

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Dominion Cove Point LNG LP

Docket No. RP05-43-005

ORDER DIRECTING FILING OF PROVISIONS OF SETTLEMENT

(Issued November 7, 2005)

1. This order involves the request for rehearing or clarification filed by Dominion Cove Point LNG, LP (Cove Point), based upon a subsequent agreement dated May 24, 2005, between Cove Point and the LTD-1 Shippers (2005 Settlement), and the request for rehearing filed by the LTD-1 Shippers¹ of the Commission's May 31, 2005 Order on Technical Conference and on Rehearing and Clarification (the May 2005 Order)². The May 2005 Order addressed requests for rehearing of the Commission's December 23, 2004 Order in this proceeding,³ and the issues raised in comments received in the technical conference proceeding ordered by the December 2004 Order. This order directs Cove Point to file certain provisions of the 2005 Settlement.

Background

2. The December 2004 Order and the May 2005 Order fully describe the background, and this order will not repeat that material in great detail. In essence, this proceeding involves interpretation of a Commission-approved settlement concerning Cove Point's liquefied natural gas terminal (LNG) at Cove Point, Maryland.

¹ The LTD-1 Shippers are Shell NA LNG LLC (Shell LNG), BP Energy Company (BP Energy) and Statoil Natural Gas LLC (Statoil). Statoil does not join in certain parts of the rehearing request.

² *Dominion Cove Point LNG, LP*, 111 FERC & 61,294 (2005).

³ *Dominion Cove Point LNG, LP*, 109 FERC & 61,363 (2004) (December 2004 Order).

3. LNG operations at the terminal began in March 1978, were interrupted in April 1980, and ceased in December 1980. Pursuant to Commission authorization in 1994, Cove Point reactivated the mothballed onshore LNG facilities, including four LNG storage tanks, and constructed a liquification unit, for the purpose of liquefying and storing domestic natural gas for later use at peak times during the winter. Cove Point then provided 10-day, 5-day and 3-day guaranteed send-out firm peaking services under Rate Schedules FPS-1, FPS-2, and FPS-3, respectively. This service authorizes FPS Shippers to inject natural gas during a summer injection period commencing April 15, for storage as LNG until it is withdrawn in the winter withdrawal period, commencing December 15. Cove Point entered into contracts with FPS customers for the storage and send-out capacity at the LNG terminal. The FPS customers also have contracts under Rate Schedule FTS for firm transportation service on Cove Point's 87-mile pipelines from the LNG terminals to interconnections with other pipelines in Virginia.

4. Later Cove Point proposed to reopen and expand the LNG terminal for the importation of LNG, and held an open season for new tanker discharging services (the LTD-1 service). The LTD-1 service consists of the receipt of LNG from ocean-going tankers, the temporary storage of LNG, and the vaporization of LNG and delivery of natural gas to points along Cove Point's existing pipeline. The service is provided throughout the year, so unlike the FPS service there is no withdrawal or injection season.

5. In the open season for the new LTD-1 service, there were three bidders for the LTD-1 service, all of whom bid at the maximum rate. When, contrary to expectations, the existing FPS customers whose contracts had terms that were due to expire prior to the reactivation of the terminalling facilities renewed their contracts, there was insufficient storage capacity to satisfy all the prospective LTD-1 customers' requests. The three LTD bidders agreed to accept an allocation of one-third of the available storage capacity, as well as one-third of the 750,000 Dth/d available send-out capacity, *i.e.*, 250,000 Dth/d, for each LTD-1 customer.

6. All parties, consisting of Cove Point, the LTD-1 shippers, the FPS shippers, and the one FTS shipper, then entered into a settlement (the 2001 Settlement) of rates and capacity allocation issues. Relevant to this proceeding the 2001 Settlement included a mechanism for transitioning FPS capacity to the LTD-1 Shippers when an FPS contract terminated as follows:

[I]n the event that any Rate Schedule FPS services are terminated, whether by expiration of a service agreement(s) or capacity turn-back, the capacity that becomes available as a result shall be dedicated to Rate Schedule LTD-1 service and allocated among the LTD-1 Shippers in proportion to each such Shipper's firm MDDQ and included in such Shipper's service agreement for the remainder of its term, and the applicable storage ratios

for Rate Schedule LTD-1 service will be modified accordingly. Cove Point agrees that in the event of such a reallocation of storage capacity, it will make a compliance filing for the sole purpose of (i) placing into effect rates which will reflect a reallocation of the total revenue responsibility associated with such relinquished Rate Schedule FPS service (at the then-effective maximum rates), together with the associated storage and transportation capacity, to Rate Schedule LTD-1 service, and (ii) revising appropriately the storage ratios applicable to Rate Schedule LTD-1 service.⁴

