112 FERC ¶ 61,046
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. RP04-428-000

ORDER ON TECHNICAL CONFERENCE

(Issued July 6, 2005)

1. On November 9, 2004, a technical conference was convened to explore the merits of Dominion Cove Point LNG, LP's (Cove Point) proposal to permit it to take up to two business days to approve or reject a request for an inventory transfer of liquefied natural gas (LNG) among customers. Parties filed initial and reply comments to the technical conference based on Cove Point's presentations at the technical conference. As discussed below, the Commission accepts Cove Point's proposal as modified in its initial comments. This order benefits customers by ensuring that Cove Point's tariff does not unreasonably constrain Cove Point in making decisions regarding transfers of inventory, thereby ensuring that its ability to serve its customers is not diminished.

Background

2. On July 1, 2004, Cove Point filed tariff sheets in Docket No. RP03-545-000 to modify section 10 (Release and Assignment of Service Rights) of its General Terms and Conditions (GT&C). However, in its July 1 filing, Cove Point inadvertently deleted section 11 (LNG Inventory Transfers Among Buyers) from its tariff, which provides that Cove Point shall accept or reject customer requests to transfer LNG inventory between accounts within two business days of that request. On July 30, 2004, Cove Point filed in Docket No. RP04-428-000 to reinstate the erroneously deleted section 11. The July 30 filing was protested by various parties, claiming the language was outdated. On August 27, 2004, the Commission issued an order accepting Cove Point's July 30 filing, subject to the outcome of a technical conference, which was conducted on November 9, 2004. Following the technical conference, comments were filed by Cove Point, Shell NA LNG LLC (Shell) and BP Energy Company (BP) jointly, Statoil Natural Gas, LLC

(Statoil),[1] Washington Gas Light Company (Washington Gas), Atlanta Gas Light Company (AGLC) and Virginia Natural Gas (VNG).

Initial Comments

3. In its initial comments, Cove Point maintains that its proposed inventory transfer tariff provision is just and reasonable, and notes that it was approved and accepted by the Commission and all parties as part of a settlement prior to Cove Point's reactivation and start-up. Cove Point notes that section 11 of their originally proposed tariff provision specifies that Cove Point may reject any proposed inventory transfer request

> if it determines that such transfer cannot be accommodated: (i) without diminishing Operator's ability to provide firm service to any buyer; (ii) without increasing Operator's firm service obligations; (iii) because the LNG sought to be transferred is not available in Buyer's account; (iv) because of an imbalance status of the tranferor's and transferee's accounts, as reflected in Operator's records; or (v) because the requested transfer is retroactive.

4. Cove Point explains that it needs time to evaluate transfer requests because customers that take service under the LNG Tanker Discharge (LTD) rate schedule have different entitlements than customers taking service under the Firm Peaking Service (FPS) rate schedule. Cove Point explains that the LTD service encompasses berthing tankers, unloading LNG, storage, vaporization and delivery of regasified LNG that meets tariff standards for gas quality. Shippers utilizing Cove Point's LTD service must provide significant advance notice of their tanker shipping schedule, submitting an annual discharge schedule three months prior to the start of the scheduling year established in Cove Point's tariff. Shippers using the service must update their shipping schedule seven business days prior to the start of each month by providing Cove Point a monthly discharge schedule and a forward schedule for the following two months. Cove Point then evaluates the monthly discharge schedule in relation to scheduled nominations for sendout from the plant, to confirm that sufficient tank space will exist to unload any arriving tanker.

5. Cove Point further explains that by contrast, its FPS service is a "single turn" service with gas injected gradually over the Injection Season from April 16 through the succeeding December 14 and withdrawn on peak days during the remainder of the year. The FPS customers have a total Maximum Contract Peaking Quantity (MCPQ) of 1.44 MMDt, and a customer's aggregate injection quantity over the season cannot exceed its MCPQ adjusted for retainage. Each FPS customer has a Maximum Daily Peaking Quantity (MDPQ) of 1/3, 1/5, or 1/10 of its MCPQ depending on whether it takes ten-day (FPS-1), five-day (FPS-2) or three-day (FPS-3) service. An FPS customer must nominate

[1] Shell, BP, and Statoil are jointly referred to as the LTD-1 Shippers.

its desired withdrawals of gas, and Cove Point must deliver up to a daily quantity of 115 percent of the customer's MDPQ with an hourly rate up to 120 percent of $1/24^{th}$ of the MDPQ. Cove Point notes that the FPS customers retain their LNG in storage for all but a very limited number of days per year but send it out very quickly at times of peak need.

