

168 FERC ¶ 61,097  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

KMC Thermo, LLC,  
Complainant

Docket No. RP18-1130-001

v.

Dominion Energy Cove Point LNG, LP,  
Respondent

ORDER DENYING REQUEST FOR REHEARING

(Issued August 20, 2019)

1. On December 27, 2018, KMC Thermo, LLC (KMC) filed a request for rehearing (Request for Rehearing) of the Commission's November 27, 2018 order,<sup>1</sup> which denied KMC's complaint alleging that it was unlawful for Dominion Energy Cove Point LNG, LP (Cove Point) to charge KMC the General System Commodity Electric Surcharge (Electric Surcharge) that Cove Point recently introduced into its tariff. As discussed below, the Commission denies rehearing.

**I. Procedural History and Background**

2. On September 29, 2014, the Commission authorized Cove Point to expand its existing system by constructing and operating expansion facilities known as the Cove Point Liquefaction Project (Liquefaction Project).<sup>2</sup> The Liquefaction Project added services related to the liquefaction and export of natural gas at Cove Point's existing

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<sup>1</sup> *KMC Thermo, LLC v. Dominion Energy Cove Point LNG, LP*, 165 FERC ¶ 61,166 (2018) (November Order).

<sup>2</sup> *Dominion Cove Point LNG, LP*, 148 FERC ¶ 61,244 (2014) (Certificate Order), *reh'g denied*, 151 FERC ¶ 61,095 (2015), *petition for review denied*, *EarthReports, Inc. v. FERC*, 828 F.3d 949 (D.C. Cir. 2016), *remanded*, *BP Energy Co. v. FERC*, 828 F.3d 959 (D.C. Cir. 2016), *order on remand*, 160 FERC ¶ 61,134 (2017), *reh'g denied*, 164 FERC ¶ 61,107 (2018).

liquefied natural gas (LNG) import terminal. The Liquefaction Project facilities included 62,500 horsepower of new electric-driven compression added at Cove Point's existing Pleasant Valley compressor station.<sup>3</sup> Cove Point stated in its application for the Liquefaction Project that this new compression would be used to compress natural gas for transportation for both new (incremental) and existing, system-wide customers received at both the Pleasant Valley and the nearby Loudoun receipt points.<sup>4</sup> Cove Point anticipated that, once the Liquefaction Project began operations, it would run existing, natural gas-fired compression at Loudoun only on an occasional basis and as a back-up to the Pleasant Valley compression.<sup>5</sup>

3. Cove Point also stated in its Liquefaction Application that the addition of the proposed new services would require changes to its tariff related to electric costs, retainage, boil-off, and "cooling quantities" that would affect not only the Liquefaction Project customers but other Cove Point customers as well,<sup>6</sup> and that, consistent with Commission policy, those tariff changes would be presented in a filing under Natural Gas Act (NGA) section 4<sup>7</sup> made 30-60 days before the in-service date of the Liquefaction Project.<sup>8</sup> In granting the certificate authorization for the project, the Commission found that Cove Point's existing customers would not subsidize the expansion because new customers would pay an incremental recourse rate and "other sources of potential

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<sup>3</sup> Certificate Order, 148 FERC ¶ 61,244 at P 14; Cove Point Application for the Liquefaction Project, Docket No. CP13-113-000, at 26-28 (Apr. 1, 2013) (Liquefaction Application).

<sup>4</sup> Liquefaction Application at 27-28. Cove Point's 88-mile pipeline (the Cove Point Pipeline) extends from its LNG Terminal in Calvert County, Maryland, to connections with three interstate pipelines: Transcontinental Gas Pipe Line Co., LLC (Transco) at Pleasant Valley in Fairfax County, Virginia, and both Dominion Energy Transmission, Inc. (Dominion) and Columbia Gas Transmission Corp. (Columbia) at Loudoun in Loudoun County, Virginia.

<sup>5</sup> Liquefaction Application at 29-30.

<sup>6</sup> *Id.* at 36.

<sup>7</sup> 15 U.S.C. § 717c (2012).

