

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Dominion Cove Point LNG LP

Docket No. CP06-469-000

ORDER GRANTING AUTHORIZATION
UNDER SECTION 3 OF THE NATURAL GAS ACT

(Issued April 23, 2007)

1. On September 29, 2006, Dominion Cove Point LNG, LP (Cove Point) filed an application under section 3 of the Natural Gas Act (NGA) for authority to construct and operate three spare liquefied natural gas (LNG) send-out pumps, two supplemental heaters to be used as an alternate heating source for heat vaporizers, and related electrical infrastructure improvements (referred to as the Post-CPX Send-Out Project) at Cove Point's LNG terminal in Maryland. For the reasons discussed herein, we are granting Cove Point's requested authorization.

Background

2. Cove Point owns and operates an LNG import terminal near Lusby, in Calvert County, Maryland, and the Cove Point Pipeline, which extends approximately 87 miles from the terminal to interconnections with several interstate pipelines in Loudon County, Virginia. The LNG terminal and pipeline were authorized in 1972. LNG shipments to Cove Point ended in 1980 and the facilities were used only to provide a small amount of interruptible transportation through the Cove Point Pipeline until 1994 when the facilities were reactivated and adapted for the purpose of storing domestic natural gas during the summer for use at peak times during the winter.¹

3. Cove Point currently provides 10-day, 5-day and 3-day firm peaking services under Rate Schedules FPS-1, FPS-2, and FPS-3, respectively, and provides firm and

¹ *Dominion Cove Point LNG Limited Partnership*, 68 FERC ¶ 61,377 (1994), *reconsideration denied*, 69 FERC ¶ 61,292 (1994).

interruptible transportation services under Rate Schedules FTS and ITS.² Under a one-time election, the FPS customers chose to receive transportation service on the Cove Point Pipeline on an unbundled basis under Rate Schedule FTS, a Part 284 rate schedule for open-access transportation service.³

4. In a 2001 order,⁴ the Commission authorized Cove Point to construct new facilities and to reactivate and operate existing facilities to recommence the importation of LNG, and to provide LNG Tanker Discharging (LTD) services for shippers importing LNG under Rate Schedules LTD-1 and LTD-2.⁵ As part of that authorization, the Commission approved a settlement (2001 Settlement) that established initial rates for the new LTD customers and lower rates for the existing FPS and FTS customers.

5. In November 2003, the Commission authorized Cove Point to construct and operate two new compressor stations on the Cove Point Pipeline to provide additional west-to-east firm transportation capacity.⁶ In November 2004, the Commission authorized Cove Point to place into service a fifth LNG storage tank, with a capacity of 2.8 Bcf that was approved in the 2001 reactivation orders. As a result of that expansion, the LNG import terminal currently has a total storage capacity of 7.8 Bcf and 1.0 MMDth a day of peak send-out capacity.

6. On June 16, 2006, the Commission authorized Cove Point to begin a major expansion of its LNG terminal and its downstream transportation infrastructure (CPX

² Under the FPS rate schedules, the customer may inject domestic gas for storage as LNG during an injection season from April 16 to December 14, which gas is later vaporized and redelivered during a withdrawal season from December 15 to April 15.

³ The FPS customers are Washington Gas Light Company, Public Service Company of North Carolina, Inc., Virginia Natural Gas Inc., and Atlanta Gas Light Company.

⁴ *Dominion Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043 (2001), *order on reh'g*, 97 FERC ¶ 61,276 (2001), *order on reh'g*, 98 FERC ¶ 61,270 (2002).

⁵ The LTD service consists of the receipt of LNG from tankers, the temporary storage of LNG, and the vaporization of LNG and delivery of natural gas to points along the existing Cove Point Pipeline. The LTD-1 shippers are Shell NA LNG LLC, BP Energy Company, and Statoil Natural Gas LLC.

⁶ *Dominion Cove Point LNG, LP*, 105 FERC ¶ 61,234 (2003).

Project).⁷ The CPX Project facilities authorized by the Commission included two additional LNG storage tanks, each capable of storing 160,000 cubic meters of LNG. The authorized facilities, when in service, will increase send-out capability by 800,000 Dth a day and storage capacity by approximately 6.8 Bcf. After expansion, the Cove Point LNG terminal will have storage capacity of 14.6 Bcf and a send-out capability of 1.8 MMDth a day.

