

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 Nos. RP05-43-005
RP05-43-008

ORDER ON REHEARING AND CLARIFICATION

(Issued April 19, 2006)

1. This order addresses the request for rehearing or clarification filed by Dominion Cove Point LNG, LP (Cove Point), based upon a subsequent agreement between Cove Point and the LTD-1 Shippers (the 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 31 Order).² The May 31 Order addressed requests for rehearing of the Commission's December 23, 2004 Order in this proceeding (the December 2004 Order),³ and the issues raised in comments received in the technical conference held pursuant to the December 2004 Order. This order denies rehearing and grants clarification.

Background

2. The December 2004 Order and the May 31 Order fully describe the background, and this order will not repeat that material in great detail. At issue in this proceeding is whether certain tariff revisions proposed by Cove Point are consistent with 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).

³ 109 FERC ¶ 61,363 (2004).

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 providing a peaking service. That service is provided under Rate Schedules FPS-1, FPS-2, and FPS-3, respectively. Under these rate schedules, the customer may inject domestic gas for storage as LNG at the terminal 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. The FPS Rate Schedules also included a bundled transportation service under which FPS customers could obtain transportation service approximately 87 miles from the LNG terminal to an interconnection with other pipelines in Virginia. The FPS customers were also granted, and each exercised, a one-time election to receive the transportation service on an unbundled basis under Rate Schedule FTS, a Part 284 open access transportation service.

4. Later Cove Point proposed to reopen the LNG terminal for the importation of LNG, and expand the terminal by constructing a fifth storage tank. Cove Point held an open season for new tanker discharging services (the LTD service). The LTD 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. At the time of the open season some of the FPS shippers' contracts were scheduled to expire before reactivation of the terminalling facilities, and Cove Point did not expect them to renew their contracts. Based on this assumption, Cove Point proposed to make storage available to successful bidders in the open season for LTD service based on a fixed ratio of 5.7 to 1 of storage capacity to contracted-for daily send-out capacity upon reactivation, and 9.0 to 1 upon activation of the fifth tank. The LTD 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 service, there were three bidders for the LTD service, all of whom bid at the maximum rate. When, contrary to expectations, the existing FPS customers 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. Each LTD shipper also exercised the option to obtain transportation service on an unbundled basis under Rate Schedule FTS.

6. All parties, consisting of Cove Point, the LTD-1 Shippers, the FPS Shippers, and the one existing 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

terminates. Section II.2 of the settlement relates that the mistaken assumption that the FPS Shippers' contracts would expire had "resulted in an expected ratio [of storage capacity to contracted Maximum Daily Delivery Quantity or MDDQ] of 5.7:1 upon reactivation of the LNG import facilities and 9.0:1 upon completion of the fifth (5th) storage tank." The 2001 Settlement then provided:

However, subsequent to the open season, Cove Point determined that this assumption was not valid, and in recognition of the fact that the LTD-1 Shippers would not otherwise receive the full amount of storage capacity assumed in the open season, the Parties agree (1) the capacity of the fifth (5th) LNG storage tank will be increased from 2,500,000 dth to 2,800,000 dth; (2) all of the capacity of the fifth storage tank shall be dedicated to Rate Schedule LTD-1 service and allocated among the LTD-1 Shippers ... in proportion to each such shipper's MDDQ, and (3) in 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.

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.⁴

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

⁴ 97 FERC ¶ 61,043 (2001), *reh'g*, 97 FERC ¶ 61,276 (2001), *reh'g*, 98 FERC ¶ 61,270 (2002).

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.

9. Accordingly, Cove Point proposed several revisions to its tariff which it contended carried out the intent of the 2001 Settlement. First, it proposed to add a new paragraph section 4(k) of its General Terms and Conditions of Service (GT&C) providing that it could agree with any shipper to an extension of that shipper's long-term service agreement.⁵ Second, it proposed to add a new paragraph, 4(l), which as relevant here, provides that when an FPS service agreement is terminated, the FPS shipper's storage capacity will transfer to the LTD-1 service. Proposed section 4(l) tracked the language of section II.2 of the 2001 Settlement concerning the transfer of FPS capacity to LTD-1 service, except that it described more specifically the circumstances in which the FPS service could be terminated. Also, in its transmittal letter of the filing, Cove Point interpreted section II.2 as providing only for the transfer of FPS shippers' storage capacity to the LTD shippers and not the send-out or transportation capacity.