<sup>8</sup> Liquefaction Application at 36-37.

subsidization such as fuel retainage and power requirements will be appropriately addressed in an NGA section 4 proceeding prior to the in-service date of the expansion.”<sup>9</sup>

4. On February 2, 2018, in Docket No. RP18-419-000, Cove Point filed with the Commission a variety of proposed tariff changes associated with both the implementation of the Liquefaction Project and the settlement of an intervening general NGA section 4 rate case.<sup>10</sup> A number of Cove Point’s customers intervened in that proceeding, with some filing protests, and Cove Point filing an answer to the protests.

5. Included in the proposed tariff changes was an Electric Surcharge used to recover transmission electric power costs. The purpose, design, and cost responsibility of the Electric Surcharge were addressed in detail in the transmittal letter,<sup>11</sup> and the tracker mechanism formula for the Electric Surcharge was set out in Attachment C, with the initial rates set at \$0.0946 per Dth for shippers in KMC’s position.<sup>12</sup>

6. On March 5, 2018, the Commission accepted the unopposed portions of Cove Point’s tariff filing, without suspension, and nominally suspended the protested portions of the filing, subject to refund and the outcome of a technical conference. All of the tariff records were permitted to take effect on March 5, 2018, or the date on which the Liquefaction Project was placed into service.<sup>13</sup> After the technical conference, the Commission found Cove Point’s modified proposal to be just and reasonable.<sup>14</sup> KMC did not participate in the February 2018 Filing proceeding.<sup>15</sup>

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<sup>9</sup> Certificate Order, 148 FERC ¶ 61,244 at P 37.

<sup>10</sup> Cove Point Tariff Filing, Docket No. RP18-419-000 (filed Feb. 2, 2018) (February 2018 Filing).

<sup>11</sup> February 2018 Filing, Docket No. RP18-419-000, at 6-11, Ex. C.

<sup>12</sup> February 2018 Filing, Docket No. RP18-419-000, Ex. C. This rate was later reduced to \$0.0837 per Dth after the formula was updated using 2017 data from annual tracker filings. See Cove Point Electric Power Cost Adjustment and Retainage filings, Docket Nos. RP18-498 and RP18-499 (filed Feb. 28, 2018).

<sup>13</sup> *Dominion Energy Cove Point LNG, LP*, 162 FERC ¶ 61,199 (2018).

<sup>14</sup> *Dominion Energy Cove Point LNG, LP*, 163 FERC ¶ 61,214 (2018).

<sup>15</sup> Complaint at 5.

7. On August 31, 2018, KMC filed a complaint pursuant to section 5 of the NGA and Rule 206 of the Commission's Rules of Practice and Procedure.<sup>16</sup> In the complaint, KMC stated that it owns a power generating facility in Brandywine, Maryland, and it receives firm transportation service from Cove Point pursuant to a firm transportation service agreement. KMC claimed that the Commission authorized Cove Point to expand its existing system by constructing and operating the Liquefaction Project in part because the Commission found that existing customers would not be subsidizing the project<sup>17</sup> and that nowhere in the certificate proceedings did Cove Point assert that existing shippers would have to pay an additional electric surcharge as a result of the Liquefaction Project.

8. KMC asserted that it should not be required to pay the Electric Surcharge because it results in an unlawful subsidy from existing customers to the Liquefaction Project customers, which KMC claims are the sole beneficiaries of the Liquefaction Project. In support, KMC cited the Commission's 1999 Certificate Policy Statement stating that "[e]xisting customers of the expanding pipeline should not have to subsidize a project that does not serve them,"<sup>18</sup> and argued that the Commission approved the Liquefaction Project with that understanding.<sup>19</sup>

9. KMC requested that the Commission find that KMC bears no obligation to pay the Electric Surcharge or, in the alternative, that the Commission modify the Cove Point tariff pursuant to NGA section 5 to provide that only customers using the Liquefaction Project facilities and/or those that were historically subject to the Electric Surcharge be required to pay it.

10. On September 19, 2018, Cove Point filed an answer and motion to dismiss the complaint. On September 28, 2018, KMC filed an answer in response to the Cove Point answer.

11. The November Order denied KMC's complaint. The Commission found that Cove Point properly assessed KMC a Commission-approved tariff surcharge to recover

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<sup>16</sup> 15 U.S.C. § 717d (2012); 18 C.F.R. § 385.206 (2018).

<sup>17</sup> Complaint at 3 (citing Certificate Order 148 FERC ¶ 61,244 at P 37)

<sup>18</sup> *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,746, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000), (*quoted in* Complaint at 7).