7. In another order also issued on June 16, 2006, the Commission authorized Cove Point to refurbish and reactivate two waste heat vaporizers (Vapor Reactivation Project) originally authorized at the Cove Point terminal in the 1970's.⁸ The Vapor Reactivation Project has been completed and the refurbished waste heat vaporizers were placed in service on December 22, 2006. That project enabled Cove Point to provide an additional 250,000 Dth per day of firm send-out capability during off-peak periods to ensure that Cove Point would be able to deliver up to its current peak-day capability of 1.0 MMDth per day on a year-round basis. The additional send-out capacity from the Vapor Reactivation Project is allocated to the existing LTD-1 Shippers under an incremental send-out quantities (ISQ) service. To deliver the increased volumes made available by the ISQ service, Cove Point also established an off-peak firm transportation service (OTS) on the Cove Point Pipeline.

Proposal

8. The purpose of the Post-CPX Send-Out Project is to enhance the reliability of service at the Cove Point LNG terminal for Rate Schedule LTD-1 customers by eliminating Cove Point's current right to interrupt ISQ service when (1) ambient temperatures exceed 80 degrees Fahrenheit at 7:00 a.m. Eastern Time or (2) there is insufficient power generation to support the ISQ service.⁹ To accomplish this, Cove Point proposes to install two new supplemental heaters, one spare first stage LNG

⁷ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006), *order on reh'g*, 118 FERC ¶ 61,607 (2007).

⁸ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,336 (2006), *order denying reh'g and clarification*, 118 FERC ¶ 61,006 (2007).

⁹ Cove Point will continue to have the right to interrupt ISQ service (1) when there is insufficient nitrogen injection capability; (2) to maintain firm withdrawals provided under any FPS rate schedule; or (3) when Cove Point is constrained in its ability to provide service in accordance with any term or condition in Rate Schedule LTD-1 or any applicable provision of Cove Point's FERC Gas Tariff.

send-out pump, and two spare second stage LNG send-out pumps. It also proposes to reroute the power for the three existing circulating water pumps, add a new modular electrical substation, and install new field instrumentation, field wiring, and power wiring. Cove Point states that the Post-CPX Send-Out Project will not increase its capability to receive or store LNG or to send out vaporized LNG beyond currently authorized levels; rather, the new facilities will make the previously approved ISQ service more reliable.

9. The waste heat vaporizers recently reactivated pursuant to the June 16, 2006 Vapor Reactivation Project Order use the heat produced by existing gas turbine generators (GTGs) to support the vaporization process. Reactivating the waste heat vaporizers provides spare vaporization capability to maintain levels of send-out during times when vaporization would otherwise be limited by normal maintenance requirements. As part of the CPX Project, Cove Point is installing two new GTGs at different locations on the terminal site. Operation of the new GTGs will reduce the run time for the original GTGs, and likewise reduce the amount of waste heat available from them to operate the waste heat vaporizers.

10. The proposed supplemental heaters for the Post-CPX Send-Out Project are designed to provide an alternate heat source for the waste heat vaporizers during periods when the original GTGs are not operating, or when the GTGs are not providing sufficient waste heat for the vaporizers, so that the waste heat vaporizers can continue to operate at full capacity. The proposed spare send-out pumps are intended to provide redundancy to the existing pumps to improve the reliability of the LTD-1 service and reduce service interruptions. The pumps will be used only as spares.

11. As stated in more detail below, Cove Point will offer recourse and negotiated rates with its LTD-1 shippers agreeing upon a negotiated reservation rate for the enhancement of the ISQ service. The proposed reservation rate for the ISQ service will be charged in addition to the reservation and commodity rates already being charged under Rate Schedule LTD-1. Cove Point states that the project is financially supported by the LTD-1 shippers that will receive the enhanced ISQ service, and the project will therefore require no subsidization from existing customers under any other rate schedule. Moreover, states Cove Point, the enhanced ISQ service will not degrade the quality of service for existing customers because the new service will be subordinate to firm withdrawals under FPS rate schedules.

