104 FERC ¶ 61,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Dominion Cove Point LNG, LP Docket No. RP03-545-000

ORDER ACCEPTING TARIFF REVISIONS
SUBJECT TO MODIFICATION

(Issued August 1, 2003)

1. This order accepts for filing, subject to modification, tariff sheets filed by Dominion Cove Point LNG, LP (Cove Point) to revise Section 10 (Release and Assignment of Rights) of its General Terms and Conditions (GT&C).[1] Cove Point states that its proposal is intended to rationalize and streamline its provisions regarding capacity release. This decision benefits customers because it is consistent with the Commission's policy of allowing capacity release to meet the needs of the customer and the pipeline.

I. Background

2. On July 2, 2003, Cove Point filed revised tariff sheets proposing to modify Section 10 (Release and Assignment of Service Rights) of its GT&C to set forth its capacity release provisions in a more logical sequence than its existing provisions. Cove Point explains that prior to now, it has not had an active capacity release market and that the proposed changes should not affect any customer. Furthermore, Cove Point states that these revisions are modeled after the existing provisions of its affiliate, Dominion Transmission, Inc. (DTI) and that by adopting capacity release provisions that are comparable to those of DTI, the two pipelines will be able to facilitate programming and reduce administrative costs since they will be sharing an electronic bulletin board.

II. Notice of Filing and Interventions

[1]See Appendix for list of tariff sheets.

3. Public notice of the filing was issued on July 9, 2003. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214), any timely filed motion to intervene is granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Any motions to intervene out-of-time filed before the date of this order are granted pursuant to 18 C.F.R. § 214(d), since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Calpine Corporation (Calpine) and Reliant Energy Services, Inc. (Reliant) filed protests out-of-time.

III. Protests

4. Calpine and Reliant both oppose Cove Point's proposed language in Section 10(a)(4)(i).[2] Calpine contends that the proposed pre-qualification and bidder eligibility standards would impose unduly burdensome and discriminatory creditworthiness requirements on non-creditworthy shippers. Calpine states that this provision would require the non-creditworthy customer to post collateral based on its bid, and not on how much capacity has ultimately been awarded. Calpine is also concerned with the impact that multiple transactions over multiple days will have on non-creditworthy customers since these customers would be required to "tie up" valuable capital solely to be on an approved bidders list.

5. Calpine and Reliant argue that posting any level of security prior to being awarded the capacity is unreasonable since Cove Point does not bear any financial risk until such time when the capacity is awarded. Moreover, both Calpine and Reliant contend that the timeline for providing the security is unworkable. Since capacity release transactions often occur in a matter of hours, Reliant believes that there may be too little time to request an evaluation by the pipeline or to post adequate security so that a replacement shipper can bid. As such, Reliant states that it is unclear how this provision would work and requests that Cove Point be directed to modify its tariff to provide non-creditworthy replacement shippers with a reasonable amount of time after the award of capacity to provide the security.

IV. Discussion

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[2]Proposed Section 10(a)(4)(i) provides that "[a]ny party desiring to submit a bid under this Section must first prequalify by demonstrating that it meets, on a continuing basis, the creditworthiness standards of Section 3 and Section 6 of the General Terms and Conditions of Operator's Tariff. Operator has no obligation to accept a bidder as a Replacement Customer until the potential bidder satisfies these criteria."

6. The Commission finds that Cove Point's proposed tariff revisions are generally consistent with the Commission's policy on capacity release.[3] However, the Commission finds that Cove Point's proposed Section 10(a)(4)(i) concerning prequalification of bidders with the pipeline's creditworthiness standards is not workable and may not be reasonable.

7. Cove Point's proposed Section 10(a)(4)(i) would require that all shippers that wish to bid in future capacity release auctions must prequalify with the pipeline's creditworthiness standards. Where a pipeline has proposed a prequalification procedure for released capacity, the Commission finds that each releasing shipper should have the option whether to require bidders for its released capacity to prequalify under the pipeline's creditworthiness standards. Prequalification is not necessary to protect the pipeline. While the pipeline must allow the winning bidder to submit a scheduling nomination even before a contract has been executed, it need not flow gas until it has determined that the winning bidder is creditworthy.[4] The Commission requires that the same criteria be applied to released capacity and pipeline capacity in order to ensure that pipeline capacity is available on an open access, non-discriminatory basis to all shippers.[5] This requirement principally protects releasing shippers in the event a non-creditworthy replacement shipper defaults. This is because the pipeline is already protected because the releasing shipper is responsible for paying the reservation charge even if the replacement shipper defaults. In addition, in Order No. 637, the Commission held that in situations where the replacement shipper is not creditworthy, "the pipeline could give the releasing shipper the option of posting a bond for the usage charge or assuming liability

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[3]We will grant waiver of the notice period and accept Cove Point's tariff sheets effective August 1, 2003, as proposed, subject to modification as discussed below.