6. Cove Point contends that transfers between rate schedules may present serious operational problems. The company notes that while it does not prohibit transfers of inventory between FPS and LTD rate schedules, it reviews such transactions closely and insists that customers comply with the terms and conditions of each rate schedule. Cove Point argues that it must be particularly cautious with transfers that alter Cove Point's firm obligations, such as transfers that have the effect of increasing LTD-1 customers' storage beyond their contractual rights or that purport to allow FPS customers to cycle their inventory multiple times. In addition, when customers request a transfer of inventory between rate schedules, Cove Point argues that it must consider changes in service entitlements and in the likely use of the inventory in the near future, in conjunction with all the other variables of operating the facility. In terms of the reasons set forth in section 11(c) of its existing tariff's GT&C to reject a transfer request, which it states have not been challenged here, Cove Point argues that it must carefully analyze whether the transfer can be accommodated without diminishing its ability to provide firm service to any customers and without increasing Cove Point's firm service obligations. Cove Point asserts that this tariff determination requires analysis of the following criteria: (1) space in the accounts; (2) maintenance schedule at the plant; (3) ship schedule – taking into account the volatility of the schedule, weather, and LTD nomination changes; (4) operations of downstream pipelines; (5) the status of operational balancing agreements; (6) pipeline and customer imbalance; (7) anticipated customer activity; and (8) quality (Btu content) of liquid. Cove Point asserts that it must determine whether the change in operations that will result from an inventory transfer from LTD to FPS can be accommodated in light of all these factors. It asserts that circumstances in any of these areas may make it impossible to change suddenly from an established plan of operations. In short, Cove Point asserts that it must consider a host of factors to determine whether it can allow the transfer and that this process necessarily takes time.

7. While Cove Point asserts that its existing tariff GT&C section 11 is just and reasonable, Cove Point offers to modify its tariff to provide additional flexibility to the LTD-1 Shippers. Cove Point included a pro forma tariff sheet No. 250Awith its initial comments detailing its proposed changes. First, Cove Point will make reasonable efforts to process any inventory transfer request in less than two business days where circumstances permit. Second, Cove Point proposes to adopt the following three categories of "fast track" inventory transfers: 1) transfers between accounts under identical Rate Schedules, 2) transfers between accounts under different Rate Schedules requested during Cove Point's Injection Season (April 16 through December 14), and 3) all transfers for quantities of 10,000 Dth or less (with that limit applicable to each

account each Business Day). Cove Point states that "fast track" inventory transfer requests received by 9 a.m. CCT on a Business Day will be responded to by no later than 9 a.m. on the following Business Day. Third, inventory transfers are irrevocable once requested and, if approved, effective immediately upon approval. Lastly, inventory transfers will remain subject to all applicable tariff limitations (including limits on FPS injection, storage and withdrawal rights) and applicable Commission policies (including the "shipper must have title" rule).

8. Regarding a related issue raised in this proceeding, Cove Point states that it is now ready to provide title tracking transfer (TTT) service in compliance with Order No. 587-O.[2] Cove Point states that it has never received a request for TTT service but intends to make a separate filing to establish a rate schedule detailing TTT service on its system. Cove Point also states that TTT is not the same as storage inventory transfers. Cove Point states that unlike in-place inventory transfers, pure title transfers occur only in conjunction with other nominated activities.

9. In their Initial Comments, Shell and BP argue that Cove Point does not require two business days to consider a request by an existing customer to transfer ownership of LNG that is already in Cove Point's storage facilities. Shell and BP argue that inventory transfers under section 11 of the GT&C do not involve any physical movement of LNG within or out of Cove Point's facilities. They argue that only the ownership of LNG in storage is transferred and that there is no physical movement of gas molecules. The two companies further argue that since each of the tanks are dedicated to general LNG storage there should be no allocation of storage to any type of service provided by Cove Point whether it be for LTD or FPS service.