<sup>19</sup> Complaint at 7 (citing Certificate Order, 148 FERC ¶ 61,244 at P 37 ("We find that existing customers will not subsidize the expansion of the Cove Point Pipeline.")).

the costs of compression used to provide service to KMC at the Columbia Interconnection.<sup>20</sup>

12. The Commission also found that KMC failed to meet its burden under section 5 of the NGA to sustain its challenge to Commission-approved tariff provisions because it failed to demonstrate that the existing rate was unjust and unreasonable. The Commission found that KMC had failed to show, whether due to new evidence or any change in circumstances, a compelling reason why the Commission should find the Electric Surcharge it recently accepted for inclusion in the Cove Point tariff to be unjust or unreasonable.<sup>21</sup>

13. The Commission rejected KMC's argument that KMC was being forced to subsidize the incremental customers, explaining that:

the record reflects that Cove Point introduced the new electric compression so that it could phase out the natural gas-fired compression for domestic service.<sup>22</sup> KMC neither alleges nor presents any evidence demonstrating that Cove Point's decision to prefer new electric compression over aging natural gas-fired compression is operationally or financially imprudent, nor does it show that it does not benefit from the installation of these compressors to supplant the use of aging plant so that Cove Point could maintain the same level of service to its customers after adding the new facilities. Without such showings, it is irrelevant that KMC was not charged an Electric Surcharge prior to the Liquefaction Project.<sup>23</sup>

14. The Commission also found that Cove Point had properly assessed KMC the Electric Surcharge. The Commission noted that it accepted Cove Point's tariff modifications, including the application of the Electric Surcharge to "other Buyers" at the interconnection of Columbia and Cove Point, Transco and Cove Point, and the interconnect between Dominion Pipeline and Cove Point. The Commission also found Cove Point explained that following implementation of the Project, "gas received at both

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<sup>20</sup> November Order, 165 FERC ¶ 61,166 at P 28.

<sup>21</sup> *Id.* P 32.

<sup>22</sup> Liquefaction Application at 29-30.

<sup>23</sup> November Order, 165 FERC ¶ 61,166 at P 33.

Pleasant Valley and Loudon will be compressed using the new electric compression at Pleasant Valley”<sup>24</sup> and noted that the service that Cove Point now provides to KMC uses that electric compression. The Commission thus concluded that KMC is obligated to pay the Electric Surcharge because this charge recovers the cost of providing it electric compression service.<sup>25</sup> Further, the Commission noted that if the Electric Surcharge did not apply to KMC, as KMC proposes, this would result in a shortfall in costs falling on other Cove Point customers, and this would not be a just and reasonable result.<sup>26</sup>

## **II. Request for Rehearing**

15. On rehearing, KMC argues that the Commission erred by holding that existing customers, such as KMC, are required to pay the Electric Surcharge. KMC reiterates its assertion that it should not be required to pay the Electric Surcharge<sup>27</sup> because it results in an unlawful subsidy from existing customers to the Liquefaction Project customers, which KMC claims are the sole beneficiaries of the Liquefaction Project. KMC states that this determination constitutes a departure from the Commission’s prior precedent, and thus constituted arbitrary and capricious decision making.<sup>28</sup>

16. KMC argues that, in making its decision, the Commission relied on an inaccurate statement that “Cove Point introduced the new electric compression so that it could phase out the natural gas-fired compression for domestic service.”<sup>29</sup> KMC states that in fact the sole purpose of the new compression was to benefit expansion shippers.<sup>30</sup>

## **III. Determination**

17. For the reasons discussed in the November Order and below, we deny KMC’s request for rehearing, and conclude that the Commission correctly found that Cove Point properly assessed KMC a Commission-approved tariff surcharge to recover the costs of

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<sup>24</sup> *Id.* P 30 (quoting Liquefaction Application at 7).

<sup>25</sup> *Id.* P 31.

<sup>26</sup> *Id.* P 34.

<sup>27</sup> KMC asserts that the Electric Surcharge has raised its commodity rate from \$0.013 to \$0.85. Request for Rehearing at 4.

<sup>28</sup> *Id.* at 3-5.

