106 FERC ¶ 61, 339
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Cove Point LNG, LP Docket No. RP04-197-000

ORDER ACCEPTING AND SUSPENDING TARIFF
SHEETS SUBJECT TO CONDITIONS

(Issued March 31, 2004)

1. On March 1, 2004, Dominion Cove Point LNG, LP (Dominion Cove Point) submitted revised tariff sheets[1] to: (1) adjust its fuel retainage percentages so that retainage requirements for its storage services will be assessed only on injections; (2) continue the existing 0.0% retainage percentage for its transportation services under Rate Schedules FTS and ITS; and (3) clarify section 1.41 of its General Terms and Conditions of its tariff regarding the timing, basis and applicability of filings made pursuant to that section. In this order we accept Dominion Cove Point's filing, suspend it for a nominal period, to become effective April 1, 2004, subject to refund and to the conditions of this order.

Description of Filing

<u>Fuel Retainage for Storage Service</u>

2. Currently, Dominion Cove Point assesses retainage on its storage service by charging 1 percent on injections and 2 percent on withdrawals. Under Rate Schedules LTD-1, LTD-2, FPS-1, FPS-2, and FPS-3, a customer's Maximum Daily Peaking Quantity (MDPQ) or Maximum Daily Delivery Quantity (MDDQ) equals the Maximum Firm Transportation Quantity (MFTQ). However, the 2 percent retainage requirement on the MDPQ or MDDQ reduces the maximum quantity the customer can physically withdraw, and thus, transport, by 2 percent. Customers are, therefore, not able to

[1] Fourth Revised Sheet No. 10 and Fourth Revised Sheet No. 205 to FERC Gas Tariff, Original Volume No. 1.

transport their full contract quantity. Dominion Cove Point states by assessing retainage on injections only, storage customers will be able to match their maximum withdrawal and transportation quantities on each day of withdrawal service. Dominion Cove Point proposes to charge 2.8 percent retainage on injections for 2004.

Fuel Retainage for Boil-Off

3. Under the FPS rate schedules, Dominion Cove Point assesses an additional retainage charge for quantities remaining in storage after April 15, as described in section 5(h) of Rate Schedule FPS. Previously, retainage was based on the estimated fuel required to liquefy the boil-off associated with customer balances remaining after the withdrawal season for re-injection into storage. However, currently, all boil-off gas is allocated to LTD-1 Shippers and transported out of storage causing no re-liquifaction of boil off. Therefore, in this filing, Dominion Cove Point states that the basis for the previous methodology for calculating a retainage percentage for carryover balances is no longer applicable. Dominion Cove Point proposes to change its methodology for calculating retainage to using the injection fuel retainage percentage of 2.8 percent for the section 5(h) retainage, which will also have the effect of minimizing the impact of FPS carryover balance boil-off on LTD-1 Shippers.

4. Dominion Cove Point proposes to retain 2.8 percent of injections for all storage services, LTD and FPS, and states this methodology was used prior to the reactivation of the LNG terminal in August 2003.

5. Dominion Cove Point states it will continue to use a zero percent retainage for its transportation services under Rate Schedules FTS and ITS.

6. Finally, Dominion Cove Point seeks to add language to section 1.41 of its GT&C to clarify the timing, basis and applicability of filings. Specifically, Dominion Cove Point proposes to state that its annual retainage filing will be made on or before March 1, to become effective April 1, and will reconcile quantities for the previous twelve months ending on December 31.

Notices, Interventions, and Protests

7. Public Notice of the filing was published in the Federal Register, 69 Fed. Reg. 11,604 (2004), with comments, interventions and protests as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), all timely-filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on the existing parties.

8. Atlanta Gas Light Company and Virginia Natural Gas, Inc., (AGL) filed a motion to intervene with comments, and Shell NOA LNG, Inc., Statoil Natural Gas, LLC, and BP Energy Company (collectively, LTD-1 Shippers) filed a protest.

9. On March 24, 2004, Dominion Cove Point filed an answer to the protests. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to protests, unless otherwise permitted by the decisional authority. The Commission finds good cause to accept the answer as it provides information that aids in our decision-making process here.

10. AGL states that, since all boil-off gas is transferred daily to LTD-1 customers to transport and, presumably, sold at a profit, storage customers should not be required to give LTD-1 shippers their boil-off gas, and then replenish such gas back to the system through the 2.8 percent proposed retainage on such carryover volumes.

11. LTD-1 Shippers protest the inclusion of retainage underages from 2002 since Dominion Cove Point's tariff limits adjustment for overages or underages to the previous twelve months. Furthermore, since LTD-1 service did not begin until August 2003, they assert that LTD-1 shippers should not be required to pay for the 2002 underages.