Proposed Rates

12. Cove Point currently provides some services at cost-based rates and, pursuant to the Commission's policy announced in *Hackberry LNG Terminal, L.L.C. (Hackberry)*,¹⁰ some services at market-based rates. Cove Point will offer its proposed enhanced ISQ service under cost-of-service based recourse rates with a monthly incremental reservation rate of \$1.6696 per Dth.¹¹ Cove Point will also offer the ISQ service under negotiated reservation rates under Rate Schedule LTD-1, with shippers continuing to pay the applicable LTD-1 reservation and commodity rates for non-ISQ service. To isolate costs associated with the enhanced ISQ service so that they are recovered solely from the LTD-1 shippers receiving such service, Cove Point states that it will maintain accounting records in accordance with the Commission's requirements for the maintenance of books and records by natural gas companies.

13. Cove Point has filed pro forma tariff sheets revising Rate Schedule LTD-1 to reflect changes to the terms and conditions of the ISQ service. Cove Point indicates that it will implement the negotiated rates agreed upon with the LTD-1 shippers in a subsequent filing consistent with its tariff and the Commission's policies. Pursuant to NGA section 4 and section 157.207 of the Commission's regulations, Cove Point states that it will file the applicable tariff sheets between 30 and 60 days prior to the in-service date of the Post-CPX Send-Out Project facilities.

Interventions, Comments, Protests, and Procedural Issues

14. Notice of Cove Point's application was published in the *Federal Register* on October 19, 2006 (71 *Fed. Reg.* 61743). Washington Gas Light Company (Washington Gas), Statoil Natural Gas LLC (Statoil), Shell NA LNG LLC (Shell LNG), BP Energy Company and Public Service Company of North Carolina (North Carolina) filed timely,

¹⁰ 101 FERC ¶ 61,294 (2002), *order issuing certificate and granting reh'g*, 104 FERC ¶ 61,269 (2003).

¹¹ The proposed incremental reservation ISQ rate is added to the existing approved rate of \$0.4738 per Dth, resulting in a combined rate of \$2.1434 per Dth as reflected on Pro Forma Sheet No. 8. Further, the proposed daily rate for capacity release for ISQ service is added to the existing approved rate of \$0.0156 per Dth, resulting in a combined rate of \$0.0705 per Dth as reflected on Pro Forma Sheet No. 11.

unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹²

15. Atlanta Gas Light Company and Virginia Natural Gas, Inc. (Atlanta Gas and Virginia Gas) filed a joint motion to intervene out of time. These entities have shown an interest in this proceeding, and their participation will not delay the proceeding or prejudice the rights of any other party. Accordingly, for good cause shown, we will permit their late intervention.¹³

16. North Carolina, Washington Gas, and Atlanta Gas and Virginia Gas (collectively, the FPS shippers) included protests or comments questioning aspects of the Cove Point proposal with their intervention requests. Statoil and Shell (the two LTD-1 shippers) filed comments supporting Cove Point's proposal. We will address the protests and comments below.

17. Cove Point filed an answer to the FPS shippers' pleadings. Although our rules do not permit this kind of responsive pleading,¹⁴ our rules do provide that we may, for good cause, waive this provision.¹⁵ We find good cause to do so in this instance because Cove Point's answer provides information that has assisted us in our decision-making.

18. North Carolina requests that we reject Cove Point's application summarily or set it for evidentiary hearing. As grounds for rejection, North Carolina asserts that Cove Point has improperly filed this application separately, instead as part of the Vapor Reactivation Project certificated by the Commission's June 16, 2006 order, resulting in an impermissible segmentation of environmental analysis. It also maintains that Cove Point has not shown that the benefits of this project outweigh its detriments. These are issues that the Commission will address in this proceeding. Rejection of the filing would be appropriate only if it were patently a nullity as a matter of substantive law. North Carolina has failed to demonstrate that Cove Point's application is either deficient on its face or a substantive nullity.¹⁶ Therefore, North Carolina's request for summary rejection is denied.

¹² 18 C.F.R. § 385.214 (2006).

¹³ 18 C.F.R. § 385.214(d) (2006).

¹⁴ 18 C.F.R. § 385.213(a)(2) (2006).

¹⁵ 18 C.F.R. § 385.101(e) (2006).

¹⁶ *Municipal Light Boards v. FPC*, 450 F.2d 1341 (D.C. Cir. 1971).

19. An evidentiary, trial-type hearing is necessary only where there are material issues of fact in dispute that cannot be resolved on the basis of the written record.¹⁷ North Carolina has not raised a material issue of fact that cannot be resolved on the basis of the written record. The written evidentiary record provides a sufficient basis for resolving the issues relevant to this proceeding. The Commission has satisfied the hearing requirement by giving interested parties an opportunity to participate through evidentiary submission in written form.¹⁸ We will deny North Carolina's request for evidentiary hearing.