<sup>29</sup> *Id.* at 5-6 (quoting November Order, 165 FERC ¶ 61,166 at P 33).

<sup>30</sup> *Id.* at 7-8.

compression used to provide service to KMC at the Columbia Interconnection as provided for in KMC's firm transportation agreement.

18. We begin by noting that the Commission approved the Electric Surcharge just six months prior to KMC's filing of its complaint. While we do not dismiss KMC's complaint as a collateral attack on Cove Point's existing rate,<sup>31</sup> we apply "the traditional, accepted legal standard used to assess whether an existing rate is no longer just and reasonable, i.e., whether circumstance or conditions have changed since the rate was originally accepted or new evidence is available that shows the existing accepted rate is no longer just and reasonable."<sup>32</sup> KMC points to no changed circumstances or new evidence to show that the Electric Surcharge has become unjust and unreasonable. We affirm the Commission's conclusion that KMC failed to meet its NGA section 5 burden of showing that Cove Point's existing rate is unjust and unreasonable.

19. No evidence exists to support KMC's suggestion<sup>33</sup> that the Electric Surcharge amounts to an unlawful subsidy from existing customers to expansion customers. As KMC notes, the Commission generally requires that existing customers must receive specific benefits from an expansion project to be required to pay for a portion of the project.<sup>34</sup> As the Commission explained in the November Order, KMC acknowledges that it requires compression service, and does not challenge the prudence of Cove Point's decision to effectively replace aging natural gas-fired compression with new electric compression facilities.<sup>35</sup> Thus, the continuation of compression service specifically benefits KMC, and KMC has not presented evidence to the contrary. Accordingly, KMC

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<sup>31</sup> November Order, 165 FERC ¶ 61,166 at P 35 n.51.

<sup>32</sup> *La. Pub. Serv. Comm'n v. FERC*, 139 FERC ¶ 61,107, at P 120 (2012) (citing *Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286, 1288 (D.C. Cir. 2000) (holding that the party challenging the existing rate bears the burden of showing changed circumstances support a finding that the existing rate is unjust and unreasonable)), *reh'g denied*, 153 FERC ¶ 61,188 (2015), *pet. for review denied*, 860 F.3d 691 (D.C. Cir. 2017).

<sup>33</sup> Request for Rehearing at 3-5.

<sup>34</sup> *Id.* at 4 (quoting *Transcon. Gas Pipe Line Corp. (Transco)*, 112 FERC ¶ 61,170, at P 106 (2005)).

<sup>35</sup> November Order, 165 FERC ¶ 61,166 at P 33.

must bear its proportional cost responsibility for electric compression facilities used to provide it service.<sup>36</sup>

20. KMC relies on general statements in Cove Point's Liquefaction Application concerning the Liquefaction Project's overall purpose, but this language does not require a different outcome.<sup>37</sup> KMC points to language suggesting that the new compression was necessary for the expansion shippers.<sup>38</sup> However, the mere fact that the new compression was necessary for the expansion shippers does not mean that it was not also beneficial to existing shippers. In the November Order, the Commission appropriately pointed to language directly addressing the compression facilities required to serve KMC. Cove Point explained that "[w]ith the new compression to be added at the Pleasant Valley Compressor Station" the existing compression at the Loudoun Compressor Station "will be run only on an exceptional basis" as "backup" to provide "additional reliability and flexibility to [Cove Point's] customers."<sup>39</sup> Accordingly, in the November Order, the Commission accurately explained that "Cove Point introduced the new electric compression so that it could phase out the natural gas-fired compression for domestic service."<sup>40</sup> KMC has not refuted the Commission's finding that existing shippers will benefit from the new equipment, including the increased reliability provided by having the old equipment as a back-up. Compression in this case is not an incidental operational benefit, such as an "increased level of flexibility," that an existing shipper should not be asked to subsidize;<sup>41</sup> it is necessary to transport KMC's gas.

21. Further, Cove Point's tracker methodology bases KMC's percentage of responsibility on overall throughput. KMC did not protest the allocation methodology when established, but instead waited until it knew its actual share of costs to file a complaint. The Electric Surcharge, like all variable cost trackers for natural gas

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<sup>36</sup> *Id.*

<sup>37</sup> Request for Rehearing at 5-8.