10. Third, Cove Point proposed to revise the FPS and LTD Rate Schedules to eliminate the transportation services bundled within those rate schedules, as well as the "Elected FTS" service option under which the FPS and LTD-1 shippers had a "one-time election" to receive unbundled transportation service under Rate Schedule FTS in place of the transportation service bundled within the FPS and LTD-1 rate schedules. Cove Point stated that each of its FPS and LTD-1 Shippers had already exercised its election to subscribe to the unbundled Elected FTS service. Cove Point also proposed to eliminate the transportation component of the maximum FPS and LTD reservation rates, and to remove the Elected FTS service provisions from section 2.7 of Rate Schedule LTD-1, and section 3(d) of Rate Schedule FPS. Cove Point proposed to replace these provisions with tariff language stating that the FPS and LTD services are provided solely at the LNG terminal and the shipper is responsible for arranging service under Rate Schedules FTS or ITS to transport the gas along Cove Point's pipelines.

⁵ The proposed section provided:

- (k) Notwithstanding anything to the contrary in this Tariff, Operator may agree with any Buyer, on a not unduly discriminatory basis, to an extension of any long-term Service Agreement, with such additional term to be negotiated on a case-by-case basis.

11. The LTD-1 shippers protested the filing contending that the proposed revisions were in conflict with the 2001 Settlement.

The December 2004 Order

12. The December 2004 Order basically accepted Cove Point's proposed revisions. However, one of the issues addressed in the December Order was what capacity would be transferred to the LTD service when and if an FPS shipper's service is terminated. Cove Point had argued that only the LNG storage capacity held by the FPS customer was transferred but not that shipper's send-out and transportation 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 capacity transferred must include the FPS customer's associated send-out and transportation capacity because otherwise there might be stranded volumes.

13. The December 2004 Order noted that section II.2 of the settlement seemed focused on the storage capacity because it referred to the "reallocation of storage capacity," and that when there was reallocation there would be a revision of the LTD 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. Accordingly, the order accepted and suspended Cove Point's proposed tariff revisions noted above, effective May 27, 2005, subject to any subsequent Commission order.

The May 31 Order

14. The technical conference was held, and the parties filed comments and reply comments. The May 31 Order addressed requests for rehearing of the December 2004 Order, as well as the comments filed by the parties. The Commission accepted most of Cove Point's proposed tariff changes, rejecting LTD-1 Shippers' contention that the tariff changes would subvert the rights of the LTD-1 Shippers under the 2001 Settlement. The order held that only storage capacity is to be reallocated to the LTD-1 Shippers when FPS contracts terminate under the 2001 Settlement.⁶ The May 31 Order reiterated the interpretation of section II.2 of the 2001 Settlement in the December 2004 Order.

⁶ 111 FERC at 62,284, PP 78-82.

15. In addition, the May 31 Order agreed with Cove Point that, if the settlement was interpreted as requiring the transfer of the FPS shippers' send-out capacity, there would be operational problems. Cove Point explained that during the April 15-December 15 off-peak period it sequentially idles two of the ten vaporizers for four to six week periods for maintenance requirements. The FPS peaking service send-out occurs only during the winter peak period, whereas the LTD service is a continuing one throughout the year. Cove Point asserted that with only 8 of the 10 vaporizers operating during the off-peak period, if the reallocated FPS capacity also included the send-out capacity converted to a 12-month period, it could not provide the LTD Shippers the additional send-out service throughout the off-peak period. The Commission also found that while at some earlier period the LNG facility included two additional waste-heat vaporizers, so there were 12 units in operation, the 2001 reactivation did not include those units, and the Commission would not order Cove Point to reactivate them in this proceeding.

