

134 FERC ¶ 61,219
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 18, 2011

In Reply Refer To:
Dominion Cove Point LNG, LP
Docket No. RP11-1785-000

Dominion Transmission, Inc.
701 East Carey Street, 5th Floor
Richmond, Virginia 23219

Attention: Daniel L. Verdun
Manager, Regulation

Reference: Non-Conforming Negotiated Rate Agreement with Statoil (FTS3006)

Ladies and Gentlemen:

1. On February 18, 2011, Dominion Cove Point LNG, LP, (DCP) filed revised tariff records¹ to report a restructured negotiated rate service agreement with Statoil Natural Gas LLC (Statoil) under Rate Schedule FTS. DCP states the agreement may materially deviate from its *pro forma* service agreement. DCP requests waiver of the Commission's 30-day notice period and asks that the Commission accept its revised tariff records effective March 1, 2011. We grant waiver of the notice period and conditionally accept DCP's revised tariff records effective March 1, 2011, subject to DCP filing revised tariff records, within 30 days of the date this order issues, setting forth the changes discussed below.

2. DCP's restructured agreement would replace an existing non-conforming negotiated rate agreement between DCP and Statoil, which was previously entered into as part of the Cove Point Expansion Project certificated by the Commission.² The

¹ See Appendix.

² See *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006) (Certificate Order), *reh'g*, 118 FERC ¶ 61,007 (2007).

Commission issued an order accepting the existing agreement on October 18, 2009, in Docket No. RP09-1076-000, finding that the non-conforming provisions proposed by DCP do not present a risk of undue discrimination and do not affect the quality of service received by Statoil or any other shipper.³ The primary expiration date of the existing agreement is March 25, 2029, and the contractual maximum daily quantity (MDQ) is 800,000 Dt per day. DCP states that its restructured agreement with Statoil contains a different term and MDQ from its existing agreement. DCP proposes the primary term of the restructured agreement to run from March 1, 2011, through December 31, 2020, and proposes an MDQ under the agreement of 800,000 Dt per day until January 1, 2017, at which point the contractual MDQ is reduced to 160,000 Dt per day.

3. DCP states its restructured agreement contains certain non-conforming provisions that mirror the provisions accepted by the Commission in its existing agreement, with only minor changes. First, DCP proposes to adjust the negotiated limit of the Statoil parental guaranty in its restructured agreement as set forth under the Creditworthiness provisions of section V of the agreement.⁴ Second, the existing agreement includes a provision that limits each party's aggregate liability to the other for any damages under the service agreement. DCP states that parties have agreed to modify this provision so that it now limits only DCP's liability to Statoil, and not Statoil's liability to DCP. DCP asserts these provisions address the unique characteristics of the Cove Point Expansion, do not affect service to Statoil or any other of DCP's shippers, and do not present a risk of undue discrimination.

4. Finally, under section 5(b)(2) of DCP's currently effective General Terms and Conditions (GT&C),⁵ DCP and a shipper may agree to "the termination of an existing service agreement prior to its expiration date contingent upon negotiated conditions, including the payment of any agreed upon termination fees." DCP proposes to revise its *pro forma* service agreement under Rate Schedules FTS, *et al.*, to include a blank for terms entered into pursuant to section 5(b)(2) of its GT&C.

³ *Dominion Cove Point LNG, LP*, 129 FERC ¶ 61,073 (2009).

⁴ Under the existing agreement, the limit "shall be equal to (1) \$78 million upon the date of issuances until the In-Service Date and (2) will decrease by \$3.9 million each year thereafter." Under its proposed restructured agreement, the limit would be equal to the net present value of all reservation rate payment obligations calculated at a discount rate of 4.3944 percent per year.

⁵ Tariff Record 40.6, GT&C – Service Agreement, 0.0.0.

5. Public notice of the filing was issued on February 23, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁶ Pursuant to Rule 214,⁷ all timely filed motions to intervene and any unopposed 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 the proceeding or place additional burdens on existing parties. Washington Gas Light Company (WGL) timely filed adverse comments, which we discuss below. Atlanta Gas Light Company and Virginia Natural Gas, Inc., as well as Public Service Company of North Carolina, Incorporated, filed comments in support of WGL's comments.⁸ DCP filed an answer addressing these comments.