<sup>38</sup> *Id.* at 6 (quoting Cove Point Liquefaction Application at 1-2 (seeking "authority to construct, install, own, operate, and maintain facilities ... for the transportation of natural gas for the customers of the Cove Point Liquefaction Project"))).

<sup>39</sup> Liquefaction Application at 29-30.

<sup>40</sup> November Order, 165 FERC ¶ 61,166 at P 33 (citing Liquefaction Application at 29-30).

<sup>41</sup> *Cf. Southeast Supply Header*, 151 FERC ¶ 61,032, at P 13 (2015).



pipelines, only reflects the actual cost of operating the facilities.<sup>42</sup> It is not necessarily the case, as KMC implies, that its Electric Surcharge costs will continue to be higher than what it paid prior to the Pleasant Valley compressor station upgrade; indeed, the surcharge has already been reduced once.<sup>43</sup>

22. *Transco*, the primary case relied on by KMC, does not require a different result.<sup>44</sup> Among the issues in *Transco*, existing customers made a claim pursuant to section 5 of the NGA stating that they were improperly subsidizing expansion customers through an electrical surcharge for compression costs.<sup>45</sup> Both the Commission and the U.S. Court of Appeals for the District of Columbia Circuit rejected the pipeline's defense that "FERC's approach will lead to reverse subsidies" of compression costs flowing from expansion customers to existing customers.<sup>46</sup> However, that case had a much lower risk of subsidization of existing customers by expansion customers. In *Transco*, about 350 existing compressors were in use before the expansion at issue.<sup>47</sup> After the expansion, existing customers did not see any reduction in fuel costs to use those existing compressors.<sup>48</sup> Thus, if the expansion customers in *Transco* were indeed subsidizing existing customers' compression costs, it was only for an undefined and likely marginal amount. Here, by contrast, the pre-existing compression will only be used on a backup

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<sup>42</sup> *Dauphin Island Gathering Partners*, 162 FERC ¶ 61,273, at P 12 (2018) ("the bedrock requirement for all variable cost trackers is that they assess shippers no more or less than the cost of service").

<sup>43</sup> Cove Point Answer to the Complaint at 8-9 (citing Cove Point Electric Power Cost Adjustment and Retainage filings, Docket Nos. RP18-498 and RP18-499).

<sup>44</sup> Request for Rehearing at 3-4 (quoting *Transco*, 112 FERC ¶ 61,170 at P 106, *pet. for review denied*, 518 F.3d 916 (D.C. Cir. 2008)).

<sup>45</sup> *Transco*, 112 FERC ¶ 61,170 at PP 92, 107.

<sup>46</sup> *Transco*, 518 F.3d at 922; *Transco*, 112 FERC ¶ 61,170 at PP 110.

<sup>47</sup> *Transco*, 112 FERC ¶ 61,170 at P 92.

<sup>48</sup> *Id.* P 111 (finding the pipeline in *Transco* could "point to no evidence that combustion of gas at existing compressors has in fact been reduced"). Unless the Commission had found for the existing customers, the existing customers would have had to pay to power the new compression in addition to existing compression. *Id.* PP 108-112.

basis and fuel costs for gas-fired compression have been eliminated<sup>49</sup> and the Electric Surcharge will be the only fuel usage charge associated with compression.<sup>50</sup> Thus, if KMC's position were adopted,<sup>51</sup> expansion customers would be subsidizing all of KMC's power costs for compression.

23. For the reasons discussed above, KMC's request for rehearing is denied.

The Commission orders:

KMC's request for rehearing is denied.

By the Commission. Commissioner McNamee is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>49</sup> Specifically, a 0.6 percent fuel retainage to support the gas-fired compression has been zeroed out due to the switch to electric compression. *See* February 2018 Filing at 5-6 (citing changes to Tariff Record No. 10.35 and Tariff Record No. 20.20 at Section 4(b)(3)).

<sup>50</sup> Cove Point Answer to the Complaint at 12.

<sup>51</sup> KMC has not suggested that Cove Point should return to using the old gas-fired compression to service KMC; rather, its proposed remedy would permit KMC to benefit from the new electric compression but simply not pay any associated Electric Surcharge. *See i.e.*, Complaint at 8 ("The Commission should find that KMC is not an Other Buyer as defined in the Dominion Tariff and bears no obligation to pay the Electric Surcharge.").