16. The order stated that in its filing Cove Point had proposed in new GT&C section 4(l) to describe three situations where the transfer of storage capacity from the FPS service to LTD-1 service could occur. These three situations were: (1) if an existing FPS customer and Cove Point do not agree to a service agreement extension and the customer elects not to exercise its Right of First Refusal (ROFR) upon the expiration of the contractual term, (2) if the capacity is not awarded to any party in the ROFR process (*i.e.*, if neither the existing customer nor any other bidder offers maximum rates and Cove Point chooses not to discount) or (3) if capacity is turned back to Cove Point prior to the expiration of the term by mutual agreement of a shipper and Cove Point. The order stated that the second situation was inconsistent with the discussion both in that order and the December 2004 Order because it incorrectly suggests that third parties can bid for and obtain the expiring FPS service, whereas the settlement requires that, if an FPS contract terminates, the FPS storage capacity is to be transferred to LTD shippers on a pro rata basis. Accordingly, Cove Point was directed to file a revised tariff sheet to eliminate the second situation from new GT&C section 4(l).

17. The Commission also ruled that the December 2004 Order had accepted Cove Point's proposed section 4(k) concerning evergreen, rollover and other contract extension provisions, and that evergreen, rollover and other contract extension provisions in Cove Point's existing FPS contract could be given effect.⁷ In addition, the Commission

⁷ *Id.* at P 43.

allowed Cove Point to eliminate from its tariff the bundled transportation component of the FPS and LTD services, as well as the one-time option for electing unbundled transportation service.⁸

18. Finally, the May 31 Order noted that on April 15, 2005, Cove Point filed its “Cove Point Expansion Project” consisting of three applications, Docket Nos. CP05-130-000, CP05-131-000, and CP05-132-000. The project seeks authorization to increase storage capacity at the LNG facility by approximately 6.8 Bcf, increase send out capability by 800,000 Dth/d, and expand the capacity of the 87-mile pipeline from the facility so that after the expansion, the terminal will have storage capacity of 14.6 Bcf, and peak send-out capability of 1.8 MMDth/d.

Cove Point’s Compliance Filing

19. On May 15, 2005, Cove Point made its compliance filing, and revised proposed section 4 (l) to remove the second condition. By letter order issued July 28, 2005, the Commission accepted revised section 4 (l), effective May 27, 2005, as proposed.⁹

⁸ *Id.* at P 82.

⁹ Revised section 4 (l) provides as follows:

- (1) Notwithstanding anything to the contrary in this Tariff, in the event that any Rate Schedule FPS services are terminated, whether by (i) expiration of a service agreement where Buyer and Operator have not agreed to an extension and Buyer elects not to exercise its right of first refusal upon the expiration of the contractual term, or (ii) turnback of Buyer’s service rights under the Service Agreement, where Buyer and Operator have mutually agreed to such turnback, 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 MDQ and included in such Shipper’s Service Agreement for the remainder of its term, and the applicable storage ratios for Rate Service LTD-1 service will be modified accordingly. In the event of such a reallocation of storage capacity, Operator will make a compliance filing for the sole purpose of (i) placing into effect rates that will reflect a reallocation of the total revenue responsibility associated with such relinquished Rate Schedule FPS service (at the maximum effective 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

(continued...)

Cove Point's Request for Rehearing or Clarification

20. In its rehearing request of the May 31 Order, Cove Point states that Cove Point and LTD-1 Shippers have entered into an agreement that affects one issue resolved in the May 31 Order. Cove Point requests that the Commission modify that order to acknowledge the effect of this agreement.

21. Cove Point states that the May 31 Order held, as contended by Cove Point, that only storage capacity is reallocated to the LTD-1 shippers when an FPS contract terminates, and that the order accepted Cove Point's explanation that, due to the need for down-time for maintenance of the vaporizers, there would be operational problems if any reallocation included the FPS shipper's send-out capacity on a year-round basis. Cove Point noted that the order also held that the reactivation of Cove Point's LNG import terminal did not include two waste heat vaporizers located at the facility, and that the Commission would not order the reactivation of those vaporizers in this proceeding.

22. Cove Point states that on May 24, 2005, it entered into an agreement with the LTD-1 shippers (the 2005 Agreement) regarding the proposed expansion of the Cove Point LNG terminal and Cove Point's interstate pipeline, and certain pipeline and storage facilities of Dominion Transmission, Inc. pending in Docket Nos. CP05-130, CP05-131, and CP05-132 (the "Expansion Proceedings"), as well as certain other matters associated with Cove Point's services to the LTD-1 Shippers. Cove Point further states that on May 27, 2005, in a filing in the Expansion Proceedings, Cove Point and the LTD-1 Shippers provided the Commission with an overview of the terms and conditions of the 2005 Settlement.

