125 FERC ¶ 61,227
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Cove Point LNG, LP Docket No. RP09-41-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued November 25, 2008)

1. On October 31, 2008, Dominion Cove Point LNG, LP (Cove Point) filed a revised tariff sheet,[1] pursuant to section 1.42 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, to increase its retainage percentages for storage services from 2.2 percent to 6.9 percent. The revised tariff sheet is accepted to be effective December 1, 2008, subject to the conditions discussed below.

I. Background

2. Cove Point currently recovers its system's fuel use and lost and unaccounted for gas by retaining in-kind a percentage of gas or Liquefied Natural Gas (LNG) tendered by customers. Section 1.42 of the GT&C of its tariff governs how Cove Point's retention percentages are established and annually updated. Cove Point adjusts its retainage percentages annually by filing with the Commission on or before March 1, with such adjustment to become effective April 1. The adjusted percentages are based upon Cove Point's estimate of operating requirements for the succeeding 12-month period ending December 31 of the filing year, as adjusted for quantities retained either over or under the actual quantities required by Cove Point during the preceding 12 months ending December 31 of the prior year. If operating or other conditions warrant, Cove Point may adjust the retainage percentages at such other times as Cove Point in its reasonable discretion determines an adjustment is required to prevent excessive over or under recovery of retainage. Such filing is based upon Cove Point's estimate of operating requirements for the 12-month period ending nine months after the proposed effective

[1] Eleventh Revised Sheet No. 10 to FERC Gas Tariff, Original Volume No. 1.

date, as adjusted for quantities retained either over or under actual quantities required by Cove Point during the 12-month period ending three months prior to the proposed effective date.

3. In accordance with Cove Point's annual retainage filing in February 2008, Cove Point currently retains 2.2 percent of storage injections under its storage service Rate Schedules LTD-1, LTD-2, FPS-1, FPS-2, and FPS-3 (Storage Services). Service under the FPS rate schedules is also subject to a retainage assessment for quantities of gas remaining in storage after April 15, as described in section 5(h) of Rate Schedules FPS-1, FPS-2, and FPS-3. Section 5(h) retainage is equal to the applicable injection retainage percentage, which, as stated above, is currently 2.2 percent. Cove Point also assesses a retainage of 0.0 percent for general system services under Rate Schedules FTS, ITS, and OTS.

II. <u>Details of Filing</u>

4. In its filing, Cove Point proposes an interim increase in its injection retainage for Storage Services from 2.2 percent to 6.9 percent to be effective December 1, 2008. Cove Point states that this interim adjustment is being made to prevent an excessive under-recovery of retainage primarily due to two factors: (1) total storage gas retained shifted from an over-recovered balance of 438,979 Dth at the end of 2007 to an under-recovery of 764,095 Dth as of August 31, 2008, resulting in an increase in the storage retainage percentage by 0.4 percent (i.e., from negative 0.2 to 0.2 percent); and (2) Cove Point's estimated storage retainage has increased from 2.4 percent to 6.7 percent due primarily to the reduced level of LNG imports during the interim period. Cove Point states that during the 12 months ended August 31, 2008, quantities received for injection at Cove Point were reduced by 74 percent (i.e., 151,459,238 Dth in 2007 compared to 39,873,761 Dth during the interim period). Cove Point states that this reduction in injection activity requires that retainage requirements for ongoing operations be recovered over significantly lower injection quantities, thereby increasing the percentage of injections that must be retained.

5. As described above, section 5(h) retainage is equal to the injection retainage percentage and accordingly, Cove Point's proposed tariff sheet changes the section 5(h) retainage from 2.2 percent to 6.9 percent. Cove Point is not proposing to change the currently effective 0.0 percent retainage percentage for general system services under Rate Schedules FTS, ITS and OTS (Transportation Services) nor the currently effective 0.3 percent retainage applicable to Cove Point East.

6. Cove Point proposes that the new retainage percentage be in effect through March 31, 2009. Cove Point states that, in accordance with section 1.42 of the G&TC, it will submit its annual fuel retainage filing on or before February 28, 2009 with an effective date of April 1, 2009. Cove Point notes that, in the event of a significant change in import of LNG to be injected into storage prior to April 1, 2009, it may submit another

interim filing to revise the retainage percentage in order to prevent excessive over- or under-recoveries of fuel.