7. On October 12, 2001, the Commission issued an order (the 2001 Certificate order) granting Cove Point a certificate and approving the 2001 Settlement which permitted the reactivation of the Cove Point LNG terminalling facilities and operations.⁵

8. In its initial filing in the instant proceeding, Cove Point stated that it was proposing modifications of its tariff because a service agreement under its FPS rate schedules was nearing the end of its primary term, and there were divergent views of how the Commission-approved 2001 settlement would operate at the end of the primary contract term of an FPS service agreement. The LTD-1 Shippers protested the filing.

The December 2004 Order

9. One of the issues addressed in the December 2004 Order was, under the 2001 Settlement, what capacity was required to be transferred to the LTD service when and if an FPS shipper's service terminated. Cove Point had argued that the 2001 Settlement provided that only the LNG storage capacity held by the FPS customer was transferred and not that shipper's send-out capacity, pointing out that the settlement only referred to storage capacity. Cove Point also asserted there were operational reasons why only storage capacity was transferred. Protestors argued that the 2001 Settlement intended that the capacity transferred must include the FPS customer's associated send-out capacity and FTS transportation capacity because otherwise there might be stranded volumes.

10. The December 2004 Order noted that the settlement seemed focused on the storage capacity because it referred to the "reallocation of storage capacity," and that

⁴ 109 FERC at 62,655 P 8.

⁵ Cove Point LNG Limited Partnership, 97 FERC ¶ 61,043 (2001), *reh'g*, 97 FERC ¶ 61,276 (2001), *reh'g*, 98 FERC ¶ 61,270 (2002).

when there was reallocation there would be a revision of the LTD-1 shippers' storage capacity ratios to send-out capacity. The order concluded that while a persuasive case could be made for finding that only the storage capacity would be reallocated, there still was uncertainty over the intent of the 2001 Settlement, and directed that the issue be explored at a technical conference which staff was directed to convene.

The May 31 Order

11. The technical conference was held, and the parties filed comments and reply comments. The May 2005 Order addressed requests for rehearing of the December 2004 Order, as well as the comments filed by the parties. Among other things the order held that under the 2001 Settlement only storage capacity is to be reallocated to the LTD-1 Shippers when FPS contracts terminate.⁶

LTD-1 Shippers' Rehearing Request

12. LTD-1 Shippers assert that the Commission erred in interpreting the 2001 Settlement as providing that only storage capacity associated with terminated FPS contracts is to be reallocated to the LTD-1 Shippers, and erred in accepting Cove Point's explanation as to why this limitation was necessary because of operational considerations. They assert that the FPS shippers' send-out and transportation capacity must also transfer to the LTD-1 Shippers when an FPS contract terminates. They also request rehearing on other issues addressed by the Commission in the May 2005 Order.

Cove Point's Request for Rehearing or Clarification

13. In its request, Cove Point states that Cove Point and LTD-1 Shippers have entered into an agreement that affects one issue resolved in the May 2005 Order. Cove Point requests that the Commission modify the May 2005 Order to acknowledge the effect of this agreement.

14. Cove Point contends that the May 2005 Order correctly interpreted the 2001 Settlement, as Cove Point had asserted. However, Cove Point states on May 24, 2005, it and the LTD-1 Shippers entered into the 2005 Settlement which partially modifies the 2001 Settlement's provision concerning what FPS capacity would transfer to LTD service upon termination of an FPS contract.

⁶ 111 FERC at 62,284-85 PP 78-82.