23. As pertinent to this proceeding, Cove Point states that under the 2005 Agreement, 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 31 Order.¹⁰ 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 agreement with LTD-1

LTD-1 service. This Paragraph shall remain in effect for the term of the LTD-1 Service Agreements in effect as of October 1, 2004, including any extension of such Service Agreements.

¹⁰ 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).

Shippers provides that when 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, 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 Agreement, the LTD Shippers agreed that until the two additional heat vaporizer units are in operation, the Commission's ruling that only storage capacity is transferred to the LTD service when an FPS contract terminates, would still govern.

24. Cove Point requests that the Commission confirm that, notwithstanding the limitations recognized by the Commission's December 2004 Order, 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 Settlement will be converted to a corresponding amount of LTD-1 service, with both storage capacity and send-out entitlements. However, until these additional units are in operation, the Commission's ruling that sendout capacity is not being transferred when an FPS contract terminates would stand.

LTD-1 Shippers' Rehearing Request

25. LTD-1 Shippers assert that the Commission erred in ruling that only storage capacity associated with terminated FPS contracts is to be reallocated to the LTD-1 Shippers under the 2001 Settlement, and erred in accepting Cove Point's explanation as to why this limitation was necessary because of operational considerations. They also contend that the Commission erred by giving effect to evergreen, rollover and other contract extension provisions in Cove Point's existing FPS contracts, and holding that Cove Point's proposed tariff changes permitting Cove Point to enter into evergreen, rollover and other contract extension provisions were consistent with the 2001 Settlement. Finally, they argue that the Commission should not have accepted Cove Point's proposal to eliminate the bundled transportation component of the FPS and LDT services together with the elected FTS Option.

Subsequent Pleadings and Filings

26. Notwithstanding their request for rehearing, the LTD-1 Shippers filed comments in support of Cove Point's request for clarification. The LTD-1 Shippers state that they believe the Commission erred in its ruling in the May 31 Order as to what would be transferred when an FPS contract terminated, and were seeking rehearing on this issue, as well as other issues. However, the LTD-1 Shippers state that they support Cove Point's request that the Commission modify the May 31 Order to reflect the parties' agreement as to what is transferred when an FPS contract terminates once the two additional waste units are in operation.

27. Cove Point filed a motion for leave to answer the LTD-1 Shippers' request for rehearing.¹¹ Cove Point offers the answer to explain the relationship between its recent agreement with the LTD-1 Shippers, and two issues included in the LTD-1 Shippers' request for rehearing on this ruling. Cove Point further states that if the Commission were to grant the 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)."¹²

The November 7, 2005 Order and Cove Point's Compliance Filing

28. In an order issued November 7, 2005,¹³ the Commission stated that while Cove Point and the LTD-1 Shippers agree that they have entered into an agreement relating to operations at the Cove Point terminal, there are differing views as to what that agreement encompasses. Thus, although Cove Point asserted that the 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 capacity, the LTD-1 Shippers filed for rehearing of the Commission's ruling in the May 31 Order that the reallocation of the FPS capacity is limited to storage capacity.

29. Further, the order stated that what Cove Point submitted to the Commission on May 27, 2005, in the Expansion Proceedings, was "Notice of Terms of Settlement of Matters Related to the Cove Point Expansion Proceedings," but not the 2005 Agreement itself. Thus, in order for the Commission to determine whether the LTD-1 Shippers have agreed to what Cove Point asserts they have agreed to concerning what is transferred upon an FPS contract's termination, the Commission needed to have the provisions of the 2005 agreement before it. Accordingly, the order directed Cove Point to file those portions of the 2005 agreement that were relevant to the issues before the Commission on rehearing in this docket, together with an explanation how the filed material supports its contention on this issue. The order gave the LTD-1 Shippers an opportunity to file a reply to Cove Point's filing.

¹¹ We will accept the answer under Rule 213(a)(2) since it provides a better understanding of the issues.

¹² Cove Point Answer at 4.

¹³ 113 FERC ¶ 61,136 (2005).

