

170 FERC ¶ 61,255
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Dominion Energy Cove Point LNG, LP

Docket No. RP20-232-002

ORDER DENYING REHEARING

(Issued March 26, 2020)

1. On January 10, 2020, Dominion Energy Cove Point LNG, LP (Cove Point) filed a request for rehearing of the Commission’s December 13, 2019 order.¹ In the December 2019 Order, the Commission accepted a service agreement under Cove Point’s Rate Schedule LTS between Cove Point and Mattawoman Energy LLC (Mattawoman), subject to the condition that Cove Point either eliminate two provisions from the agreement that materially deviated from Cove Point’s *pro forma* LTS form of service agreement, or revise Rate Schedule LTS to offer the same provisions to all LTS shippers in a non-discriminatory manner. Cove Point seeks rehearing of the Commission’s imposition of conditions on its acceptance of the non-conforming contract. For the reasons discussed below, we deny rehearing.

I. Background and Request for Rehearing

2. Cove Point offers a limited-firm service pursuant to its Rate Schedule LTS, under which Cove Point has the right to declare the shipper’s service to be unavailable for up to 30 days in a calendar year (LTS Unavailable Day). Cove Point also has the tariff right to lift that limitation if “Operator in its sole discretion determines the submitted nominations will alleviate the conditions that required the posting of the LTS Unavailable Day.”²

¹ *Dominion Energy Cove Point LNG, LP*, 169 FERC ¶ 61,200 (2019) (December 2019 Order).

² *Id.* n.2 (citing *Dominion Energy Cove Point LNG, LP*; FERC NGA Gas Tariff; *Dominion Energy Cove Point LNG, LP Tariffs*; [Tariff Record No. 20.45, LTS Rate Schedule, 2.0.0](#)).

3. In the subject service agreement, Cove Point proposed a non-conforming scheduling provision that would allow Mattawoman to nominate east-to-west flows on a primary basis despite the LTS Unavailable Day restrictions, on days when Cove Point declares that the LTS Unavailable Day restrictions are due to west-to-east constraints. In other words, when an LTS Unavailable Day is established due to west-to-east gas flow constraints, Mattawoman would be able to make contraflow nominations without the restrictions to which other LTS shippers would be subject.³

4. The Commission found this provision unjust and unreasonable on two grounds. First, the December 2019 Order stated that this provision conferred “a special right that presents a risk of undue discrimination.”⁴ Second, the order found that the provision undermined the exemption mechanism in Rate Schedule LTS. The Commission reasoned that exemption mechanism was to be based on forecasted system conditions but that the exemption proposed for the Mattawoman contract was based on discretionary favor.⁵ The Commission directed Cove Point to either eliminate Mattawoman’s special operational rights from the contract, or else offer a similar service on a firm basis to all shippers under those conditions.⁶

5. In its request for rehearing, Cove Point argues that the Commission erred in disregarding the history of Mattawoman’s involvement with Cove Point. Cove Point states that Mattawoman was signed up to be one of the initial shippers on Cove Point’s Eastern Market Access Project (EMA). After receiving certification for the project, Cove Point proposed amendments that would reduce the cost of the EMA but also reduce EMA’s capacity. Cove Point states that in order to reduce EMA’s capacity, Cove Point needed Mattawoman to agree to no longer be an initial shipper on EMA. Cove Point states that in order to secure this agreement, it offered Mattawoman a non-conforming LTS scheduling provision in an effort “to provide Mattawoman with as much assurance

³ The Commission also disallowed a non-conforming provision that would have allowed Mattawoman a one-time right to terminate (or partially terminate) its LTS service agreement to the extent that Mattawoman enters into a comparable service agreement under Rate Schedule FTS prior to the expiration of Mattawoman’s LTS service agreement. *Id.* P 4. Cove Point does not seek to overturn that ruling in its request for rehearing. Cove Point Request for Rehearing at 1.

⁴ *Id.* P 7.

⁵ *Id.* (citing *Dominion Energy Cove Point LNG, LP*, 169 FERC ¶ 61,149, at P 4 (2019)).