III. Notice of Filing, Intervention, and Protest

7. Notice of Cove Point's filing was issued on November 4, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Shell NA LNG LLC (Shell) and BP Energy Company (BP) filed comments, and Washington Gas Light Company (WGL) and Statoil Natural Gas LLC (Statoil) filed protests. On November 17, 2008, Cove Point filed a motion for leave to respond and a response to the protests and comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Cove Point's answer because it has provided information that assisted us in our decision-making process.

8. Shell questions whether Cove Point's fuel tracker mechanism is appropriately structured to address fuel usage fluctuations and whether it yields equitable results in the assessment of retainage charges among all of Cove Point's customers in a fluctuating market. Shell believes that Cove Point's fuel tracker mechanism could create marketplace uncertainty because such a wide variability in retainage in a relatively short time period may act as a disincentive for LNG sellers to use Cove Point's terminal. Shell believes that it is more appropriate for Cove Point and its customers to review the fuel tracker mechanism to address the impact fluctuating LNG markets has on Cove Point and its customers outside of this proceeding and it urges Cove Point to discuss with its customers the mechanism and possible revisions thereto prior to the next annual fuel tracker filing.

9. BP asserts that Cove Point's proposed retainage percentage may be out of line with the retainage at other LNG import facilities. BP urges the Commission to direct Cove Point to provide monthly data related to the major fuel consuming facilities at the Cove Point terminal in order to analyze the reasonableness of the amount of fuel being consumed.[2] In its answer, Cove Point asserts that BP's request for data is irrelevant and

[2] The requested monthly data includes: Fuel consumed by 4 turbines, an air separation unit, vaporizers, and others, as well as power generation and average air temperatures for each of the 4 turbines. BP is requesting this data for each month from August 2007 through August 2008 and monthly updates within 20 days of the last day of subsequent months.

ignores the issue of the lack of activity at the terminal. Cove Point states that there is no basis for requiring an ongoing monthly breakdown of fuel use by each piece of equipment and, in any event, each pipeline or LNG facility is unique and comparisons of fuel use with other plants will be meaningless. Cove Point asserts that its filing contains all of the data required under the Commission regulations and its tariff and is the same data used to review previous submittals.

10. Statoil states that it understands the basis for Cove Point's filing and does not believe that it has acted imprudently in its fuel usage. However, Statoil believes that the proposed increase is high and will have a negative impact on the commercial viability of the terminal. Moreover, to the extent the proposed increase results in reduced LNG imports, retainage will need to be further increased, which will in turn further reduce Cove Point's ability to attract LNG supplies. Statoil also contends that this filing could result in one shipper or class of shippers bearing a disproportionate burden of the costs associated with providing fuel at the facility. Such a result could occur, Statoil suggests, where import shippers bringing additional shipments to Cove Point during the interim period results in a reduction of the interim fuel retention percentage, thereby giving later importers a commercial advantage over earlier importers.

11. Statoil believes that there may be more reasonable solutions that will allow Cove Point to gain access to fuel to meet its operational and reliability needs while keeping its fuel retainage commercially competitive. One such alternative, Statoil maintains, is a cost- or burden-sharing mechanism. Statoil states that such a sharing mechanism will ensure that no shipper or service will be forced to bear a disproportionate burden of the fuel problem or is penalized for actions which help reduce the interim fuel retention percentage. Therefore, Statoil requests that the Commission convene a technical conference to allow Cove Point and its shippers to exchange information and ideas about alternatives to Cove Point's proposed interim retainage.

12. WGL states that Cove Point failed to explain the basis for its total estimated storage activity of 319,377,767 Dth[3] and, moreover, such projection is at odds with Cove Point's overall stated purpose of the filing which is that Cove Point needs to update its retainage to reflect a reduced level of import activity. WGL asserts that, until Cove Point can adequately explain the basis for its total estimated storage activity, the Commission should, at a minimum, require that all collections under this proposal be made subject to refund. Additionally, WGL asserts that Cove Point should also be required to explain whether this filing applies to activity using the existing terminal facilities or a combination of the existing facilities and the expansion facilities that the pipeline seeks to place into service on or after December 11, 2008.

[3] See Cove Point Filing, Appendix A-3, line 5, Col. (2).