10. Shell and BP assert that Cove Point should be able to complete evaluation of inventory transfer much faster than two business days. They argue that Cove Point has not put forward any compelling reason why Cove Point cannot complete its evaluation in less than two business days, especially since the Commission now requires Cove Point to accept proposed inventory transfers through e-mail or its electronic bulletin board. Shell and BP further argue that all the information Cove Point needs to consider should be readily available in electronic format.

11. Shell and BP further argue that Cove Point should not be allowed to use factors other than the five criteria specified in its tariff for evaluating inventory transfers, such as downstream imbalance concerns. Shell and BP argue that many of the additional factors for rejecting proposed transfers listed by Cove Point in its Initial Comments[3] go beyond

[2] Standards of Business Practices of Interstate Natural Gas Pipelines, Order No. 587-O, 99 FERC ¶ 61,146, *reh'g*, Order No. 587-Q, 100 FERC ¶ 61,105 (2002).

[3] *See* supra P 6.

the authority Cove Point has in its tariff to evaluate requests for LNG inventory ownership transfers. Shell and BP further argue that some of the non-tariff factors listed, such as the schedules for arrival and offloading of LNG tankers, do not appear relevant to a decision on a transfer of inventory already in the storage tanks.

12. With regards to Cove Point's TTT proposal, Shell and BP ask Cove Point to clarify what relationship there will be between physical service rights and TTT services. They stress that a title transfer does not affect the contractual injection or withdrawal rights of either the buyer or the seller on the day of the transfer. Shell and BP argue that a shipper's physical send-out rights should not be diminished by its use of virtual deliveries into a TTT account for title transfers.

13. In its Initial Comments, Statoil agrees with Shell and BP that Cove Point should be able to make its determination in less than two business days. Statoil also argues that a scenario where a customer receives only one day's notice that a ship has been delayed due to adverse weather presents a situation where an LNG shipper may wish to make an inventory transfer with an FPS shipper. Statoil contends that under this situation, waiting a business day for a response from Cove Point would result in lost business opportunities.

14. As a counteroffer to Cove Point's proposal, Statoil proposes that Cove Point waive the FPS limitations on injections and withdrawals or amend the FPS Rate Schedule to eliminate these restrictions for purposes of inventory transfers that involve short-term parking and loaning of LNG. Statoil argues that this type of waiver would not harm the FPS shippers and need not alter any other FPS shipper entitlements. Statoil contends that this would provide greater flexibility to LTD shippers at no cost to Cove Point. Statoil further contends that these waivers would be of no practical or financial consequence to Cove Point because the transfer of ownership of the molecules within the tank does not involve any physical movement.

15. In its reply comments, Cove Point argues that the only factors it considers in approving or rejecting an inventory transfer request are the criteria listed in its tariff. Cove Point explains that the discussion in its initial comments of other factors was merely an attempt to explain some of the specific elements that underlie its tariff analysis. Cove Point also argues that Statoil has not borne the burden of proof required under section 5 of the Natural Gas Act to force Cove Point to offer park and loan services, or to fundamentally restructure its peaking service for that purpose. Cove Point further argues that the suggestion to implement short-term parking and loaning is entirely beyond the scope of this proceeding.

16. In their reply comments, the LTD-1 Shippers argue that Cove Point has still not demonstrated that evaluating an inventory transfer request requires two business days. The LTD-1 Shippers also argue that they demonstrated a real need for a quicker response time. Shell and BP argue that a two business-day delay in processing inventory transfers

is incompatible with the fast-paced decision making and rapid implementation required under current circumstances.

17. Washington Gas filed reply comments supporting Cove Point's modified proposal as discussed in Cove Point's Initial Comments. Washington Gas also stated that Statoil's park and loan proposal should be considered in a later proceeding. Atlanta Gas Light Company (AGLC) and Virginia Natural Gas, (VNG) Inc. filed reply comments in support of Cove Point's two business day approval requirement. AGLC and VNG argue that inventory transfers between rate schedules are not simply paper transfers and state that Shell and Statoil consented to the settlement that approved this language. AGLC and VNG further state that inventory transfers across rate schedules have significant operational impacts for the various services. In regard to Cove Point's modified proposal AGLC and VNG support Cove Point's proposal stating that it provides additional flexibility to shippers in processing inventory transfer requests and should give Cove Point the time it requires to analyze the factors involved with inventory transfers requests while providing the LTD shippers with additional flexibility.

