

140 FERC ¶ 61,013  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

July 9, 2012

In Reply Refer To:  
Dominion Cove Point LNG, LP  
Docket Nos. RP11-2136-000  
RP11-2136-002  
RP11-2137-000

Dominion Cove Point LNG, LP  
1050 Thomas Jefferson Street, NW  
Washington, DC 20007

Attention: Paul Korman, Counsel for Dominion Cove Point LNG, LP

Reference: Letter Order Approving Uncontested Settlement

Dear Mr. Korman:

1. On April 13, 2012, Dominion Cove Point LNG, LP (Cove Point) filed a Stipulation and Agreement (Settlement) to resolve all outstanding issues raised in the above-referenced dockets. The Presiding Administrative Law Judge (ALJ) in Docket No. RP11-2137-000 certified the settlement as uncontested on May 15, 2012 (Certification).<sup>1</sup> We approve the settlement as fair and reasonable and in the public interest.

2. On May 27, 2011, pursuant to section 4 of the Natural Gas Act (NGA), Cove Point filed revised tariff records in Docket No. RP11-2136-000 proposing changes to certain terms and conditions of service. On the same day, Cove Point filed a general section 4 rate case in Docket No. RP11-2137-000. In its transmittal letters explaining each of these filings, Cove Point stated that it is currently experiencing a significant decline in usage of its Cove Point LNG Terminal in Lusby, Maryland and related facilities (Terminal),

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<sup>1</sup> *Dominion Cove Point LNG, LP*, 139 FERC ¶ 63,011 (2012).

mainly due to the development of large quantities of domestic shale gas and the consistent demand for LNG outside of the United States. Cove Point asserted that the resulting decline in LNG cargoes to the Terminal was causing significant operating concerns because unless Cove Point received periodic deliveries of LNG cargoes, it would be unable to keep the cryogenic portions of the Terminal cooled to the temperature necessary to receive LNG imports. Cove Point therefore proposed to modify certain tariff provisions to encourage the arrival of LNG cargoes, and to adjust its recourse rates to reflect current expenses and increased market risk.

3. On June 24, 2011, the Commission issued an order in Docket No. RP11-2136-000 that accepted and suspended most of the non-rate tariff changes, subject to the outcome of a technical conference.<sup>2</sup> On June 30, 2011, the Commission issued an order in Docket No. RP11-2137-000 accepting and suspending the rate filing subject to refund and establishing hearing procedures, and including the non-rate issues such as the proposed change in the authorized overrun scheduling priority in the technical conference.<sup>3</sup> Commission Staff convened the technical conference on July 14, 2011 to address issues raised by Cove Point's filing.

4. According to Cove Point, at the conclusion of the technical conference it and the Firm Import Shippers<sup>4</sup> agreed upon a timely but interim solution to settle the imminent operational issues at the Terminal. As a result, on July 22, 2011, Cove Point submitted the first Stipulation and Agreement of Interim Partial Settlement, which the Commission approved as uncontested July 27, 2011.<sup>5</sup> On November 25, 2011, the Commission issued an Order on Technical Conference that accepted certain of Cove Point's tariff proposals subject to conditions, and rejected others.<sup>6</sup>

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<sup>2</sup> *Dominion Cove Point LNG, LP*, 135 FERC ¶ 61,261 (2011). The order also rejected a proposed change to Operational Flow Order authority, without prejudice to Cove Point submitting a revised proposal consistent with Commission policy.

<sup>3</sup> *Dominion Cove Point LNG, LP*, 135 FERC ¶ 61,276 (2011).

<sup>4</sup> The Firm Import Shippers are BP Energy Company, Shell NA LNG LLC, and Statoil Natural Gas, LLC.

<sup>5</sup> *Dominion Cove Point LNG, LP*, 136 FERC ¶ 61,059 (2011).

<sup>6</sup> *Dominion Cove Point LNG, LP*, 137 FERC ¶ 61,158 (2011). In particular, the Commission accepted the proposed prepayment option, rejected Cove Point's proposed revisions to Rate Schedule LTD-2 that would remove current barriers to the availability

(continued...)

5. In December 2011, the parties reached an agreement in principle which addressed the cooling issues and several other outstanding concerns. On December 22, 2011, the Chief ALJ suspended the procedural schedule in Docket No. RP11-2137-000 to allow the parties additional time to continue to finalize the settlement in principle. On December 30, 2011, Cove Point filed tariff records to adjust cost responsibility on an interim basis and establish other pertinent terms for the immediate implementation of expanded use of Cove Point's existing liquefier, in order to help address the operational issues associated with the declining LNG inventory levels at the Terminal.

6. While the parties were finalizing the terms of the eventual Settlement, on March 2, 2012, Cove Point submitted a second Interim Partial Settlement, again to provide a limited solution to the operational issues at the Terminal by arranging for a one-time operational purchase of LNG by Cove Point. The Commission approved this interim agreement on March 12, 2012.<sup>7</sup> On April 13, 2012, Cove Point informed the Presiding ALJ that all the parties had consented to a comprehensive Settlement.