Discussion

Section 3 Authorization

20. Because the proposed LNG terminal facilities will be used in connection with the importation of gas from foreign countries, the construction and operation of the facilities and the site of their location require approval by the Commission under section 3 of the NGA.¹⁹ The Commission's authority over facilities constructed and operated under section 3 includes the authority to apply terms and conditions as necessary and appropriate to ensure that the proposed construction and siting is in the public interest.²⁰

¹⁷ See, e.g., *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124 (D.C. Cir. 1982); *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d. 1125, 1128 (D.C. Cir. 1969).

¹⁸ *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

¹⁹ The regulatory functions of section 3 were transferred to the Secretary of Energy in 1977 pursuant to section 301(b) of the Department of Energy Organization Act (Pub. L. No. 95-91, 42 U.S.C. §§ 7101 *et seq.*). In reference to regulating the imports or exports of natural gas, the Secretary subsequently delegated to the Commission the authority to approve or disapprove the construction and operation of particular facilities, the site at which facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry or exit for exports. DOE Delegation Order No. 00-004.00A, effective May 16, 2006. However, applications for authority to import natural gas must be submitted to the Department of Energy. The Commission does not authorize importation of the commodity itself.

²⁰ *Distrigas Corporation v. FPC*, 495 F.2d 1057, 1063-64), *cert. denied*, 419 U.S. 834 (1974); *Dynegy LNG Production Terminal, L.P.*, 97 FERC ¶ 61,231 (2001).

3 provides that the Commission “shall issue such order on application. . .” if it finds that the proposal “will not be inconsistent with the public interest.”

21. In recent years, the Commission concluded that it was appropriate to exercise a less intrusive degree of economic regulation for new LNG import terminals. Therefore, the Commission decided that it would not require an applicant for a new LNG terminal to offer open-access service or to maintain a tariff or rate schedules for its terminal service, but that the Commission would reserve its authority under section 3 to take any necessary and appropriate action if it received complaints of undue discrimination or anticompetitive behavior.²¹

22. On August 8, 2005, the Energy Policy Act of 2005 (EPAAct 2005) was signed into law.²² Section 311 of EPAAct 2005 amends section 3 of the NGA regarding the Commission’s authority over the siting, construction, expansion or operation of an LNG terminal.²³ Section 311(c) of EPAAct 2005 adds a new NGA section 3(e)(3)(B) providing that, before January 1, 2015, the Commission shall not condition an order approving an application to site, construct, expand or operate an LNG terminal on: (1) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant securing the order; (2) any regulation of the rates, charges, terms or conditions of service of the LNG terminal; or (3) a requirement to file schedules or contracts related to the rates, charges, terms or conditions of service of the LNG terminal. However, as amended by EPAAct 2005, section 3(e)(3)(C) of the NGA provides that an order issued under these new provisions for an LNG terminal that also offers service to customers on an open-access basis shall not result in subsidization of expansion capacity by existing customers, degradation of service to existing customers or undue discrimination against existing customers as to their terms or conditions of service at the facility.

23. As stated above, Cove Point currently provides some services at market-based rates and some services at cost-based rates. In this proceeding, Cove Point seeks authorization of new facilities that will enable it to provide enhanced ISQ service and

²¹ See *Hackberry*, 101 FERC ¶ 61,294 (2002), *order issuing certificates and granting reh’g*, 104 FERC ¶ 61,269 (2003).

²² Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

²³ Energy Policy Act of 2005, Pub. L. No. 109-58, § 311, 119 Stat. 594, 685 (2005).

proposes to offer such service under cost-of-service based recourse rates and negotiated rates.²⁴

24. As described in Cove Point's application, the facilities proposed in its instant application allow Cove Point to vaporize LNG within the terminal's existing maximum send-out capabilities, thereby eliminating the need for Cove Point to interrupt ISQ service when ambient temperatures exceed 80 degrees Fahrenheit at 7:00 a.m. Eastern Time or when there is insufficient power generation to support the ISQ service. Thus, the proposed facilities will improve the reliability of Cove Point's ISQ service. Because, as discussed below, Cove Point will provide the enhanced ISQ service to LTD-1 shippers pursuant to incremental negotiated rates, existing customers will not subsidize the new costs. Further, the enhanced ISQ service will not degrade the quality of Cove Point's existing services because the ISQ service will continue to be subordinate to firm withdrawals under FPS rate schedules. Accordingly, we find that, subject to the conditions set forth in this order, Cove Point's proposed Post-CPX Send-Out Project is not inconsistent with the public interest.