30. On November 13, 2005, Cove Point submitted section 5.6 of the 2005 Agreement in compliance with the November 7 Order.¹⁴ No party filed any response to Cove Point's filing. Cove Point asserts that to ensure that the terms of the agreement would be implemented, the section provides that if the Commission issued an order not consistent with the parties' agreement, "the Parties shall jointly inform FERC that they have settled this issue pursuant to the terms of this section 5.6 and agree that FERC should vacate or modify its order on rehearing [in this proceeding] to reflect the terms of this Settlement." An order inconsistent with the agreement would be one that provided "either (i) send-out capacity is not included in any reversion of capacity from FPS Shippers to LTD-1 Shippers or (ii) send-out capacity is included in any reversion of capacity from FPS Shippers to LTD-1 Shippers prior to the anticipated in-service date" of the facilities in the expansion proceeding.

Discussion

31. The instant proceeding is concerned with interpreting the 2001 Settlement. Cove Point filed proposed revisions to its tariff which it asserted carried out the intent of the 2001 Settlement. The issue presented is whether the proposed tariff revisions appropriately implement the 2001 Settlement.

32. The May 31 Order interpreted the 2001 Settlement as providing that, when an FPS contract terminates, only the FPS shipper's storage capacity transfers to the LTD-1 shippers, and not the FPS shippers' send-out or transportation capacity. Accordingly, the Commission approved Cove Point's proposed revision of section 4(l) of its tariff that limits any transfer of capacity upon termination of an FPS contract to the FPS shippers' storage capacity. On rehearing, the LTD-1 shippers contend that the Commission erred in accepting section 4(l), arguing that the 2001 Settlement provides for the FPS shipper's send-out and transportation capacity also to transfer to the LTD-1 Shippers in that circumstance. However, as Cove Point asserts, in the 2005 Agreement the LTD-1 Shippers have agreed that, if an FPS contract terminates before Cove Point's proposed expansion is in operation, the FPS shipper's send-out capacity will not transfer to the LTD-1 shippers. Thus, we deny LTD-1 Shippers' request for rehearing on this issue, since the 2005 Agreement reflects the LTD-1 Shippers' agreement that, under current circumstances, send-out capacity is not included when an FPS contract terminates.

¹⁴ Cove Point redacted the sections surrounding Section 5.6 pursuant to the November Order. The entire section is set forth in Appendix A of this order.

33. In addition, since no send-out capacity will transfer to the LTD-1 Shippers when an FPS contract terminates under current circumstances, there is no reason for the FPS shippers' corresponding transportation capacity to transfer either. The Commission thus denies rehearing on this issue and reaffirms its approval of Cove Point's new section 4(l) tariff provision as reflecting the LTD-1 Shippers' and Cove Point's agreement, both in the 2001 Settlement and the 2005 Agreement, as to what capacity is transferred when an FPS contract terminates before the Vaporizer Reactivation Project goes into service.

34. Cove Point seeks clarification that once the Vaporizer Reactivation Project goes into service, it may implement the provision of the 2005 Agreement that if an FPS contract expires thereafter, then both storage and send-out capacity will transfer to LTD-1 shippers. Section 4(l) of Cove Point's tariff as approved in this proceeding only permits transfer of the storage capacity. The Commission clarifies that Cove Point may file to revise section 4(l) of its tariff when Cove Point's expansion project is operational to implement the terms of the 2005 Agreement that apply to that situation. But Cove Point must make that filing to make that aspect of the 2005 Agreement effective. Accordingly, the Commission grants Cove Point's request for clarification in part to permit Cove Point to make the necessary tariff filing.

35. The LTD-1 Shippers' other contentions in their rehearing request are readily answered. The December 2004 Order explained that the proposed section 4(k) explicitly permitting evergreen, rollover and other contract extensions was consistent with the 2001 Settlement, pointing out that existing FPS contracts at the time of the 2001 Settlement included such clauses, and the 2001 Settlement was not intended to change existing rights. LTD-1 Shippers argue that giving effect to the evergreen, rollover and other contract extensions in the existing FPS contracts "will have the effect of significantly limiting the rights of the LTD-1 Shippers under Article II.2(b)(3) of the 2001 Settlement to retain capacity needed for enhanced levels of LTD-1 service when FPS contracts terminate."¹⁵ LTD-1 Shippers do not "retain capacity" when FPS contracts terminate--they are permitted to obtain that capacity when the FPS contract terminates. Until the FPS contract terminates, the LTD-1 Shippers have no right to that capacity. Rather, the FPS shipper can "retain capacity," as the 2001 Commission order stated, as long as their contract continues, including any extension of the term through the ROFR process.¹⁶

¹⁵ Rehearing request at 17.