7. Article I, titled "Procedural Background," provides a detailed procedural background of both of the dockets being settled.

8. Article II, titled "Scope of Settlement," states that the "Settlement resolves all issues in Docket Nos. RP11-2136-000 and RP11-2137-000."

9. Article III, titled "Definitions," defines the phrases Contesting Party, Final Commission Order, Firm Import Shippers, Firm Peaking Customers, Settling Party, and Term of This Settlement.

10. Article IV, titled "Settlement Rates," notes that the *pro forma* tariff records on rates are in Appendix B of the Settlement and the depreciation, amortization, and negative salvage rates embedded in the proposed rates are in Appendix C of the Settlement; provides for the rates and tariff records agreed to in both appendices to be effective April 1, 2012; and clarifies that settlement rates do not displace negotiated rates. It also notes that the rates that shall apply in the event that the liquefier usage arrangement is terminated are in Appendix D of the Settlement and explained in Article VII.

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of interruptible discharging service, accepted the proposed scheduling flexibility revisions, accepted the proposed scheduling penalty subject to conditions, accepted the authorized overrun priority revision, and directed Cove Point to file revised tariff records to bring its reservation charge crediting provisions into line with Commission policy.

<sup>7</sup> *Dominion Cove Point LNG, LP*, 138 FERC ¶ 61,169 (2012).

11. Article V, titled “Refunds,” obligates Cove Point to refund any excess revenues to the other Settling Parties within 60 days, and then within the next 30 days to file a report pursuant to 18 CFR §§ 154.501(e) and 154.502.
12. Article VI, titled “Operational Purchase and Sale of Cooling Quantities and Cost Recovery Mechanism,” notes that the terms under which Cove Point may call for an operational purchase of LNG cooling quantities, the posting and bidding procedures for such purchases or sales, and the associated cost recovery mechanism, are reflected in *pro forma* tariff records in Appendix B of the Settlement that amend Sections 35 and 37 of the General Terms and Conditions (GT&C).
13. Article VII, titled “Liquefier Usage Arrangement,” explains how the existing liquefier will be operated for the benefit of both Firm Peaking Customers and Firm Import Shippers. The reservation rates in Rate Schedules FPS-1, FPS-2, FPS-3, and LTD-1 are adjusted to share the costs of liquefaction. The fuel retainage rate will initially have a 20.5 percent cap, but Cove Point shall make annual retainage filings in which it may seek to raise the cap beyond 20.5 percent. GT&C Section 36.4 provides for the optional termination of the Liquefier Usage Arrangement, in which case Cove Point may file to implement the rates for liquefier usage in Appendix D of the Settlement instead.
14. Article VIII, titled “Pipeline Payback,” provides that Cove Point “shall allow Firm Import Shippers to tender pipeline gas for purposes of satisfying retainage obligations,” and notes that the *pro forma* tariff records modify the tariff accordingly.
15. Article IX, titled “Reservation Charge Credits,” provides that the Settling Parties have agreed to the reservation charge crediting mechanisms set forth in Appendix B of the Settlement.
16. Article X, titled “New Facilities,” provides that any Settling Party has the right to oppose any filing by Cove Point for new facilities, including but not limited to the proposed rate of return. It also provides that, in calculating the return on new facilities, Cove Point will continue “to follow the provisions of Article III of the Stipulation and Agreement in Docket No. RP06-417-000, *et al.*” The referenced article states as follows:

New facilities constructed pursuant to Section 7 of the NGA shall have a recourse rate for services computed using a pre-tax return of 14%. This Article applies to any new facilities constructed pursuant to Section 3 of the NGA which are subject to FERC rate review, including any instances or facilities where [Cove Point] expressly seeks Commission approval of such rate. This Article is deemed to satisfy the Commission’s requirement set out in *Dominion Cove Point LNG, LP*, 118 FERC ¶ 61,007 at P 123 (2007). For the purposes of this Stipulation, “new facilities” to which the

14% pre-tax return shall apply include, without limitation, facilities constructed pursuant to the authorizations issued in Docket Nos. CP05-395 and CP06-26 and pending in Docket No. CP06-469.<sup>8</sup>

17. Article XI, titled “Tariff Records,” holds that during the duration of the Settlement, Cove Point may not propose to change the notice provisions in Rate Schedule LTD-2, nor may it propose to recover out-of-pocket costs associated with Section 5.3(g)(i) of Rate Schedules LTD-1 and LTD-2.<sup>9</sup> In addition, it states that the Settling Parties request that the Commission reject the following suspended tariff records, effective on the same date as the Commission issues its order:

- a. Docket No. RP11-2136-000
  - i. Tariff Record 20.1.6, Version 2.0.0
  - ii. Tariff Record 20.2, Version 2.0.0
- b. Docket No. RP11-2137-000
  - i. Tariff Record 20.10, Version 1.0.0
  - ii. Tariff Record 40.2, Version 2.0.0
  - iii. Tariff Record 40.16, Version 1.0.0
  - iv. Tariff Record 40.17, Version 1.0.0

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<sup>8</sup> Cove Point, Stipulation and Agreement of Settlement, Docket No. RP06-417-000, at p. 5 (filed March 1, 2007).