25. Last year's Vapor Reactivation Project and the proposed Post-CPX Send-Out Project are products of the LTD-1 Settlement. We are satisfied that Cove Point's sequencing the Vapor Reactivation Project and the Post-CPX Send-Out Project as separate projects is appropriate. In response to a Commission data request, Cove Point explained that there is no direct integration of construction activities between the two projects. It further explained that the Vapor Reactivation Project application was filed first as a separate project because it was limited to bringing existing equipment back into service and therefore required only a limited amount of design and engineering. The Vapor Reactivation Project, Cove Point states, was not dependent on the implementation of any other project, and, we note, the Vapor Reactivation Project has been completed and is already in service.

26. On the other hand, Cove Point states that the proposed Post-CPX Send-Out Project required more extensive design and engineering, required further commercial negotiations with the FPS and LTD-1 shippers and is dependent on completion of both the CPX Project and the Vapor Reactivation Project. The CPX Project will not be

²⁴ Cove Point states in its application that, in view of the provisions of the EP Act 2005, the commercial agreements between the parties, which establish the negotiated reservation rate, do not include a provision stating that they are subject to the Commission's approval.

completed until 2008, and there is no need for the Post-CPX Send-Out Project facilities until that time.

Rate Issues

LTD-1 Settlement

27. Cove Point and its LTD-1 customers entered into a settlement in May 2005 (LTD-1 Settlement) relating to Cove Point's further expanding its terminal facilities. Cove Point later provided a redacted copy of the LTD-1 Settlement to the Commission.

28. Washington Gas states that the Post-CPX Send-Out Project filing is of the type contemplated in the LTD-1 Settlement between Cove Point and the LTD-1 shippers to implement the settlement. However, because FPS shippers have not been permitted to review an unredacted copy of the LTD-1 settlement, Washington Gas asserts that the Commission has a particular duty to safeguard the FPS shippers to ensure that their rights and rates are not adversely affected.

29. North Carolina asserts that Cove Point's representations regarding the project should be carefully scrutinized because of the lack of transparency in the LTD-1 settlement and the complicated mix of regulated and non-regulated types of rates involved. North Carolina argues that the rate design and recordkeeping requirements for the proposal to provide enhanced interruptible ISQ services at negotiated rates using previously certificated facilities must be explored to protect the cost-of-service FPS shippers.

Commission Response

30. The Commission addressed similar issues concerning the LTD-1 settlement in the Vapor Reactivation Project proceeding.²⁵ In that proceeding, the Commission explained that the LTD-1 settlement is an agreement between Cove Point and its import shippers concerning their respective rights and obligations surrounding future expansion applications, and that access to an unredacted LTD-1 settlement was not necessary in order for FPS shippers to review and comment on Cove Point's proposed expansion rates in the Vapor Reactivation Project proceeding. For that reason and because the excised portions of the redacted LTD-1 settlement filed by Cove Point concern commercially sensitive information, the Commission did not require Cove Point to file an unredacted version of the LTD-1 settlement in the Vapor Reactivation Project proceeding. For the same reasons, an unredacted version of the LTD-1 settlement is not required here. The

²⁵ See 115 FERC ¶ 61,366 at P 24-28, and 118 FERC ¶ 61,006 at P 21-24.

parties to this proceeding have had an opportunity to review the redacted LTD-1 settlement and have submitted comments. As was the case with the Vapor Reactivation Project, we have considered the comments of the FPS customers and find that the proposals we are acting on here do not in any way amend or alter their rights.

Subsidization

31. The FPS shippers express concern that, despite assurances by Cove Point to the contrary, FPS shippers will, in fact, subsidize the new facilities. They aver that Cove Point has not fully explained what measures it intends to implement to prevent such subsidization, and Atlanta Gas and Virginia Gas assert that a careful review of total costs and allocation of costs is needed to ensure that any costs related to the new service are assigned to the appropriate shippers. Washington Gas states that because the proposed project is operationally interdependent with facilities being used and paid for by the FPS shippers, true apportionment of cost responsibility should include a review of more than just the proposed incremental cost expenditures. Thus, Washington Gas states, the cost of service for the proposed Post-CPX Send-Out Project should include any costs associated with increased use of pre-existing facilities. As an example of these kinds of costs, Washington Gas and North Carolina state that the Commission should require Cove Point to track fuel costs associated with this project separately.

