127 FERC ¶ 61,014
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 3, 2009

In Reply Refer To:
Dominion Cove Point LNG, LP
Docket Nos. RP09-399-000
RP09-399-001

Dominion Cove Point LNG, LP
701 East Cary Street, 5th Floor
Richmond, VA 23219

Attention: Daniel L. Verdun
Manager - Regulation

Reference: Annual Fuel Retainage Filing

Dear Mr. Verdun:

1. On February 27, 2009, in Docket No. RP09-399-000, Dominion Cove Point LNG, LP (Cove Point) requested waiver of section 1.42 of the General Terms and Conditions (GT&C) of its tariff to delay making a required tariff filing on March 1 to modify its annual retainage percentages until March 9, 2009. On March 5, 2009, in Docket No. RP09-399-001, Cove Point filed revised tariff sheets[1] to adjust the fuel retainage percentages for storage and transportation services and implement a revised retainage mechanism. Cove Point's request for waiver of GT&C section 1.42 is granted and its revised tariff sheets are accepted effective April 1, 2009, as requested.

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

[1] *See* Appendix for listing of tariff sheets.

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 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. On October 31, 2008, Cove Point proposed an interim increase in its injection retainage for its LNG storage service Rate Schedules LTD-1, LTD-2, FPS-1, FPS-2, and FPS-3.[2] Cove Point filed for the interim adjustment to prevent an excessive under-recovery of retainage primarily due to a decline in import activity. Cove Point stated that the reduction in injection activity required that retainage requirements for ongoing operations be recovered over significantly lower injection quantities, thereby increasing the percentage of injections that must be retained. Several parties questioned the commercial viability of the terminal in light of this and any further increases in the retainage percentage as determined by the tracker mechanism. As a result, the Commission conditioned its acceptance of Cove Point's interim filing 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.[3]

4. Currently, Cove Point retains 6.9 percent of storage injections under its storage service Rate Schedules LTD-1, LTD-2, FPS-1, FPS-2, and FPS-3, and the 2004 Terminal Expansion pursuant to GT&C section 30 (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 6.9 percent. Cove Point also assesses a retainage of 0.0 percent for general system pipeline transportation services under Rate Schedules FTS,

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[2] LTD-1 - Firm LNG Tanker Discharging Service; LTD-2 - Interruptible LNG Tanker Discharging Service; FPS-1, 2, 3 - Firm Peaking Service.

[3] *See Dominion Cove Point LNG, LP*, 125 FERC ¶ 61,227 (2008) (November 25 Order).

ITS, and OTS (Transportation Services) and a retainage of 0.3 percent for incremental transportation service on Cove Point East pipeline.[4]

5. In this filing, Cove Point proposes to implement a revised retainage mechanism as set forth in section 1.42.B of the proposed tariff sheets. Cove Point states that, in accordance with the Commission's November 25 Order, it engaged in discussions with those shippers that had expressed concern with the potential for further increases in the retainage level associated with Storage Services. Cove Point states that those discussions resulted in the instant proposal, which it claims provides for lower retainage percentages for all Storage Service rate schedules and a more timely recovery of retainage requirements.

6. Cove Point states that, absent modification of its retainage mechanism as proposed herein, Cove Point would propose to increase the retainage for Storage Services by 4.5 percent (i.e., from 6.9 percent to 11.4 percent).[5] Cove Point states that the 4.5 percent increase in retainage for Storage Services would be primarily due to: (a) the total under-recovery in storage gas retained increased 98 percent, from 764,095 Dth at the end of the interim period covered in Cove Point's October 31, 2008 interim fuel filing to 1,511,615 Dth at December 31, 2008, which results in an increase in the storage retainage percentage of 1.3 percent (i.e., from 0.2 percent to 1.5 percent); and (b) Cove Point's estimated storage retainage has increased from 6.7 percent to 9.9 percent, a difference of 3.2 percent, which Cove Point attributes primarily to continued reductions in the level of import activity at the plant.

7. Under its revised retainage mechanism, for Rate Schedule LTD-1 and the 2004 Terminal Expansion (Firm Import Shippers), Cove Point proposes capping the retainage percentage at 3.0 percent if the otherwise calculated retainage percentage exceeds 3

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[4] FTS - Firm Transportation Service; ITS - Interruptible Transportation Service; OTS - Off-Peak Firm Transportation Service. The Cove Point East project, which was certificated in 2003, allows Cove Point to receive gas at interconnections with Transcontinental Gas Pipe Line Corporation, Dominion Transmission, Inc., and Columbia Gas Transmission Corp. in Virginia for delivery on Cove Point's pipeline, which extends eastward towards Cove Point's LNG terminal in Maryland.

