FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 28, 2004

In Reply Refer To:
Dominion Cove Point LNG, LP
Docket No. RP03-552-001

Dominion Cove Point LNG, LP
120 Tredegar Street
P.O. Box 26532
Richmond, Virginia 23261

Attention: Machelle F. Grim, Manager, Regulatory and Pricing

Reference: Substitute Original Sheet No. 282
to FERC Gas Tariff, Original Volume No. 1

Dear Ms. Grim

1. On September 8, 2003, Dominion Cove Point LNG, LP (Cove Point) submitted the above referenced tariff sheet, with a proposed effective date of June 30, 2003, in compliance with the Commission order issued on August 22, 2003.[1] Cove Point also provided explanations for why it was not necessary to make certain other tariff modifications, and why it should be allowed to sell a portion of its recommissioning cargo as excess gas. The above-referenced tariff sheet satisfactorily complies with the provisions of the August 22, 2003 Order, and accordingly, the Commission accepts the above-referenced tariff sheet effective June 30, 2003, as proposed. Further, the Commission accepts Cove Point's explanations as to why certain other tariff modifications are not necessary. However, although the Commission finds Cove Point's explanation of why it believes it should be allowed to retain the proceeds from the sale of a portion of its recommissioning cargo not to be sufficient, the Commission finds that the rate and other issues regarding such a sale should be addressed in Cove Point's next general rate case. This order benefits the public interest by ensuring that the costs of recommissioning are properly allocated among Cove Point and its customers.

[1] Dominion Cove Point LNG, LP, 104 FERC ¶ 61,218 (2003).

Notice and Interventions

2. Public notice of the instant filing was issued on September 8, 2003, with interventions and protests due on or before September 22, 2003. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214. BP Energy Company and Shell NA LNG, LLC (collectively, BP) filed a protest, the details of which are discussed below.

Background and Details of Instant Filing

Point of Sale

3. In the August 22, 2003 Order, the Commission directed Cove Point to modify its proposed tariff language to specify that all sales are at the outlet of Cove Point's LNG facility. In the instant filing, Cove Point states that it agrees that the tariff language regarding the point of sale will be clearer if all operational sales are made at the outlet of the LNG facility. Accordingly, Cove Point has modified section 28 as directed by the Commission.

Sales of Excess Gas: Confiscated Gas

4. In the August 22, 2003 Order, the Commission found that Cove Point's proposal to sell excess gas on its system was just and reasonable, with certain exceptions. The Commission stated that the confiscation of gas a customer leaves on Cove Point's system after a service agreement terminates would constitute a penalty, and Commission policy requires that penalty revenues, net of costs, should be credited to a pipeline's customers.[2] The Commission noted in the August 22, 2003 Order that section 12(e) of Cove Point's GT&C provides for the crediting of penalty revenues. The Commission directed Cove Point to modify its proposed tariff language to provide for the crediting of revenues from the sale of penalty or confiscated gas, consistent with section 12(e) of its GT&C.

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[2] The August 22, 2003 Order cited Algonquin LNG, Inc., 96 FERC ¶ 61,301 at 62,172-3 (2001), and ANR Storage Co., 96 FERC ¶ 61,162 at 61,708 (2001), Tennessee Gas Pipeline, 99 FERC ¶ 61, 017 at P 209 (2002). See also 18 CFR 284.12(b)(2)(v) (2003).

5. In the instant filing, Cove Point asserts that it is not necessary to modify GT&C section 12(e), and explains that its current tariff contains other provisions[3] that provide for the crediting of revenues, net of costs, from the sale of gas that Cove Point has confiscated.

Sales of Excess Gas: Excess Retainage

6. In the August 22, 2003 Order, the Commission accepted Cove Point's request to sell excess retainage gas, subject to Cove Point modifying GT&C section 1.41 to provide for the tracking of over- and under-recoveries of retainage gas. The Commission stated that adjustments to Cove Point's retainage percentage would be prospective only and would not correct for accrued over- or under-recoveries of retainage. If Cove Point had excess retainage gas that it must sell for operational reasons, then the retainage percentage was too high, and the Commission found that Cove Point should not profit from the fact its retainage percentage was too high. The Commission directed Cove Point to modify section 1.41 to provide that such over-recoveries be returned to its customers. The Commission also allowed that Cove Point may modify section 1.41 so that, in circumstances where the retainage percentage has been too low, Cove Point may recover the under-recoveries.