32. North Carolina asserts that because Cove Point has opted to provide this service under cost-of-service regulation, offering recourse rates and entering into negotiated rates, rather than under section 3(e)(3) of the NGA, the Commission must afford all interested parties the opportunity to challenge the rate proposal to assure that no Post-CPX Send-Out Project-related costs will be allocated to other shippers.

33. Washington Gas states that in Cove Point's pending rate case in Docket No. RP06-417-000 et al., Cove Point claims that the facilities constructed for the Vapor Reactivation Project have made the FPS service more reliable and seeks to shift substantial costs of the 2001 reactivation of the Cove Point terminal to the FPS shippers, even though the project was for the benefit of the LTD-1 shippers. Washington Gas requests that the Commission make a specific determination here regarding who will benefit from Post-CPX Send-Out Project, which, it argues, would prohibit any future attempt to shift the costs to customers who are not subscribers to LTD-1 service.

Commission Response

34. In the 2006 proceeding on Cove Point's CPX Project, we explained that Commission policy concerning incremental rates is to ensure that there is a proper assignment of costs, that the respective shippers pay for the service they receive, and that the project can proceed without subsidies from the existing customers. Therefore, the

Commission required Cove Point to isolate the costs of different services, and to maintain separate books and accounting of the costs attributable to the proposed incremental service.²⁶ Similarly, in the Vapor Reactivation Project proceeding, the Commission explained that separate books will allow the parties to determine the costs attributable to the services provided to the FPS customers and to the LNG import shippers.²⁷

35. In this Post-CPX Send-Out Project proceeding for facilities to enhance its ISQ service, Cove Point is again proposing to charge incremental rates which will be applicable only to Rate Schedule LTD-1 shippers electing ISQ service. Accordingly, consistent with the approach taken in prior Cove Point proceedings, as discussed above, we will require Cove Point to maintain separate books and records and to track the fuel for send-out volumes.²⁸

36. Washington Gas emphasizes that the proposed Post-CPX Send-Out Project will only benefit LTD-1 shippers. Therefore, Washington Gas requests that the Commission prohibit any future attempt by Cove Point to shift costs associated with this project to other customers. We will deny this requested condition. The initial section 7 rates approved by this order are incremental rates which will be paid only by LTD-1 customers who subscribe to ISQ service. Since this order establishes incremental rate treatment for Cove Point's initial rates, Cove Point will have the burden of proof if it seeks in a future rate case to recover any of this project's costs from non-LTD-1 customers. There is no need, nor would it be appropriate, to impose a condition that would preclude Cove Point from seeking to change the rate treatment for these costs in the future if it can demonstrate that the project has benefited non-LTD-1 customers. Further, this order's approval of initial incremental rates does not foreclose Cove Point and its customers from agreeing to different rate treatment in the future. We note, in response to Washington Gas's assertion that its requested condition is needed because Cove Point sought in its pending rate case in Docket No. RP06-417-000 et al. to change the allocation of costs associated with certain prior projects, that Cove Point filed a Stipulation and Agreement

²⁶ See 115 FERC ¶ 61,337 at P 106-109 (2006).

²⁷ See 118 FERC ¶ 61,006 at P 27 (2007) (order on rehearing and clarification).

²⁸ Cove Point tracks fuel usage at the terminal. To the extent that LTD-1 shippers deliver additional cargoes and send out those volumes of LNG using the proposed ISQ service, any incremental quantities imported will be charged the storage fuel rate upon receipt for injection by the LTD-1 shipper.

of Settlement in that proceeding on March 1, 2007. Washington Gas is a signatory party to that settlement agreement, which is pending before the Commission.

Priority of Service

37. The FPS shippers also request clarification regarding priority of service to assure that Cove Point's new service will not degrade their existing services or result in undue discrimination. Cove Point has stated that the ISQ services will be subordinate to firm withdrawals under the FPS rate schedules. The FPS shippers aver, however, that Cove Point has not addressed whether the proposed service will be likewise subordinate to the existing injection and overrun rights of the FPS shippers. Washington Gas argues that subordination of the ISQ service to these services should be specifically affirmed.