[5] The proposed retainage percentage for Storage Services of 11.4 percent is comprised of two components. The first component of 9.9 percent provides for the recovery of prospective retainage requirements and the second component of 1.5 percent provides for the recovery of the under-recovered balance.

percent.[6] Cove Point explains that capping the retainage percentage at 3.0 percent could result in an under-recovery from Storage Service retainage and therefore, the revised retainage mechanism provides that Storage Service under-recoveries will be reimbursed by Firm Import Shippers. More specifically, the revised tariff sheets provide that cumulative Storage Service retainage under-recoveries that are equal to or greater than 100,000 Dth during any calendar quarter will be recovered in the subsequent calendar quarter via LNG inventory transfer or the tender of gas to the Cove Point pipeline. If the cumulative Storage Service under-recovery is less than 100,000 Dth or if an over-recovery has occurred, the balance will carry forward to the subsequent calendar quarter. In the event that the cumulative Storage Service over-recovery is greater than or equal to 300,000 Dth at the end of any calendar quarter, Cove Point is required to submit an interim retainage filing if such a filing would result in a retainage percentage, calculated in accordance with proposed section 1.42.A of the GT&C, of less than 3.0 percent.[7] In addition, the revised retainage mechanism provides that the under-recovered balances as of December 31, 2008, will be reimbursed by the LTD-1 shippers during April 2009.

8. Under its proposed retainage mechanism, Cove Point states that the proposed retainage on injections under storage Rate Schedules LTD-2, FPS-1, FPS-2, and FPS-3 would be reduced by 1.5 percent, from 11.4 percent to 9.9 percent. Cove Point states the reduction from 11.4 percent to 9.9 percent is due to the reimbursement of the December 31, 2008 balance by the Firm Import Shippers served under Rate Schedule LTD-1. In addition, Cove Point states that during a period when the 3.0 percent cap is in place for Firm Import Shippers, under-recoveries will be reimbursed by Firm Import Shippers. Therefore, as set forth in Cove Point's filing and the proposed tariff revision, until the retainage percentage calculated in accordance with Section 1.42.A is less than 3.0 percent, the retainage percentage for Rate Schedules LTD-2, FPS-1, FPS-2, FPS-3 will not include a component for under-recovered quantities.

9. As described above, section 5(h) retainage is equal to the injection retainage percentage and accordingly, Cove Point's proposed tariff revisions change the section 5(h) retainage from 6.9 percent to 9.9 percent. Cove Point also proposes to increase the retainage for general system services under the Transportation Services from 0.0 percent to 0.2 percent. Cove Point further proposes to increase the incremental transportation retainage on Cove Point East's pipeline from 0.3 percent to 0.5 percent.

[6] Cove Point explains that, because the proposed retainage calculated in accordance with section 1.42.A of the GT&C is 11.4 percent, the 3 percent cap would go into effect.

[7] If the cumulative over-recovery is less than 300,000 Dth, then the balance will be carried forward to the subsequent period.

10. Notice of Cove Point's filings in Docket Nos. RP09-399-000 and RP09-399-001 was issued on March 3, 2009 and March 12, 2009, respectively. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[8] Pursuant to Rule 214,[9] 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. Washington Gas Light Company (Washington Gas) filed comments and request for technical conference and Statoil Natural Gas LLC (Statoil) filed comments in support of the proposal. Cove Point filed a motion for leave to reply and reply to Washington Gas' comments. Rule 213(a)(2) of the Commission's regulations, 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.

11. Statoil supports Cove Point's March 5, 2009 filing. Statoil believes that Cove Point's proposed tariff changes directly address Statoil's concern that a high retainage percentage at the LNG terminal puts Cove Point at a commercial disadvantage relative to other domestic and international LNG import terminals and could lead to a further decrease in the level of activity at Cove Point. Statoil states that Cove Point's proposal is the result of lengthy discussions between Cove Point and its Firm Import Shippers. Statoil states that the more frequent collection of under-recoveries by Cove Point and the additional repayment options (e.g., LNG or pipeline gas) should allow Cove Point to operate its system efficiently and within the proposed cap. Finally, Statoil asserts that the proposed tariff changes properly balance the needs of LNG importers who, based on global market conditions, may import cargoes of LNG on a less than regular basis, with the needs of Cove Point to minimize the over- and under-recoveries as a result of LNG imports into the Cove Point facility.

12. Washington Gas filed comments requesting that a technical conference be held to discuss Cove Point's proposed tariff sheets.[10] Washington Gas states that it is unable to confirm the reasonableness of Cove Point's calculations. Of particular concern to Washington Gas is Cove Point's use of three different figures to compute storage retainage, including: (a) a three year average for terminal injections by LTD-1 shippers;

[8] 18 C.F.R. § 154.210 (2008).