7. In the instant filing, Cove Point asserts that it is not necessary to modify GT&C section 1.41. Cove Point explains that under section 5(h) of Rate Schedules FPS-1, FPS-2, and FPS-3, when a customer fails to satisfy the tariff storage turnover requirements, the gas retained is covered by Cove Point's retainage tracker set forth in section 1.41 of its GT&C, which does correct for past over- or under-recoveries of retainage, including the retainage applicable to Rate Schedules FPS-1, FPS-2, and FPS-3. Specifically, Cove Point cites GT&C section 1.41:

> Each Retainage filing shall establish revised percentages based upon Operator's estimate of operating requirements for the succeeding twelve (12) month period, as adjusted for quantities retained either over or under actual quantities required by Operator during the preceding twelve (12) months.

8. Consistent with this language, Cove Point contends that it properly corrects for prior over- or under-recoveries of retainage when calculating the new percentage in a tracker filing. Cove Point asserts that if it has collected "additional retainage" from an FPS customer, the result will be a lower retainage percentage in the future.

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[3] Cove Point cites sections 2.3, 5.4(f) and 5.4(g) of Rate Schedule LTD-1, and section 5.4(e) of Rate Schedule LTD2.

Recommissioning Cargo

9. In the August 22, 2003 Order, the Commission found that it was not clear, from the information provided in the application and the pleadings, whether Cove Point, or the shippers ultimately would be responsible for paying for the cost of the gas used in recommissioning. The Commission stated this information was necessary in order to make a determination as to whether Cove Point is entitled to keep the revenues resulting from the sale of any such gas. The Commission directed Cove Point to file an explanation whether it or its shippers were responsible for the cost of the gas used in recommissioning.

10. In the instant filing, Cove Point states that its customers will not be responsible for the portion of the recommissioning cargo to be sold by Cove Point. Cove Point also states that it sought and was granted authority to include in its cost of service the estimated value of purchased LNG, that will not be sold, and that will remain at the facility in the form of "line pack."

11. Cove Point asserts that it is retaining and capitalizing a portion of the recommissioning cargo to ensure that its plant and pipe retain the minimum levels of LNG necessary to keep temperatures at the requisite low levels, even in the absence of customer LNG inventories. Cove Point explains that the retained gas will function as essentially "liquid line pack" or "plant heel." Cove Point states that it anticipates that in its next rate case, the retention of this portion of the recommissioning cargo would result in certain costs being borne by Cove Point's customers, but this gas will not be sold and has no relevance to the operation of GT&C section 28.

12. Cove Point states that it anticipates selling a different portion of the recommissioning cargo that it does not need to retain for operational purposes, pursuant to section 28. As proposed, Cove Point asserts that its customers are not currently responsible for the costs of this gas, and will not become responsible for those costs at any future time. Cove Point maintains that it alone bore the responsibility and risk of purchasing that LNG, and accordingly, Cove Point alone should retain the revenues resulting from the sale of that gas.

Details of BP's Protest

13. BP comments that the August 22, 2003 Order appropriately recognized that Cove Point had not adequately addressed issues surrounding its recommissioning cargo and ordered Cove Point to explain "whether it or its shippers are ultimately responsible for the cost of the gas used in recommissioning."[4] BP continues that the Commission

[4] BP cites the August 22, 2003 Order at P 19.

explained "[t]his information is necessary in order for the Commission to make a determination as to whether Cove Point is entitled to retain the revenues resulting from the sale of any such gas."[5]

14. BP states that Cove Point's answer to the Commission's question suggests that Cove Point's customers should be responsible for and should pay the costs associated with purchasing the "retained" portion of the cargo, but that the Commission should ignore the remaining "for-sale" portion of the cargo, where Cove Point stands to profit from selling gas associated with the facility's recommissioning.[6] BP asserts that this distinction is inappropriate.

15. BP states that Cove Point's justification for purchasing a full cargo of LNG was that it was needed for recommissioning the LNG facility. BP states that Cove Point's customers are responsible for the cost of the LNG that is needed as the equivalent of "liquid line pack." BP asserts that Cove Point assumes that the cost of that "liquid line pack" gas is the cost that Cove Point paid for the retained portion of the full LNG cargo. BP quotes Cove Point: "Cove Point anticipates that, in its next rate case, the retention of this portion of the recommissioning cargo would result in certain costs being borne by Cove Point's customers."[7] BP asserts that Cove Point's filing assumes that the for-sale portion of the cargo has nothing to do with the retained gas, but BP maintains that that is incorrect.