Commission Response

38. Cove Point's tariff at section 16 of the General Terms and Conditions (GT&C) provides the categories for interruptions of service, ranking ISQ service as the fourth service out of five to be interrupted.²⁹ Under Cove Point's tariff, the ISQ service is subordinate to quantities under the FPS and LTD-1 rate schedules (including any Authorized Excess Withdrawal Quantity), which will be the last services to be interrupted. Cove Point's tariff also provides that the authorized overrun services under Rate Schedules LTD-1, FTS, FPS-1, FPS-2, FPS-3, which are interruptible services, will be interrupted before the ISQ service. Accordingly, Cove Point's currently effective tariff sufficiently addresses the FPS shipper's concerns regarding priority of service.

ISQ Rate Design

39. North Carolina questions Cove Point's proposed rate treatment. It states that the rates set forth in the pro forma tariff appear to be a sum of the cost-of-service rates for the proposed Post-CPX Send-Out Project and the Vaporizer Reactivation Project. North Carolina states that Cove Point has not justified why this kind of pricing should be used in the pro forma tariff sheets for this expansion.

²⁹ See Second Revised Sheet No. 261 of Cove Point's FERC Gas Tariff, Original Volume No. 1. This tariff sheet revised the interruptions of service as part of Docket No. RP07-36-0000, which, among other things, placed the ISQ rates and terms of service into effect. The Docket No. RP07-36-000 filing and Sheet No. 261 were accepted effective December 22, 2006. *Dominion Cove Point LNG, LP*, 118 FERC ¶ 61,023 (2007).

Commission Response

40. The proposed Post-CPX Send-Out Project is an enhancement to the existing ISQ service, providing greater reliability of service and eliminating certain interruption rights applicable to the ISQ service. As an enhancement, the cost and rates of the proposed Post-CPX Send-Out Project are being added to the existing ISQ costs and rates resulting in the proposed combined rate of \$2.1434 per Dth as reflected on proposed Pro Forma Sheet No. 8. As noted earlier in this order, Cove Point combined the existing approved ISQ rate of \$0.4738 per Dth, and the proposed incremental reservation rate of \$1.6696 per Dth, resulting in the combined rate of \$2.1434 per Dth. Cove Point has adequately supported the proposed rate of \$1.6696 per Dth for the Post-CPX Send-Out Project, and the Commission has previously accepted, subject to modification, the existing ISQ rate of \$0.4738 per Dth in the Vapor Reactivation Project proceeding. Combing the existing ISQ rate and the new incremental rate proposed in this application is appropriate because the combined rate reflects the total cost of providing the enhanced ISQ service.

Proposed Rate and Rate of Return

41. Cove Point's proposed rates are based on the third full year cost of service. While the Commission generally prefers that rates be based on the first year average, in this instance, because the third year cost of service results in a lower rate, we will accept the proposed incremental ISQ rates based on the third full year cost of service.

42. Cove Point's application states that it will also provide the ISQ service pursuant to its negotiated rate authority, Cove Point is obligated to file either numbered tariff sheets setting forth the details of the negotiated rate agreement or the negotiated rate contracts, consistent with Commission policy as articulated in the *Alternative Rate Policy Statement*,³⁰ and the Commission's decision in *NorAm Gas Transmission Company*.³¹

³⁰ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines (Alternative Rate Policy Statement)*, 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *petitions for review denied and dismissed*, *Burlington Resources Oil & Gas Co. v. FERC*, 172 F. 3d 918 (D.C. Cir. 1998), *criteria modified*; *Rate Regulation of Certain Natural Gas Storage Facilities*, Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006), *order on clarification and reh'g*, 117 FERC ¶ 61,190 (2006).

³¹ *NorAm Gas Transmission Company*, 77 FERC ¶ 61,011 (1996) (*NorAm*).

43. In designing the proposed rates, Cove Point used its Commission-approved pretax rate of return of 16.28 percent, which was in effect on the date of the filing.³² Subsequent to filing this application, Cove Point filed a Stipulation and Agreement of Settlement on March 1, 2007 to resolve its section 4 rate case in Docket No. RP06-417-000, et al. The settlement agreement provides at Article III that the recourse rate for services will be computed using a pre-tax return of 14 percent.³³ Since the Commission has not issued an order addressing the settlement agreement, Cove Point is directed to recalculate the ISQ recourse rate based upon the pre-tax return ultimately approved by the Commission in Docket No. RP06-417-000 when it files actual tariff sheets 30 to 60 days prior to the commencement of service of the proposed facilities.

