide an alternate heat source for the heaters reactivated in the Vapor Reactivation Project to ensure that the waste heat vaporizers can continue to operate at full capacity when gas turbine generators, the primary heat source, are not providing sufficient waste heat.

NGA Section 3 Jurisdiction

12. North Carolina contends that the Commission erred in authorizing the supplemental heaters under section 3 of the NGA because the heaters assertedly do not qualify as LNG terminal facilities under section 2(ii) of the NGA. The Commission should have instead considered authorization of the supplemental heaters under section 7 of the NGA, argues North Carolina. North Carolina bases this contention on the fact that the supplemental heaters will be used in connection with the waste heat vaporizers recently reactivated in the Vapor Reactivation Project, and it maintains that the Commission erred in authorizing the Vapor Reactivation Project waste heaters under section 3 rather than under section 7.

13. The Commission directly addressed and rejected North Carolina's jurisdictional argument regarding the waste heat vaporizers in the Vapor Reactivation Project proceeding, and we will not revisit the issue here. The Commission explained in that proceeding that the waste heat vaporizers had been dormant since Cove Point terminated LNG imports in 1980 and were not part of Cove Point's reactivation of the terminal authorized by the Commission in 2001. Accordingly, the Commission found, Commission authorization was required to put the refurbished facilities into service. In its order denying rehearing and clarification, the Commission held that,

¹² Cove Point later provided a redacted copy of the LTD-1 Settlement to the Commission.

the vaporizers qualify as “LNG terminal” facilities as defined by EPA Act 2005, because they will be used to gasify natural gas imported to the United States from a foreign country. [footnote omitted] Further, these facilities are not “pipeline or storage facilities subject [to] the jurisdiction of the Commission under section 7,” which would exclude them from definition as LNG terminal facilities. [footnote omitted] Accordingly, we find that the waste heat vaporizers are LNG terminal facilities as defined in amended NGA section 3 and will deny North Carolina’s request for rehearing on this issue.¹³

Because the supplemental heaters will be used only in connection with those vaporizers found to be LNG terminal facilities, the supplemental heaters likewise qualify as LNG terminal facilities subject to the Commission’s jurisdiction under section 3 of the NGA for the same reasons that apply to the waste heat vaporizers. The Commission, therefore, properly authorized the supplemental heaters and related facilities under section 3.

LTD-1 Settlement Agreement

14. North Carolina questions the relationship between the Commission’s use of the term “CPX Send-Out Project” in the April 23 Order and the use of the same term in the LTD-1 Settlement. Specifically, North Carolina states that the FPS shippers are not parties to the LTD-1 Settlement, and it urges the Commission to clarify that the April 23 Order does not give effect to provisions of the LTD-1 Settlement.

15. Cove Point’s application in this proceeding refers to the facilities the Commission authorized for construction in the April 23 Order as the Post-CPX Send-Out Project. Our April 23 Order also uses that term as a short hand expression to describe the authorized facilities. Article V of the LTD-1 Settlement is likewise entitled “Post CPX Send-Out Project.” Article V describes rights and obligations of Cove Point and the LTD-1 shippers with respect to future expansion applications at the Cove Point terminal. North Carolina expresses concern that the facilities referred to as the Post-CPX Send-Out Project that the Commission approved in the April 23 Order differ in scope from what is called the Post-CPX Send-Out Project in the LTD-1 Settlement. North Carolina notes that Article V of the LTD-1 Settlement addresses the future treatment of the liquefaction facilities at the Cove Point terminal used by the FPS shippers and the possible future disposition of FPS shippers’ capacity.

¹³ 118 FERC ¶ 61,006 at P 26 (2007).

16. The Commission explained in the April 23 Order that the LTD-1 Settlement is only an agreement between Cove Point and its import shippers concerning their respective rights and obligations surrounding future expansion applications, and that approval of the proposal before the Commission in this proceeding does not in any way amend or alter the rights of the FPS shippers.¹⁴ We cannot be more clear than that. Our April 23 Order authorized the construction and operation of specific facilities at the Cove Point terminal. The April 23 Order does not address the future of the existing liquefaction facilities used by the FPS shippers or any other facilities or services not specifically authorized in the April 23 Order. The fact that Cove Point in its application refers to these facilities as the Post-CPX Send-Out Project, and the LTD-1 Settlement uses the same term in a broader context has no significance or relevance here. The April 23 Order simply cannot be read to give effect to any provisions of the LTD-1 Settlement.