⁶ *Id.*

of the reliability of deliveries” as it can, without providing Mattawoman actual EMA service.⁷

6. Cove Point argues that no other current or potential customer is similarly situated to Mattawoman for two reasons. The first is because of the unique history of Mattawoman’s contract. Cove Point argues that the Commission should allow the otherwise impermissible contract proposal by finding that Mattawoman is not similarly situated to other shippers on its system, because Mattawoman was originally considered to be an initial shipper.⁸

7. Second, Cove Point argues that Mattawoman’s unusual service requirements mean that no current or potential customer is similarly situated. Cove Point argues that it will “not know what ... receipt and delivery point combination that hypothetical, future customer may seek.”⁹ By contrast, Cove Point states that it “already knows, in advance, that the specific factual circumstances contemplated in the Mattawoman non-conforming provision would alleviate the conditions.”¹⁰ Therefore, Cove Point argues, the Commission was incorrect in stating that the non-conforming clause would directly contradict the premise that Cove Point would only judge whether to lift LTS Unavailable Day restrictions “based on forecasted system conditions” on a day-to-day basis.¹¹ Cove Point admits that this “undoubtedly does go further than the general tariff modification approved in Docket No. RP20-87, making the service less restrictive and providing greater certainty for Mattawoman.”¹² Cove Point argues that this deviation is lawful, however, because it reasonably extends the general provision of Rate Schedule LTS to the special situation where it knows much more in advance than it could possibly know about a potential future LTS customer. Cove Point concludes that without having similar information about a potential customer, no potential customer can be similarly situated.

⁷ Cove Point Request for Rehearing at 3.

⁸ *Id.* (citing several cases involving initial shippers, namely *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at P 59 (2017); *Gulf South Pipeline Co., LP*, 149 FERC ¶ 61,174, at P 104 (2014); *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192, at P 104 (2014); *Transcontinental Gas Pipe Line Corp., LLC*, 145 FERC ¶ 61,152, at P 34 (2013); *Tennessee Gas Pipeline Co.*, 144 FERC ¶ 61,219, at P 32 (2013)).

⁹ *Id.* at 4.

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² *Id.*

II. Determination

8. As noted above, the Commission found in the December 2019 Order that Cove Point's agreement with Mattawoman contained two provisions that materially deviated from Cove Point's Rate Schedule LTS form of service agreement. In *Columbia Gas Transmission Corp.*,¹³ the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (b) affects the substantive rights of the parties. A material deviation is permissible only if the Commission finds that such deviation does not constitute a substantial risk of undue discrimination.¹⁴ "Undue discrimination occurs when two classes of customers are similarly situated and the two classes of customers are afforded different treatment."¹⁵

9. Cove Point challenges the finding that the non-conforming provision in the agreement was unduly discriminatory, based on the claim that Mattawoman is not similarly situated to any other shipper. Cove Point argues that there are two grounds for why Mattawoman cannot be similarly situated to any other customer: (1) the history behind its contract, and (2) the fact that its shipping requirements are known. Neither ground is adequate.

10. The Commission permits some non-conforming provisions for initial shippers.¹⁶ Although Mattawoman was, at one point, in line to become an initial shipper, as Cove Point concedes, Mattawoman declined to actually become an initial shipper on the EMA expansion. For the purposes of evaluating the instant agreement, therefore, Cove Point has not shown that Mattawoman has any relevant, unique status justifying special treatment on its system that may constitute a substantial risk of undue discrimination.

¹³ 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*).

¹⁴ *Columbia*, 97 FERC at 62,003-04; *see also Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

¹⁵ *Equitrans, L.P.*, 161 FERC ¶ 61,017, at P 7 (2017) (citing *Energy Transfer Partners, L.P.*, 120 FERC ¶ 61,086, at P 169 (2007); *Sebring Util. Comm'n v. FERC*, 591 F.2d 1003, 1009 & n.24 (5th Cir. 1979); *Transwestern Pipeline Co.*, 36 FERC ¶ 61,175, at 61,433 (1986); *Tennessee Gas Pipeline Co.*, 77 FERC ¶ 61,215, at 61,877 (1996)).

¹⁶ *Questar Pipeline Co.*, 132 FERC ¶ 61,152, at P 10 (2010) (order on rehearing) (accepting non-conforming provisions, on the ground that offering "a special incentive for anchor shippers to participate in the expansion ... would assist in obtaining capital for the expansion.").

11. Nor does the fact that Cove Point does not know the needs of future customers make Mattawoman eligible to receive special treatment that may constitute a substantial risk of undue discrimination. Every future shipper's requirements are unknown until the moment that the shipper makes them known by requesting a contract. Accordingly, we find that Cove Point has not presented any arguments on rehearing that compel us to reverse the December 2019 Order.

The Commission orders:

The Commission hereby denies the request for rehearing.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.