12. LTD-1 Shippers also protest Dominion Cove Point's use of the lower estimated volume calculated from the 2003 numbers, instead of a higher estimated volume based on the volumes already scheduled. Protesters argue Dominion Cove Point's use of the lower volume will increase retainage surcharge and result in an over-collection by Dominion Cove Point.

13. Additionally, LTD-1 Shippers request that Dominion Cove Point explain the substantial underrecovery in August 2003 in light of the over-recovery of fuel for all other months. They argue that if the under-recovery in August was a one-time event, then those numbers should not be included in the fuel tracker.

Discussion

14. The Commission accepts and suspends Dominion Cove Point's filing subject to the conditions discussed below.

<u>Retainage Percentage for Storage Service</u>

15. Section 1.41 of the GT&C of Dominion Cove Point's tariff specifies that the retainage percentage is calculated based on Dominion Cove Point's estimate of operating requirements for the succeeding 12-month period as adjusted for quantities retained either over or under actual quantities required by Dominion Cove Point during the preceding 12-month period. LTD-1 Shippers protest that, in calculating the retainage percentage for

2004, Dominion Cove Point includes an underage for 2002, which does not fall within the previous 12-month period and is apparently an out-of-period adjustment.

16. Dominion Cove Point answers that this is not an out-of-period adjustment, but rather is the ending balance for 2002 which carries forward as the beginning balance for 2003. Dominion Cove Point argues that if year-end balances are zeroed out rather than carried forward, Dominion Cove Point would bear the responsibility for underages and would enjoy the rewards of overcollections.

17. The Commission accepts Dominion Cove Point's explanation on this issue. Tracking mechanisms are meant to ensure that the pipeline is made whole for, in this case, fuel used in operations. Carrying forward a remaining balance at the end of a year as the beginning balance for the next year ensures that the pipeline must pay for neither underages nor profits from overages.

18. LTD-1 Shippers also argue that since they did not come on to the system until 2003 they should not have to pay for costs incurred in 2002. They argue that Dominion Cove Point should settle the 2002 balance with the FPS customers who were on the system when those costs were incurred.

19. The Commission denies LTD-1 Shippers' request. Trackers function on an ongoing basis so that customers are responsible for the amount of the tracker when they come on the system, and do not carry any remaining cost responsibility with them when they leave the system. Just as LTD-1 Shippers must bear the costs present in the system when they came on the system, when they leave the system they will not be required to settle out any amount from the tracker mechanism.

20. Dominion Cove Point proposed revisions to section 1.41 of the GT&C of its tariff to more specifically state that estimated retainage is adjusted for actual quantities during the previous 12-month period ending December 31 of the prior year. The Commission finds these revisions are reasonable and, therefore, accepts them.

21. LTD-1 Shippers argue that in estimating monthly nominations under LTD-1 service, Dominion Cove Point used an average of four months in 2003 when start-up problems delayed reactivation of the facility. They claim that results in a monthly average figure of 15,718,152 Dth for injections. The LTD-1 Shippers state that they have advised Dominion Cove Point that they will schedule six cargoes in 2004 resulting in a monthly average of 18,000,000 Dth (and have since revised that estimate upward to seven cargoes). They assert that Dominion Cove Point's tariff specifies that the retainage factor will be calculated using Dominion Cove Point's estimate of operating requirements for the succeeding period.

22. Since 2003 was a partial year of operations and the LTD-1 Shippers have informed Dominion Cove Point that they are planning on six cargoes during 2004 and for two of the three months of 2004 thus far, they have advised Dominion Cove Point of their plans to import seven cargos, LTD-1 Shippers assert that it is more reasonable to use the six cargos, or 18,000,000 Dth per month as a basis for estimating 2004 usage instead of Dominion Cove Point's estimate of 15,763,454 Dth.

23. In its answer, Dominion Cove Point states that LTD-1 Shippers' argument does not consider possible schedule disruptions. Furthermore, using the higher figure will result in only a minimal change to the fuel retention factor because the higher level of injections will result in a proportionate increase in storage gas usage for 2004. Dominion Cove Point states that the impact of using the higher figures would be approximately 0.04%. Therefore, Dominion Cove Point argues its estimate based on past activity is reasonable.

24. Since LTD-1 Shippers have already scheduled six cargos, or 18,000,000 Dth, per month for 2004 which they plan to exceed by one cargo for two months in 2004, and Dominion Cove Point's estimate was based on only a partial 2003 year, the Commission finds the six cargos or 18,000,000 Dth to be a more reasonable estimated projection for 2004. Therefore, the Commission directs Dominion Cove Point to revise its estimate to six cargos, 18,000,000 Dth per month.