Separate Books and Records

17. North Carolina alleges that the Commission's requirement in the April 23 Order that Cove Point maintain separate books and records for the LTD-1 services does not adequately protect the FPS customers. North Carolina contends that the separate books requirement does not provide meaningful guidance as to how the books should be kept. North Carolina states that it is concerned that FPS shippers will bear an unfair portion of the increased costs associated with the new facilities or not benefit from potential fuel savings.

18. The requirement for separate books and records to protect existing customers from subsidizing an incremental project follows established Commission policy.¹⁵ As we explained in the Vapor Reactivation Project proceeding, separate books allow the parties to isolate the costs attributable to the LNG import shippers from the costs attributable to the services provided to the FPS customers. Thus, in a future rate proceeding, the parties will be able to evaluate the costs and make all arguments concerning the appropriate rate calculations.¹⁶ We explained in the April 23 Order that this requirement is consistent with the approach taken in the prior Cove Point proceedings. In those proceedings, we

¹⁴ 119 FERC ¶ 61,079 at P 30 (2007).

¹⁵ See, e.g., *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006); *El Paso Natural Gas Company*, 104 FERC ¶ 61,303 (2003); and *Iroquois Gas Transmission System, L.P.*, 100 FERC ¶ 61,275 (2002).

¹⁶ 118 FERC ¶ 61,006 at P 27-28.

directed that this information must be in sufficient detail so that the data can be identified in Statements G, I, and J in such a rate proceeding. That provision applies to this proceeding as well. We find this requirement is sufficient to ensure sufficient information to protect FTS customers from impermissible cross-subsidization.

Separate Fuel Charge for the Supplemental Heaters

19. North Carolina states that the supplemental heaters authorized in the April 23 Order will consume natural gas as a fuel in their operation, and only the LTD-1 shippers will benefit from them. North Carolina contends that the Commission should require Cove Point to meter and account for the actual fuel used by the supplemental heaters separately and to file a tariff modification setting an initial fuel rate that will ensure that supplemental heater fuel will be billed only to LTD shippers. North Carolina states that the FPS shippers pay for the additional fuel used for the liquefaction facilities used only for the benefit of the FPS shippers, and the LTD shippers should likewise pay for fuel associated with use of the supplemental heaters used only for their benefit.¹⁷

20. In response to a Commission data request, Cove Point explained that, because it as yet has no experience employing the ISQ service, it has no current basis upon which to project the fuel use that the new ISQ service will entail.¹⁸ We agree with North Carolina, however, that costs must be properly assigned to those who benefit from the service provided. Accordingly, as part of the requirement that Cove Point keep separate books and records for the LTD-1 services, the April 23 Order specifically required Cove Point to track the fuel for the send-out volumes associated with the LTD-1 ISQ service. The Commission noted that Cove Point already tracks fuel usage at the terminal and explained that fuel used for the ISQ service must be charged to the LTD-1 shippers.¹⁹ It is implicit in our fuel tracking requirement, moreover, that Cove Point have the necessary

¹⁷ In its reply to the rehearing request, Cove Point notes that, since reactivation of the Cove Point terminal in 2003, sufficient volumes of LNG have been received from the import shippers to serve FPS customers without the need to liquefy any natural gas received from FPS shippers, with the result that FPS shippers have already realized a significant reduction in fuel retainage requirements.

¹⁸ Cove Point did, however, note that it expects that operation of the Vapor Reactivation Project and the Post-CPX Send-Out Project together may reduce overall per-unit fuel use for the LNG terminal operation to the mutual benefit of LTD-1 and FPS shippers alike. See January 23, 2007 data request response at Question No. 8.

¹⁹ April 23 Order at P 35.

equipment in place to accomplish the fuel tracking.²⁰ Under the circumstances, we find that there is no reason for a specific requirement that Cove Point install a meter to track fuel usage or to revise its tariff. By examining the separate records for the ISQ service North Carolina can ensure that it is not paying for the fuel used to provide that service.

The Commission orders:

The requests by Public Service Company of North Carolina for rehearing and clarification are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.

²⁰ If Cove Point does not already have such equipment in place, it must install facilities for measuring the fuel use, to ensure that the LTD shippers are appropriately charged for the fuel associated with the send out volumes.