6. In its comments, WGL expresses concerns over two elements of the restructured agreement. First, it contends that DCP fails to disclose the reason for the significant MDQ reduction, or whether DCP received any considerations for agreeing to the shorter term, lesser quantity, or other concessions. WGL asserts that DCP and Statoil should be required to disclose the amount, timing, and other details concerning any considerations so that the proper accounting and rate treatment for the considerations can be appropriately reviewed and determined.

7. WGL also expresses concerns about the financial impact of the restructured agreement on existing shippers. Specifically, WGL asks the Commission to reaffirm two paragraphs from the underlying certificate order. The first provides that DCP "is not proposing to allocate any pipeline expansion costs to any existing customers, nor is it proposing to change the currently effective transportation rates."⁹ The second is that DCP's "existing pipeline transportation customers should not pay for the expansion of the pipeline system if they do not benefit or receive service from the incremental facilities, nor should [DCP] be permitted to shift any costs to them."¹⁰ WGL asserts that the

⁶ 18 C.F.R. § 154.210 (2010).

⁷ 18 C.F.R. § 385.214 (2010).

⁸ In footnote 2 of its answer, DCP correctly notes that Atlanta Gas Light Company, Virginia Natural Gas, Inc., and Public Service Company of North Carolina, Incorporated, all filed their comments and motions to intervene out-of-time. These parties filed on March 2, 2011, but after the 5:00 p.m. close of business. Nevertheless, DCP did not move to oppose a grant of late intervention pursuant to Rule 214(d); we grant late intervention accordingly.

⁹ Certificate Order, 115 FERC ¶ 61,337 at P 113.

¹⁰ *Id.* at P 114.

Commission should also specifically find that DCP still bears the full economic risk for the remaining cost of the expansion facilities (O&M, return on equity, and return of equity) during the current period and when the Statoil agreement terminates or the MDQ under the agreement is reduced.

8. In its answer, DCP states that it negotiated the restructured agreement with Statoil pursuant to section 5(b)(2) of its GT&C, which permits DCP and a shipper to mutually terminate an agreement prior to the agreement's expiration and subject to negotiated conditions, including a possible termination fee. DCP disagrees with WGL's assertion that DCP should disclose the amount, timing, and other details of any considerations made for the restructuring of the agreement. DCP argues that the only issue in this proceeding is whether the non-conforming provisions are permissible under Commission policy. It asserts that WGL's request to state the considerations made by parties to terminate the contract are outside the scope of this proceeding. DCP adds, however, that it did not receive any termination or exit fee, or additional monetary compensation, from Statoil as part of this agreement restructuring.

9. WGL expresses concerns that it not be responsible for any under-collection of costs resulting from this contract restructuring, and requests that the Commission reaffirm as such. DCP states that in the Certificate Order authorizing the Cove Point Expansion Project, the Commission stated:

Cove Point LNG's existing pipeline transportation customers should not pay for the expansion of the pipeline system if they do not benefit or receive service from the incremental facilities, nor should Cove Point LNG be permitted to shift any costs to them. To further protect the existing customers, we will require Cove Point LNG to keep separate books and accounting of the costs attributable to the proposed incremental service.¹¹

10. DCP acknowledges that it must operate the Cove Point Expansion Project subject to prior Commission orders on the project, and sees no need for the Commission to reaffirm any findings from those orders. DCP contends that, as required by the Commission, it keeps separate books and accounts for the costs attributable to the Cove Point Expansion Project, and is not proposing any reallocation of costs in the subject filing, and no rates are at issue. It adds that any further consideration of the potential, future effect of the change in Statoil's service agreement on other shippers would be premature and speculative at this time. DCP states that all issues concerning future cost allocations should be deferred until a future rate case when they may be considered based on a fully developed record concerning the relevant facts as they exist at that time.

¹¹ *Id.* P 114.