25. LTD-1 Shippers request that the Commission direct Dominion Cove Point to explain a large underage of gas retained in August 2003. LTD-1 Shippers assert that Appendix A-1 of the filing shows that Dominion Cove Point experienced a large underage of gas retained during August 2003, the month the facility was reactivated. In each subsequent month, they assert Dominion Cove Point experienced overages of gas retained. Dominion Cove Point states in its answer that under its tariff it is entitled to recover fuel used in operations and they request the Commission to reject LTD-1 Shippers' request for an explanation.

26. The Commission finds that, while it is true that Dominion Cove Point's tariff permits it to recover the fuel used in operations, when an anomalous result, such as for the month of August 2003, appears, the parties responsible for bearing the cost should receive an explanation. Therefore, the Commission directs Dominion Cove Point to provide a complete explanation for the underage for August 2003.

27. Dominion Cove Point proposes to revise Note (1) to its Currently Effective Rates-Fuel Retainage Percentages[2] to state that Dominion Cove Point will retain gas based on "gas received for transportation, received for injection into storage, or received for

[2] Fourth Revised Sheet No. 10 to FERC Gas Tariff, Original Volume No. 1.

withdrawal out of storage." Since the stated purpose of this filing is to revise the fuel retainage percentage so that it applies to injections but not to withdrawals, there is no basis for Dominion Cove Point to include language related to withdrawals in its tariff revision. Accordingly, the Commission directs Dominion Cove Point to eliminate that language from its proposed tariff revision.

Fuel Retainage for Boil-Off

28. Under section 5(h) of Rate Schedule FPS, a retainage charge is assessed to FPS customers for the liquefaction and re-injection of any storage balances remaining after April 15. Under section 5.4(d) of Dominion Cove Point's Rate Schedule LTD-1, boil-off gas is allocated to LTD-1 Shippers on a daily basis, and they must nominate and transport it away from Dominion Cove Point's facility. AGL argues that since the boil-off gas, which is legally FPS customers' gas, is allocated daily to LTD-1 Shippers who then have it transported away, there is no liquefication and presumably, no need for a retainage factor. AGL argues, further, that, since LTD-1 customers presumably sell the boil-off at a profit, it seems inequitable to charge FPS customers a 2.8 percent fuel retainage charge for the boil-off.

29. Dominion Cove Point answers that there is no inequity in this arrangement. Rather than creating additional gas for LTD-1 customers, it states that the boil-off is deducted from their existing inventory and does not reduce the FPS customers' inventory. Therefore, according to Dominion Cove Point LTD-1 customers do not gain additional profit at the expense of the FPS customers, and FPS customers retain their inventory levels. Dominion Cove Point states its:

> proposal to base the section 5(h) retainage charge on the injection fuel retainage charge effectively places the LTD-1 shippers in a similar position to that which would have occurred if the LTD-1 shippers had not been allocated boil-off associated with FPS customers' storage balances that remain in inventory at the end of the storage season. In addition, the proposal places FPS shippers in a similar position to that which would have occurred if the PFS shippers had fully turned their inventory, and subsequently injected gas to establish the storage balance that otherwise remained as a carryover balance.[3]

30. The Commission is not convinced by Dominion Cove Point's filing or answer that there should be any retainage charge under section 5(h) of Rate Schedule FPS for this boil-off. It is not at all clear from Dominion Cove Point's filing or answer what actual costs are associated with this charge and why they should be assessed to FPS customers.

[3] Dominion Cove Point, Answer at p 7.

The Commission directs Dominion Cove Point to explain in detail, with numerical examples why is should be permitted to assess this charge.

31. 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 will accept the tariff sheets listed in footnote 1 for filing and suspend their effectiveness for a nominal period, subject to refund and the conditions in this order.

32. 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.[4] 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.[5] Such circumstances exist here where the Commission is reviewing an annual fuel retainage proposal filed in accordance with section 1.41 of the GT&C of its tariff. Accordingly, the Commission will exercise its discretion to suspend the tariff sheets listed in footnote 1 for the minimal period and permit the rates to take effect on April 1, 2004, subject to refund and the conditions set forth in the body of this order and the ordering paragraphs below.

The Commission orders:

(A) The tariff sheets listed in footnote 1 of this order are accepted and suspended to become effective April 1, 2004, subject to refund and to Dominion Cove Point filing a revised tariff sheet and supplemental information as discussed above.

(B) Dominion Cove Point must submit its filing to comply with the directives of this order within 15 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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

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