¹⁶ 97 FERC at 61,195.

36. No one questions that the existing rights of the FPS shippers were unaffected by the 2001 Settlement.¹⁷ The record in this proceeding shows that at least some of the FPS shippers' contracts contained evergreen clauses at the time of the 2001 Settlement. Thus, continuing to give effect to those evergreen clauses is consistent with the 2001 Settlement. To permit Cove Point to include evergreen clauses with FPS Shippers follows from our interpretation of the 2001 Settlement that the ROFR process does not allow for third-party bids. If the FPS shipper may extend its existing contract through the ROFR process without concern of bids from others, allowing the parties to provide for an evergreen provision does not go beyond the rights the FPS shippers have under the existing tariff provisions.

37. LTD-1 Shippers also argue that the Commission erred in accepting Cove Point's proposal to eliminate the elected FTS option from the LTD-1 and FPS Rate Schedules. LTD-1 Shippers had objected to Cove Point's proposal for the same reason that they contended that any reallocation of FPS storage capacity to the LTD service must be accompanied with transportation capacity. The May 31 Order rejected the LTD Shipper's argument stating "However, since we have rejected this same argument in ruling that the allocation to the LTD shippers is limited to the FPS storage capacity, we see no reason to reject Cove Point's proposal. In any event, all shippers have exercised the one-time option and we see no prejudice to any party from its elimination."¹⁸

38. LTD-1 Shippers' rehearing request repeats its prior argument that LTD-1 Shippers must be granted transportation rights when an FPS contract terminates and there is a reallocation to the LTD service. Since LTD-1 Shippers have abandoned this position in the 2005 agreement until the Vaporizer Reactivation Project goes into service, we find no merit in LTD-1 Shipper's similar request here that we not permit the elimination of the elected FTS option.

39. The 2005 Agreement only relates to send-out rights, not to FTS capacity. Cove Point's filing in the expansion proceeding states that Cove Point proposes to "expand the capacity of the approximately 88-mile Cove Point pipelines."¹⁹ Under our ruling that at present, when an FPS contract terminates, only storage capacity is transferred to the LTD service, there is no need for LTD Shippers to acquire additional FTS capacity. When the

¹⁷ Section V(3) of the Settlement provides that "No party to this Settlement waives its rights as to matters not resolved hereby."

¹⁸ 111 FERC at 62,285 P 82.

¹⁹ Application in Docket No. CP05-130-000, filed April 15, 2005, at 7.

expansion proceeding is operational and the LTD shippers acquire additional send-out rights, there will also be additional FTS capacity to transport the gas from the terminal so the LTD Shippers' concern of stranded storage capacity would have no basis. Accordingly, we adhere to our ruling that Cove Point may eliminate the bundled transportation and elective option in its tariff.

The Commission orders:

(A) Cove Point's request for rehearing or clarification is denied in part, and granted in part as set forth above.

(B) The LTD-1 Shippers' request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A

5.6 Effect of Reversion of FPS Services to LTD-1 Shippers.

A. In the event that (i) if any FPS capacity reverts to the LTD-1 Shippers pursuant to the terms of the CP01-76 Settlement, and (ii) all Post CPX Send-out Project facilities have been constructed and placed in service, the FPS capacity will be converted to LTD-1 services and a like amount of ISQ [incremental send-out service] rights will terminate; the termination of ISQ rights will be made in direct proportion to each Participating LTD-1 Shippers' allocation of such ISQ rights. [Revenue Requirements Provision Omitted.] In the event that the FERC issues a decision in Docket No. RP05-43 providing that either (i) send-out capacity is not included in any reversion of capacity from FPS Shippers to LTD-1 Shippers or (ii) send-out capacity is included in any reversion of capacity from FPS Shippers to LTD-1 Shippers prior to the anticipated in-service date of the Post CPX Send-out Project, then the parties shall jointly inform FERC that they have settled this issue pursuant to the terms of this section 5.6 and agree that FERC should vacate or modify its order on rehearing to reflect the terms of this Settlement Agreement.