13. WGL also argues that total estimated storage activity of 319,377,767 Dth does not "square" with the Commission's finding that "[g]iven present world LNG market conditions, shipments of LNG to the Cove Point terminal are likely to remain diminished."[4] WGL argues that, if this figure is an accurate projection of existing plant throughput over the next annual period, then the Commission must reconsider its recent finding that served as a basis for the Commission's order re-approving the construction and operation of an expansion to Cove Point LNG terminal after the Court's decision in *Washington Gas Light Company v. FERC*, 532 F. 3d 928 (D.C. Cir. 2008).

14. In response to WGL's statements regarding the total estimated storage activity of 319,377,767 Dth, Cove Point states that the figure is largely drawn from the Preliminary Annual Discharge Schedule submitted by the LTD shippers, as previously required by the Commission.[5] Cove Point states that, if the retainage percentage was computed based only on the past 12 months of actual storage activity, the retainage percentage would increase even further, to 8.6 percent. Cove Point also states that WGL's request for a refund condition must also be denied, stating that trackers with true-up provisions contain self-executing refund mechanisms. Cove Point observes that the Commission has granted this method of refund treatment,[6] and states that WGL has offered no basis to deviate from that precedent.

15. In its answer, Cove Point states that it has the obligation to ensure that the plant be ready for service regardless of whether ships arrive. Cove Point also agrees with Shell that the best way to resolve this matter is through discussion with the affected customers, rather than a technical conference, as proposed by Statoil. Therefore, Cove Point proposes to commence meeting with affected customers with a goal of reaching an appropriate long term resolution before the next regularly scheduled fuel filing at the end of February 2009. Cove Point states that if the parties can agree to a mechanism that will address the problem, Cove Point will make the appropriate filing at that time. If a resolution cannot be reached, Cove Point states that it will report that to the Commission, reserving the right to continue to follow the current mechanism or to propose an alternative solution in the future.

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[4] WGL Protest at 3, citing *Dominion Cove Point LNG, LP, et al.*, 125 FERC ¶ 61,018, at P 70 (2008) (October 2008 Order on Remand).

[5] *Dominion Cove Point LNG, LP*, 106 FERC ¶ 61,339, at P 24 (2004).

[6] *Dominion Cove Point LNG, LP*, 114 FERC ¶ 61,320, at P 6 (2006).

IV. Commission Determination

16. The Commission accepts Cove Point's revised tariff sheet to become effective December 1, 2008, subject to conditions, as discussed below. The parties generally do not dispute Cove Point's right under its tariff to make the proposed interim change in its fuel retention percentage, nor do they challenge the figures upon which Cove Point relied in calculating the revised retainage percentage, and neither do we.

17. Rather, the parties generally question the commercial viability of the terminal in light of this and any further increases in the retainage percentage as determined by the tracker mechanism. We agree with Cove Point and the parties generally that the issues raised concerning Cove Point's fuel tracker mechanism and its impact on imports at the terminal are best resolved through discussions between Cove Point and its customers. We, therefore, condition our acceptance of Cove Point's proposed tariff sheet upon Cove Point meeting with its customers for the purpose of reaching a long term, mutually agreeable resolution before Cove Point's next regularly scheduled fuel filing at the end of February 2009. If the parties can agree to a mechanism that addresses the issues raised herein, Cove Point shall make an appropriate filing at that time and alternatively, if a resolution cannot be reached prior to the fuel filing at the end of February 2009, Cove Point shall also notify the Commission thereof at that time.

18. Regarding BP's request for monthly data, we find its request irrelevant and unnecessarily burdensome. Such data, compared to other LNG facilities' fuel use, will not provide any insight on fuel use at the Cove Point facility. Each LNG facility is unique, with different fuel requirements. Requiring this additional information will not create more import activity at the Cove Point facilities, nor will it change the facts of how much fuel was used.

19. Regarding Statoil's claim that this filing could have a disproportionate negative impact on certain Cove Point importers, trackers function on an ongoing basis so that customers are responsible for the amount of the tracker when they come on the system, and do not carry any remaining cost responsibility with them when they leave the system. Just as any shipper must bear the costs present in the system when they came on the system, when they leave they will not be required to settle out any amount from the tracker mechanism.

20. Finally, WGL's statement is misplaced. We agree with Cove Point that future storage activity projections used to calculate the retainage percentage are an issue independent of the Commission's decision to approve Cove Point's expansion. If LNG supplies are not delivered, Cove Point must reconsider its fuel use regardless of the pending in-service of the expansion.

The Commission orders:

The Eleventh Revised Sheet No. 10 is accepted, effective December 1, 2008, subject to the conditions set forth in this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.