[9] 18 C.F.R. § 385.214 (2008).

[10] Washington Gas states that it is responsible for storage retainage as a FPS customer and transportation retainage as an FTS customer taking service on both a forward-haul basis and a back-haul basis as a Cove Point East customer.

(b) a two-year average for storage injections by FPS shippers; and (c) a one year look at actual gas used on the system.[11] Washington Gas also questions the transportation retainage calculation, which is based upon one year of gas used and a three-year average for injection quantities. Washington Gas argues that Cove Point has not justified the use of so many different time periods in computing its new retention rates.[12] With regard to the calculation of the Cove Point East pipeline retainage, Washington Gas states that Cove Point has not provided the detail necessary to determine which customers were charged the Cove Point East retainage (and associated volumes) and which customers and volumes are projected to be charged this added retainage in the next period. Accordingly, Washington Gas requests that Cove Point's filing be set for technical conference to allow for a full explanation.

13. In response to Washington Gas, Cove Point states that it has consistently derived the projected storage gas retainage requirement using a "one year look at actual gas on

[11] According to Cove Point's workpapers, the storage retainage of 11.4 percent was calculated by dividing the (a) projected storage gas retainage requirement for 2009, by (b) the total estimated storage activity for 2009. The storage gas retainage requirement was calculated by adding the estimated storage gas usage for 2009 based upon a look at the prior year's storage gas usage and the total under/over retained storage gas at December 31, 2008. The estimated storage gas activity for 2009 was based upon estimated storage injections by LTD and FPS shippers. The estimated storage activity for LTD service was based on the three-year average injection quantity provided by LTD-1 shippers for calendar years 2006 through 2008 and the estimated storage activity for FPS service was based on the average annual injections experienced during the 2007 to 2008 time period.

[12] According to Cove Point's workpapers, the retainage percentage for general system transportation services is calculated by dividing the (a) total transportation gas retainage requirement for 2009, by (b) the total estimated transportation activity for 2009. The total transportation gas retainage requirement for 2009 is derived by adding the under-recovered balance at the end of 2008 to the estimated transportation gas retainage requirement for 2009. The estimated transportation gas activity for 2009 is based upon the general system estimated transportation activity for 2009, which is the sum of 2009 estimated LTD delivered FTS and OTS quantities, the 2009 estimated non-LTD delivered FTS, ITS, and OTS quantities, and the 2009 estimated non-injection FTS, ITS, and OTS quantities. The 2009 estimated LTD delivered FTS and OTS Quantities were determined by multiplying the 2008 ratio of LTD delivered FTS and OTS to injections by the average LTD injections during 2006 to 2008. The 2009 estimated non-LTD delivered FTS, ITS, and OTS quantities and the estimated non-injection FTS, ITS, and OTS quantities were based upon 2008 experience.

the system" because the past 12 months of activity is the best information for developing the prospective storage retainage component. Regarding Cove Point's use of a three year average for terminal injections by LTD shippers, Cove Point states that, in response to Washington Gas' comments in Docket No. RP09-41-000, Cove Point abandoned the preliminary discharge schedule which it previously used to estimate terminal injection activity, concluding that it would not provide a reasonable estimate of terminal injection activity for the upcoming year.[13] Cove Point also states that calculating the estimated storage activity for FPS service based upon the average annual injections experienced during the 2007 to 2008 time period is also consistent with past filings and is minor relative to estimated LNG injections. Therefore, Cove Point states, it did not propose to modify the FPS estimation methodology.

14. Most importantly, Cove Point argues, if the retainage mechanism is modified as proposed in this filing, the methodology for determining the total estimated storage activity which Washington Gas is questioning will not have any practical effect because the proposed retainage modified mechanism would remove the retainage component associated with under-recovered balance thereby reducing the retainage percentage from 11.4 percent to 9.9 percent.

15. Regarding Washington Gas' concerns about the transportation retainage calculation, Cove Point states that a key component to pipeline activity is the estimated level of injections at the terminal. Cove Point states that in past filings when it used the preliminary discharge schedule of the import shippers to estimate terminal injection levels, Cove Point also used the preliminary discharge schedule quantities to estimate pipeline activity. Cove Point states that in this filing, since it is using the three-year average terminal injections to estimate storage activity (not the preliminary discharge schedule), it is also using that time period to estimate pipeline activity. With regard to gas used, Cove Point states that, similar to calculating retainage for storage services, it uses the previous twelve months' gas usage to develop the prospective retainage component for transportation service. However, it bases projected transportation volumes on an average for the three years 2006 to 2008. Cove Point maintains that, as with the storage retainage percentage, if it were to use only 2008 activity to estimate transportation volumes, the retainage percentage for the general system transportation retainage percentage would rise from 0.2 percent to 0.4 percent.