18. AGLC and VNG also object to Statoil's proposal to allow inventory transfers across rate schedules as a short-term park and loan option. The parties argue that such a proposal amounts to shippers receiving a gratuitous park and loan service subsidized by other parties, i.e. the FPS shippers. They argue that any park and loan service should be supplied under an established and FERC-approved park and loan rate schedule, and not merely as a part of inventory transfer.

Discussion

19. We find that Cove Point's proposed tariff revisions for LNG inventory transfer among buyers as modified by Cove Point in its initial comments and as reflected on Pro Forma Tariff Sheet No. 250A are just and reasonable. The Commission is concerned that Cove Point will have sufficient time to evaluate the effects of any particular proposed short-term LNG inventory transfer given the significant differences between its services and the need the need to coordinate injection and withdrawal rights with tanker schedules and seasonal demands. We are most concerned that Cove Point will have the time it needs to be satisfied that it can meet its certificated responsibilities when a short-term LNG inventory transfer is proposed. This is particularly critical given the nature of the peaking service needs of the FPS customers: the time when an FPS customer has the most inventory available for a short term transfer is during the peaking withdrawal season, precisely the time when the unpredictable nature of need for peaking service is upon them. Under these circumstances, the operational concerns expressed by Cove Point outweigh potential harm from a delay of two days in obtaining a response from Cove Point to requests to transfer inventories. Moreover, the tariff only imposes a

maximum of two business days' response time and Cove Point has stated that it will make every effort to process requests in less than two business days when circumstances permit and is implementing specific "fast track" procedures.

20. In this regard, the commenters were able to provide only one scenario where having less than two business days would adversely affect the LTD-1 Shippers, i.e., a customer receiving only one day's notice that a ship has been delayed, as discussed *supra* at P 13. While this scenario is not implausible, it is worth noting that commenters cited no examples of this situation having ever actually occurred. In addition, while it is possible that such an event could happen in the future, this one potential scenario seems sufficiently remote so as to be outweighed by the importance of giving Cove Point sufficient time to evaluate the effects of a proposed transfer.

21. Commenters argue that Cove Point should not consider factors not listed in its tariff when making an inventory transfer decision, pointing to the other factors listed in Cove Point's Initial Comments. In its reply comments, Cove Point states that it accepts or rejects requests for transfers based only on the criteria in the tariff. Cove Point clarifies that the purpose of explaining some of the specific elements that underlie the tariff analysis was to convey the circumstances that must be considered in determining whether an inventory transfer – looking not just at the transfer itself but also at the changes in planned operations that will follow it – will increase Cove Point's firm service obligation or diminish its ability to provide firm service or both, i.e., the first two criteria for rejecting transfer requests in section 11(c).[4] Thus, Cove Point was explaining, through example, the difficulty of making the decision whether to accept or reject a proposed inventory transfer: it was not purporting to set forth additional factors for rejection that belong in its tariff. Accordingly, we accept Cove Point's explanation. It is not reasonable to require the tariff to specify all the criteria that Cove Point must consider in making an analysis of a transfer request to determine if the tariff's requirements are met. The factors already listed in Cove Point's tariff appear sufficient; we see no reason to require Cove Point to expand its list.

22. Also, we reject Statoil's suggestion that Cove Point should waive FPS limitations or implement a short term park-and-loan option. Requiring Cove Point to do so is beyond the scope of this proceeding and are not necessary, given the modifications to Cove Point's proposal we are accepting.

23. Finally, in its initial comments Cove Point states that its computer processes are fully consistent with Order No. 587-O and Cove Point stands ready to provide TTT service in compliance with NAESB requirements. As such Cove Point is directed to file within 30 days of this order, a rate schedule detailing TTT service on its system and such other conforming tariff changes as needed to reflect the addition of such service.

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[4] Cove Point Reply Comments at 6.

<u>The Commission orders:</u>

(A) Cove Point must file revised tariff sheets, within 30 days of the date of this order, to reflect the changes and clarifications proposed in its pro forma tariff sheets.

(B) Cove Point must file, within 30 days of this order, a rate schedule detailing TTT service on its system and such other conforming tariff changes as needed to reflect the addition of such service.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.