11. We conditionally accept DCP's revised tariff records setting forth its restructured agreement with Statoil. DCP filed the agreement pursuant to section 5(b)(2) its GT&C which allows DCP and a shipper to mutually agree to terminate an agreement. With regard to the non-conforming provisions set forth in the agreement, the Commission already approved the majority of these provisions by order issued October 18, 2009, in Docket No. RP09-1076-000, finding that the non-conforming provisions proposed by DCP address unique circumstances concerning the foundation shippers for an expansion and therefore do not present a risk of undue discrimination and do not affect the quality of service received by Statoil or any other shipper.¹² In the subject filing, as explained above, DCP proposes revisions to its Creditworthiness provisions and Limited Liability provisions set forth in the agreement. For the same reasons the Commission found that the original versions of these non-conforming provisions were permissible material deviations, the Commission finds that revised versions of these particular non-conforming provisions set forth in the restructured agreement do not present a risk of undue discrimination and do not affect the quality of service received by Statoil or DCP's shippers. Accordingly, we accept the non-conforming provisions.

12. WGL urges the Commission to direct DCP and Statoil to disclose the amount, timing, and other details concerning any considerations made to terminate the agreement so that the proper accounting and rate treatment for the considerations can be appropriately reviewed and determined. In its answer, DCP states that that it did not receive any termination or exit fee, or additional monetary compensation, from Statoil as part of the agreement restructuring.

13. WGL requests that the Commission reaffirm that existing shippers will not be responsible for any under-collections by DCP as a result of the contract restructuring. As DCP recognizes in its answer, DCP is required to operate its Cove Point Expansion Project under the terms and conditions of its tariff and the order authorizing the certificate, which requires DCP to keep separate books and accounts for the expansion project.

14. The acceptance of DCP's revised tariff records, however, is subject to one condition. DCP's agreement with Statoil, as restructured, includes a ramp-down provision for MDQ. Specifically, from March 1, 2001, through December 31, 2016, the contractual MDQ under the agreement is 800,000 Dt per day. From January 1, 2017, though December 31, 2020, the contractual MDQ decreases to 160,000 Dt per day.

¹² *Dominion Cove Point LNG, LP*, 129 FERC ¶ 61,073.

15. The Commission addressed ramp-down provisions in service agreements in *Tuscarora*.¹³ Specifically, in that proceeding, the Commission found a non-conforming provision in an agreement between Tuscarora and Barrick Goldstrikes Mine, Inc., allowing the shipper to step down its contractual quantities after the first ten years of the agreement, to be an impermissible deviation from Tuscarora's *pro forma* service agreement. The Commission determined that providing a shipper with the option to negotiate, at the agreement's outset, a reduction in quantity at a specific time in the contract is a valuable right to that shipper that must be made generally available to all shippers. The Commission directed Tuscarora to offer the right to all shippers by either: (1) filing revised tariff records providing for this valuable right to all shippers through a tariff provision in its GT&C; or (2) amending its *pro forma* service agreement to include blank lines to fill in specific time periods and the option of decreasing contract quantity for those periods.

16. Consistent with Commission findings in *Tuscarora*, the Commission finds in the instant agreement that Statoil's ability to decrease its MDQ on January 1, 2017, from 800,000 Dt per day to 170,000 Dt per day represents a valuable right that DCP does not offer to all shippers, and is thus an impermissible material deviation. Accordingly, we direct DCP to file revised tariff records, within 30 days of the date this order issues, either: (1) removing the MDQ ramp-down from the agreement; (2) providing the ramp-down right to all shippers on a not unduly discriminatory basis through a generally applicable tariff provision in its GT&C; or, (3) amending its *pro forma* service agreement to include blank lines to fill in specific time periods and the option of decreasing contract quantity for those periods.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

¹³ *Tuscarora Gas Transmission Co.*, 131 FERC ¶ 61,091 (2010).

Appendix

Dominion Cove Point LNG, LP
DCP_DATABASE
FERC NGA Gas Tariff
Tariff Records to Become Effective March 1, 2011

Tariff Record 40.34, GT&C – Non-Conforming Service Agreements, 1.0.0
Tariff Record 40.34.1, GT&C – Non-Conforming Service Agreements - Statoil, 0.0.0
Tariff Record 45.4, Negotiated Rates, 1.0.0
Tariff Record 50.1, FOSA – LTD, FPS, FTS, ITS, OTS Rate Schedule, 1.0.0