15. Cove Point further states that on May 27, 2005, in a filing in Cove Point's "Expansion Proceeding,"⁷ Cove Point and the LTD-1 Shippers provided the Commission with an overview of the terms and conditions of the 2005 Settlement.⁸

16. As pertinent to this proceeding, Cove Point states that under the 2005 Settlement, Cove Point agreed to file with the Commission to reactivate and operate two additional waste heat vaporizers at the LNG facility, which units were mentioned in the May 2005 Order.⁹ Cove Point notes that with the addition of these two units, the LNG facility would have twelve operating units, and the addition would provide the LTD-1 Shippers with incremental send-out capacity at the terminal. Cove Point asserts that its May 24, 2005 agreement with LTD-1 Shippers provides that in the event any FPS capacity reverts to the LTD-1 Shippers pursuant to the terms of the 2001 Settlement after these two additional heat vaporizers are in operation, that FPS capacity will be converted to full LTD-1 service. Thus, it states, the capacity that is reallocated to the LTD-1 Shippers will include not only storage capacity but also send-out rights associated with that capacity. Cove Point further states that in the 2005 Settlement, the LTD-1 Shippers agreed that until the two additional units are in operation, the Commission's ruling that only storage capacity is transferred to the LTD-1 service when an FPS contract terminates, would still govern.

17. Accordingly, Cove Point requests that the Commission clarify that once these additional waste heat vaporizers have been placed in service, any FPS capacity that reverts to the LTD-1 Shippers pursuant to the reallocation provisions of the 2001

⁷ The Expansion Proceeding is the proposed expansion of the LNG terminal and Cove Point's interstate pipeline, and certain pipeline and storage facilities of Dominion Transmission, Inc. pending in Docket Nos. CP05-130-000, CP05-131-000, and CP05-132-000.

⁸ See Notice of Terms of Settlement of Matters Related to the Cove Point Expansion Proceedings, Docket No. CP05-130-000, *et al.* On May 27, 2005, Cove Point also filed a proposed *pro forma* revision to section 30 of the General Terms and Conditions (GT&C) of Cove Point's tariff to implement the terms agreed to in the 2005 Settlement. By notice issued on June 3, 2005, in Docket No. CP05-130-001, parties to the Expansion Proceedings were given the opportunity to comment on the May 27, 2005 Notice, and the *pro forma* tariff proposal.

⁹ On July 26, 2005, Cove Point filed an application in Docket No. CP05-395-000, to refurbish and reactivate the two waste heat vaporizers (the Vaporizer Reactivation Project).

Settlement will be converted to a corresponding amount of LTD-1 service, with both storage capacity and send-out entitlements.

Subsequent Pleadings

18. Notwithstanding their request for rehearing, LTD-1 Shippers filed comments in support of Cove Point's request for clarification. LTD-1 Shippers initially state in their comments that they believe the Commission erred in its ruling in the May 2005 Order as to what initially would be transferred when an FPS contract terminated, and were seeking rehearing on this issue. However, LTD-1 Shippers state that they support Cove Point's request that the Commission modify the May 2005 Order to reflect the parties' agreement that, if an FPS contract terminates after the two additional waste units are in operation, the FPS Shippers' send-out and transportation capacity would transfer to the LTD service, together with the storage capacity.

19. Cove Point filed a motion for leave to answer LTD-1 Shippers' request for rehearing.¹⁰ Cove Point offers the answer to explain the relationship between its recent settlement with the LTD-1 Shippers, and two issues included in the LTD-1 Shippers request for rehearing. Cove Point states that the LTD-1 Shippers expressly agreed in the 2005 Settlement that if an FPS contract terminated before the two additional waste heat vaporizers are activated, the FPS Shipper's send-out and transportation capacity would not be transferred to the LTD service. Cove Point further states that if the Commission were to grant LTD Shippers' request for rehearing on the issue of what is transferred when an FPS contract terminates before the two additional waste heat vaporizers are in place, "the LTD-1 Shippers would be *required* by the Settlement to support Cove Point in requesting that the Commission vacate or modify that order in a manner consistent with the Settlement" (emphasis in original).¹¹

Discussion

20. Cove Point and LTD-1 Shippers agree that they have entered into a settlement relating to operations at the Cove Point terminal. However, there may be differing views as to what that settlement encompasses. Thus, although Cove Point asserts that LTD-1 Shippers had agreed that until the two additional waste heat vaporizers are in operation any reallocation of FPS capacity to LTD service will not include the associated send-out

¹⁰ We will accept the answer under Rule 213(a) (2) since it provides a better understanding of the issues concerning the claimed 2005 Settlement.

¹¹ Cove Point Answer at 4.

capacity, LTD-1 Shippers filed for rehearing of the Commission's ruling in the May 2005 Order that the reallocation is limited to storage capacity.