Environment

44. North Carolina asserts, without more, that Cove Point failed to justify filing the instant proposal as a separate application from the Vapor Reactivation Project, resulting in an “impermissible segmentation of environmental analysis.” However, the Vapor Reactivation Project, as a reactivation of existing equipment, required no additional construction and resulted in minimal resource impacts. In fact, use of the reactivated equipment results in a net decrease in air emissions as the equipment utilizes waste heat. For the same reason, there is no need to perform a cumulative impact analysis. We find that the Post-CPX Send-Out Project, while dependent on the Commission's prior favorable action on the Vapor Reactivation Project, is properly a distinct project, the environmental aspects of which can be addressed separately from the Vapor Reactivation Project.³⁴

45. Commission staff prepared an environmental assessment (EA) for Cove Point's proposal.³⁵ The EA was issued and placed in the public record on February 15, 2007 and

³² *Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043 (2001), *order approving uncontested amendments to settlement and settlement*, 102 FERC ¶ 61,227 (2003).

³³ The Settlement also provides that the recourse rate for service approved in the Vapor Reactivation Project will be calculated at the 14 percent pre-tax return.

³⁴ We note that the February 15, 2007 environmental assessment prepared for Cove Point's proposal inadvertently failed to address North Carolina's segmentation concern. We have addressed that concern here.

³⁵ Cove Point filed an applicant-prepared draft environmental assessment on September 29, 2006.

addresses geology, soils, water resources, fisheries and wetlands, vegetation and wildlife, threatened and endangered species, land use, cultural resources, air quality, noise, reliability and safety, and alternatives. The EA specifically recognizes the existence of the Vapor Reactivation Project and its relationship to the Post-CPX Send-Out Project. The EA also explains that the Post-CPX Send-Out Project will affect only land on the existing Cove Point LNG terminal property and will have no off-site impacts. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Cove Point's application and supplements and the environmental conditions in the appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

46. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.³⁶ Cove Point shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Cove Point. Cove Point shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

47. At a hearing held on April 19, 2007, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Cove Point is authorized under section 3 of the NGA to construct and operate the proposed facilities at its existing LNG terminal, as more fully described in this order and in the application.

(B) This authorization is conditioned on Cove Point's compliance with the environmental conditions set forth in the appendix to this order.

³⁶See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(C) Cove Point shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Cove Point. Cove Point shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(D) Cove Point's facilities shall be constructed and made available for service within two years of the date of this order.

(E) Cove Point is required to calculate the ISQ recourse rate based upon the pre-tax return approved by the Commission in Docket No. RP06-417-000 and submit revised actual tariff sheets within 30 to 60 days prior to placing the authorized facilities in service.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary

APPENDIX – ENVIRONMENTAL CONDITIONS

As recommended in the EA, this authorization includes the following conditions:

1. Cove Point shall follow the construction procedures and mitigation measures described in its application and as identified in the environmental assessment (EA), unless modified by this Order. Cove Point must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take all steps necessary to ensure the protection of life, health, property, and the environment during construction and operation of the proposed Project. This authority shall include:
 - a. stop-work authority and authority to cease operation; and
 - b. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of this Order.
3. Cove Point shall not begin construction of the Project until it files with the Secretary a copy of the determination of consistency with the Coastal Zone Management Plan issued by the Maryland Department of the Environment.
4. Prior to construction, Cove Point shall document consultations with the Maryland SHPO regarding appropriate Indian tribes, Native American groups, ethnic groups, and other interested persons to contact concerning cultural resource issues, and:
 - a. provide pertinent Project details to these parties and consult with them on the presence of archaeological sites, burials, existing historic properties, and sites of religious or cultural importance in the Project area and the potential impact of the Project on these resources; and
 - b. file copies of all correspondence with the above parties and all resulting documentation with the Secretary for review by the Director of OEP.

All material filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any

relevant pages therein clearly labeled in bold lettering: **“CONTAINS
PRIVILEGED INFORMATION - DO NOT RELEASE.”**