[4]Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,091 at 31,299 (Feb. 9, 2000); order on rehearing, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,099 (May 19, 2000); order on rehearing, Order No. 637-B, 92 FERC ¶ 61,062 (July 26, 2000); aff'd in part and remanded in part, Interstate Natural Gas Association of America v. FERC, 285 F.3d 18, (D.C. Cir. Apr. 5, 2002); order on remand, 101 FERC ¶ 61,127 (2002).

[5]See Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 62 (2003) (a releasing shipper cannot impose creditworthiness conditions on a replacement shipper that are different from of the creditworthiness conditions imposed by the pipeline.)

for the usage charge in the event of the replacement shipper's default."[6] As such, Cove Point does not receive any added protection by requiring that all replacement shippers prequalify prior to bidding.

8. The releasing shipper may desire to require that the winning bidder prequalify under the pipeline's creditworthiness standards to avoid the possibility that the release cannot be completed due to the winning bidder's failure to meet the pipeline's creditworthiness standards. Alternatively, the releasing shipper may not want to require prequalification so as not to restrict the class of eligible bidders. Therefore, Cove Point must modify its prequalification provision to state that the releasing shipper may waive this requirement on a non-discriminatory basis for any release offer.[7] Such a provision would allow the releasing shipper to determine whether it wants to assume any risk in the event that a non-creditworthy replacement shipper makes the highest bid on the capacity.

9. Furthermore, the Commission finds that even if Cove Point's proposed Section 10(a)(4)(i) were acceptable, it does not provide a procedure by which the replacement shipper can maintain its prequalified status "on a continuing basis." Moreover, it is not clear how the level of security would be determined when a non-creditworthy replacement shipper bids on capacity. Additionally, the proposed tariff language does not address how a replacement shipper can prequalify with Cove Point in light of the compressed time frame under which capacity release auctions operate. Cove Point is therefore directed to either remove this provision or modify this provision to explain in detail how Section 10(a)(4)(i) will operate in a practical manner.

10. Finally, Cove Point must revise proposed Section 10(b)(6)(vi).[8] This tariff language appears to restrict segmentation by capacity release to situations where the replacement shipper can obtain primary points since this language only refers to primary receipt and delivery points. A replacement shipper need not be required to obtain primary point capacity since such a restriction would discourage segmentation through capacity

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[6] See supra n.4 at 31,299.

[7] The releasing shipper, thus, may not selectively waive the prequalification requirement for some bidders and not others.

[8] Proposed Section 10(b)(6)(vi) provides that the releasing shipper's posted notice of release will include the "[l]ocation of capacity to be released (Primary Receipt and Delivery Points), and an express description of any rights that Replacement Customer is to have for changing Primary points. Unless such rights are specified in the posted notice, Replacement Customer may not change primary points."

release where primary point capacity is not available.[9] Consistent with this policy, Cove Point is directed to modify Section 10(b)(6)(vi) so that releasing shippers may release a segment of capacity to a replacement shipper seeking to utilize primary points, and if available, secondary points.

The Commission orders:

(A) Waiver of the notice period is granted and Cove Point's tariff sheets are hereby accepted to become effective August 1, 2003, subject to modification, as discussed in the body of this order.

(B) Cove Point is hereby directed, within 30 days of the date this order issues, to file revised tariff sheets consistent with the discussion in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

Dominion Cove Point LNG, LP

FERC Gas Tariff, Original Volume No. 1

Tariff Sheets Accepted to be Effective, August 1, 2003

Second Revised Sheet No. 240

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[9] See Kern River Gas Transmission Co., 103 FERC ¶ 61,341 at P 18 (2003).

First Revised Sheet No. 241
Second Revised Sheet No. 242
First Revised Sheet No. 243
Second Revised Sheet No. 244
Second Revised Sheet No. 245
Second Revised Sheet No. 246
Second Revised Sheet No. 247
Third Revised Sheet No. 248
First Revised Sheet No. 249
Second Revised Sheet No. 250