<sup>9</sup> Section 5.3(g)(1) states:

If an LNG tanker does not arrive at the Cove Point terminal as scheduled, and Buyer has not provided Operator with written notice of the delay or cancellation at least fifteen (15) days before the LNG tanker is scheduled to arrive, Buyer shall pay Operator a penalty of \$10,000 per occurrence. Operator shall not impose this scheduling penalty if no harm resulted from the LNG tanker’s failure to arrive as scheduled, taking into account operational delays that are due to circumstances not within the control of Buyer.

18. Article XII, titled “Comeback and Moratorium,” obligates Cove Point to file a new NGA section 4 general rate case “with rates to be effective January 1, 2017, allowing for a full five-month suspension period.” Article XII also establishes a moratorium during the term of the Settlement, subject to certain exceptions.

19. Article XIII, titled “Effective Date,” states that the Settlement becomes effective “after a Final Commission Order is in effect approving the Settlement without material modification or condition,” except that the *pro forma* tariff records take effect as provided in Article IV (April 1, 2012). Article XIII also provides that none of its provisions are severable, and that the Settlement is to be viewed as an integrated package. It further provides that the Settlement expires upon the effective date of Cove Point’s next rate case filed pursuant to Section XII (January 1, 2017). Finally, Article XIII provides that on the effective date of a Final Commission Order, all requests for rehearing pending in Docket No. RP11-2136-000 shall be deemed withdrawn.

20. Article XIV, titled “Settling Parties and Contesting Parties,” provides that once the Commission approves the Settlement, it shall bind all Settling Parties, who waive their right to contest the Settlement or its implementing orders unless the Commission seeks to impose conditions on its approval of the Settlement. This Article also specifies procedures applicable in order to allow Shell NA LNG LLC (Shell LNG) to complete its internal approval process.<sup>10</sup>

21. Article XV, titled “Prior Settlements,” provides that nothing in the Settlement shall affect provisions of prior settlements that remain in effect pursuant to the terms of those settlements, except that in the event of a direct conflict, the present Settlement controls.

22. Article XVI, titled “Reservations,” sets forth the reservations in the Settlement. It also provides that as to all Settling Parties, the standard of review shall be the “public interest” standard. As to the Commission acting *sua sponte* or any third party, the standard of review shall be the just and reasonable standard.

23. Shell LNG, Cove Point, and Commission Trial Staff all filed comments in support of the Settlement. The comments note that the Settlement is a carefully balanced resolution to the operational and economic concerns facing the Terminal, and urge the Commission to accept it without modification. No parties filed adverse comments.

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<sup>10</sup> Shell LNG notified the Commission and Settling Parties that the Shell Board unconditionally approved the Settlement on April 26, 2012, and attached a signature page to its initial comments. Shell LNG Settlement Comments at 2.

24. We conclude that the uncontested Settlement is fair and reasonable and in the public interest, and we approve it accordingly, without modification. Approval of the Settlement resolves all outstanding issues in, and terminates, Docket Nos. RP11-2136-000 and RP11-2137-000 and their associated sub-dockets, along with all pending requests for rehearing by the Settling Parties in Docket No. RP11-2136-002. We note that no party filed adverse comments, and that therefore pursuant to Article III of the Settlement, any party that intervened in either of the settled dockets prior to the issuance of this order is deemed a Settling Party. This order does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

25. As requested by Article XI of the Settlement, we hereby reject the suspended tariff records set forth in the Appendix to this order. We also direct Cove Point to file actual tariff records to replace the *pro forma* records filed in the appendices to the Settlement, to be effective on the dates requested in the Settlement.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

Appendix

Dominion Cove Point LNG, LP  
FERC NGA Gas Tariff  
DCP\_DATABASE

Docket No. RP11-2136-000  
Rejected Tariff Records

[Tariff Record 20.1.6, LTD-1 Rate Schedule, 2.0.0](#)  
[Tariff Record 20.2, LTD-2 Rate Schedule, 2.0.0](#)

Docket No. RP11-2137-000  
Rejected Tariff Records

[Tariff Record 20.10, FPS-1, FPS-2, and FPS-3 Rate Schedule, 1.0.0](#)  
[Tariff Record 40.2, GT&C - Definitions, 2.0.0](#)  
[Tariff Record 40.16, GT&C – Capacity and Imbalance Allocations, 1.0.0](#)  
[Tariff Record 40.17, GT&C – Interruption of Service, 1.0.0](#)