16. BP asserts that the for-sale portion of the LNG is available to Cove Point only because Cove Point claimed that it needed a recommissioning cargo to get its facility up and running. BP states that the facility exists to serve Cove Point's customers, and the customers pay the costs of the facility through their rates. BP argues that if Cove Point profits from the sale of the recommissioning gas, that profit is a result of the recommissioning.

17. BP states that it is not known whether, if Cove Point incurred a loss in connection with the sale of the recommissioning gas, Cove Point would have assumed full and sole responsibility for the loss.

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[5] BP cites the August 22, 2003 Order at P 19.

[6] BP cites Cove Point's filing at 4-5.

[7] BP cites Cove Point's filing at 4.

18. BP states, however, that there is an obvious link between the retained portion and the for-sale portion of the recommissioning cargo. BP asserts that one would not exist without the other, and that if Cove Point profits from selling the for-sale portion of the LNG, its customers should share in those profits. BP states that at a minimum, the Commission should not ignore the fact that the retained portion and the for-sale portion of the recommissioning cargo are linked, and should recognize that this could have implications for Cove Point's next rate case.

19. BP asserts that the cost of the retained portion of the LNG cargo is not a simple matter of sub-dividing the cost of purchasing the whole cargo between the retained portion and the for-sale portion. Instead, BP asserts that the true cost of the cargo of LNG is the difference between the cost that Cove Point paid for the LNG cargo minus the amount that Cove Point was able to receive for selling the for-sale portion of the LNG cargo. BP argues that if Cove Point is able to sell the for-sale portion of the LNG at a price that exceeds the purchase price of the cargo, then the cost of the retained portion of the cargo is zero -- or perhaps less than zero. BP contends that whatever the sale price may be, the cost of the retained portion of the LNG cargo is the cost of the purchase of the cargo minus the sale price of the for-sale portion of the cargo appropriately allocated.

20. BP concludes that perhaps this issue is one for Cove Point's next rate case. BP argues that if it is, BP, Shell, and other customers should have the chance to raise this issue and argue that the cost of the retained portion of the cargo must reflect the sale of the for-sale portion of the cargo. BP states that Cove Point does not indicate in the filing the quantity of the LNG to be retained or the quantity to be sold. Nor does Cove Point specify the price it paid for the recommissioning cargo, or how the price is to be divided between (i) the liquid line pack and plant heel, on the one hand, and (ii) the LNG to be sold by Cove Point, on the other hand. BP asserts that the Commission should direct Cove Point to specify this information promptly in a further compliance filing with the Commission, and that the parties should not have to wait for the filing of Cove Point's next rate case to ascertain this important information. BP states that it reserves the right to comment on this information and request additional relief after it has had the opportunity to review this additional Cove Point filing.

Discussion

21. The Commission finds that Cove Point's revision of Substitute Original Sheet No. 282 to provide that all sales of excess gas are at the outlet of Cove Point's LNG facility, complies with the Commission's directive in the August 22, 2003 Order. Accordingly, Substitute Original Sheet No. 282 is accepted effective June 30, 2003, as requested.

22. The Commission also accepts Cove Point's explanation about the crediting of revenues from the sale of confiscated gas or excess retainage. The Commission finds that it is not necessary for Cove Point to modify GT&C sections 12(e) and 1.41 because other tariff sections set forth sufficient procedures consistent with Commission policy to provide for the crediting of revenues, net of expenses, from the sale of confiscated gas or excess retainage.

23. The Commission finds, based on the record in this proceeding, that the tracking of retained fuel on Cove Point's system will not be adversely affected by the disposition of the recommissioning cargo. With regard to Cove Point's explanation about whether Cove Point or the shippers were responsible for paying for the cost of the gas used in recommissioning and, therefore, would benefit from the sale of recommissioning gas sold as excess gas, the Commission finds that Cove Point's explanation is still not sufficient, and does not adequately address the issues raised by BP. The Commission also finds that BP has raised significant issues with regard to the amount that is to be capitalized as part of line pack/recommissioning cargo. However, Cove Point has not proposed to revise its rate base in this proceeding. Accordingly, the Commission agrees with BP's suggestion that any rate issues regarding the rate treatment of the proceeds from the sale of recommissioning gas as excess gas, and any ancillary issues, are more appropriately addressed in Cove Point's next general rate case. BP's request for an additional compliance filing to provide additional information is premature and is denied. A future rate case is the proper forum where discovery will occur.

By direction of the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

cc: All Parties