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[13] Cove Point also states that, in determining a revised methodology for estimating terminal injection activity, it also took into consideration that as the total estimated storage activity decreased the retainage component associated with the under-recovered balance would increase and could further exacerbate the issues identified in Docket No. RP09-41-000.

16. Cove Point argues that Washington Gas' request for the detailed breakdown of which customers were charged Cove Point East retainage and the associated volumes is beyond the scope of a filing under Section 1.42 of the tariff. [14] Cove Point states the estimated 2009 Cove Point East activity was based on the actual Cove Point East activity during 2008.

17. The Commission grants Cove Point's requested waiver of GT&C section 1.42 and accepts Cove Point's proposed tariff sheets to become effective April 1, 2009. No party opposes Cove Point's proposed changes to section 1.42 of its GT&C in order to revise its tracking mechanism for recovering its fuel usage, which results in lower retainage percentages than Cove Point would impose under the existing provisions of section 1.42. Therefore, the Commission approves the revisions to section 1.42.

18. In its comments on Cove Point's filing, Washington Gas questions Cove Point's calculation of its proposed fuel retainage percentages, specifically Cove Point's methods of projecting its fuel usage and storage injection and transportation volumes for the 12-month period ending December 31, 2009. Section 1.42 of Cove Point's GT&C requires that it make these projections based upon "its estimate of operating requirements for the succeeding 12-month period ending December 31 of the filing year." Cove Point has not proposed to change that part of section 1.42 in this filing. Thus, Cove Point's tariff gives it discretion as to what methodology to use to project both its fuel usage and its shippers' storage injection and transportation volumes in the next year.

19. In the instant filing, Cove Point has used generally the same methodology to make these projections as it has used in its previous retainage filings approved by Commission.[15] Where Cove Point proposes to deviate from the methodology in its previous filings, Cove Point does so to lower the retainage percentages and thus avoid jeopardizing the commercial viability of the Cove Point plant, which was a concern raised by several shippers in Cove Point's last interim filing. For example, Cove Point states, if it had used only 2008 injections as the basis for determining the storage retainage component instead of a three year average for terminal injections, the result would have been to increase the proposed storage retainage percentage to 15.2 percent

[14] However, Cove Point notes that of the 106,789 Dth of Cove Point East retainage, approximately 39 percent was retained from Cove Point East customers and the remaining 61 percent was retained from other shippers in accordance with Cove Point's tariff.

[15] *See e.g. Dominion Cove Point LNG, LP*, 125 FERC ¶ 61,227 (2008); unpublished letter order, Docket No. RP08-229-000, issued March 20, 2008; 118 FERC ¶ 61,263 (2007).

instead of 11.4 percent (i.e. the under-recovered component would have increased from 1.5 percent to 5.3 percent).

20. Also, we do not find it necessary for Cove Point to provide additional information regarding which customers were charged Cove Point East retainage and the associated volumes and which customers and volumes were projected to be charged in the next period, as requested by Washington Gas. As stated in its tariff, Cove Point currently assesses Cove Point East retainage to secondary receipts under Rate Schedules FTS and OTS and to interruptible receipts under Rate Schedule ITS.[16] Also, as shown in Cove Point's workpapers, the estimated 2009 Cove Point East activity was based upon the actual Cove Point East activity during 2008,[17] and Cove Point states in its answer that of the 106,789 Dth of Cove Point East retainage during 2008, approximately 39 percent was retained from Cove Point East customers and the remaining 61 percent was retained from other shippers in accordance with Cove Point's tariff as stated above. Therefore, Washington Gas' request for further information is denied.

21. We disagree with Washington Gas and find that Cove Point has justified the calculations used to obtain its proposed retainage percentages. Moreover, the true-up aspect of Cove Point's retainage mechanism will serve to correct any incorrect assumptions in projecting future gas usage and injections and transportation volumes. Therefore, we deny Washington Gas' request for technical conference.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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[16] *See* Fourth Revised Sheet No. 92, section 4.(b)(3)(ii), First Revised Sheet No. 123, section 4.2(c)(2), and Third Revised Sheet No. 113, section 5.(b)(2)(ii), of Cove Point's FERC Gas tariff.

[17] *See* Cove Point Filing Appendix B-2, Line 24.

Appendix

Docket Nos. RP09-399-000 & RP09-399-001
Dominion Cove Point LNG, LP

FERC Gas Tariff, Original Volume No. 1
Tariff Sheets to be Effective April 1, 2009

Twelfth Revised Sheet No. 10
Twelfth Revised Sheet No. 12
Sixth Revised Sheet No. 205
Original Sheet No. 205A
Original Sheet No. 205B