21. Moreover, what was submitted to the Commission on May 27, 2005, in the Expansion Proceedings, was a "Notice of Terms of Settlement of Matters Related to the Cove Point Expansion Proceedings" purporting to reflect a summary of the terms of the 2005 Settlement, but not the 2005 Settlement itself. That Notice does not appear to include what Cove Point asserts the LTD Shippers agreed to relating to what is transferred when an FPS contract terminates. Cove Point did not file the 2005 Settlement in the Vaporizer Reactivation Project proceeding, but stated that it, "has provided a redacted version of the LTD Settlement to the FPS Shippers"¹² Nevertheless, Cove Point has declined to file the 2005 Settlement with the Commission, claiming there is no need for Commission review or approval of that settlement.¹³

22. Cove Point provides services subject to the Natural Gas Act (NGA). Section 4(c) of the NGA¹⁴ requires jurisdictional natural gas companies to file, among other things, "all contracts which in any manner affect or relate to such rates, charges, classifications, and services." Consistent with NGA section 4(c), section 154.1 (d) of the Commission's regulations¹⁵ requires that pipelines file all contracts that deviate from the form of service agreement set forth in the pipeline's tariff.¹⁶ Cove Point is requesting that we reaffirm in part and modify in part the May 2005 Order based on the terms of the 2005 Settlement. The provisions of the 2005 Settlement concerning the transfer of FPS capacity to the LTD-1 service clearly affects Cove Point's jurisdictional service since those provisions allegedly determine what capacity currently being used to perform jurisdictional FPS service is transferred to the LTD-1 Shippers receiving jurisdictional Part 284 LTD-1 service when an FPS contract terminates.

23. As such, NGA section 4(c), and section 154.1 (d) of our regulations, require that Cove Point file at least those portions of that settlement with the Commission that relate

¹² September 12, 2005 Answer of Cove Point in Docket No. CP05-395-000 at 4.

¹³ See Cove Point Answer filed July 8, 2005, in Docket No. CP05-130-000, *et al.* at 2.

¹⁴ 15 U.S.C. § 717(c).

¹⁵ 18 C.F.R. § 154.1(d) (2005).

¹⁶ See Columbia Gas Transmission Corp., 97 FERC ¶ 61,221 at 62,001-02 (2001).

to jurisdictional service. In the Vaporizer Reactivation Project Proceeding, Cove Point stated that it made the May 27, 2005 filing of the Notice of terms of the 2005 Settlement for informational purposes only.¹⁷ Cove Point stated that it did not request the Commission to review or approve the 2005 Settlement, because that settlement contemplates future filings that will require Commission review and approval. When those filings are made, Cove Point stated, the Commission will have an opportunity to review the filing. However, although the provisions of the 2005 Settlement that Cove Point is relying upon in its request for rehearing in this proceeding may relate to Cove Point's Expansion Proceedings, and Vaporizer Reactivation Project, Cove Point is asking that we act in the instant proceeding in Docket No. RP05-43-005, based upon provisions in the 2005 Settlement. In this order we find that provisions in the 2005 Settlement concerning what FPS capacity transfers to the LTD-1 service when an FPS contract terminates must be filed with the Commission for our review. This ruling has no bearing upon whether other parts of the 2005 Settlement must also be filed.

24. In order to determine whether LTD Shippers have agreed to what Cove Point asserts they have agreed to in the 2005 Settlement concerning what is transferred to the LTD service upon an FPS contract's termination, the Commission must have the provisions of the 2005 Settlement before it.

25. Accordingly, Cove Point must file the 2005 Settlement with the Commission, but Cove Point may redact those portions of the settlement that are not relevant to the issues before the Commission on rehearing in this docket, *i.e.*, the issue of what capacity transfers to the LTD-1 service upon termination of an FPS contract. The Commission also directs that Cove Point explain how the filed material supports its contention on this issue. The parties to this proceeding will then have an opportunity to file a reply. The LTD-1 Shippers may submit any provisions of the 2005 Settlement with Cove Point that they believe are relevant to this issue in the event Cove Point did not include them in its filing.

26. The Commission will not make any substantive rulings in this docket as to the merits of the 2005 Settlement, except to the extent necessary to address the rehearing requests in this docket.

¹⁷ See September 12, 2005 Answer of Cove Point in Docket No. CP05-395-000 at 3.

The Commission orders:

(A) Cove Point must file the 2005 Settlement, with redactions as provided above, within 10 days of the issuance of this order.

(B) The parties to this proceeding may file a reply within 10 days thereafter, and LTD-1 Shippers may submit any provisions of the 2005 Settlement that they believe are relevant, in the event Cove Point did not include them in its filing.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.