

138 FERC ¶ 61,169
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 12, 2012

In Reply Refer To:
Dominion Cove Point LNG, LP
Docket No. RP11-2136-000

Dominion Cove Point LNG, LP
701 East Cary Street, 4th Floor
Richmond, VA 23219

Attention: Margaret H. Peters, Assistant General Counsel

Reference: Letter Order Approving Uncontested Settlement

Ladies and Gentlemen:

1. On March 2, 2012, Cove Point submitted a Stipulation and Agreement of Second Cooling Cargo Settlement (Second Cooling Cargo Settlement) pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. Cove Point requests approval of the Secondary Cooling Cargo Settlement and related limited, temporary waivers, in order to allow the Second Cooling Cargo Settlement to be implemented in an expeditious manner. Cove Point states that all parties to this proceeding support the Second Cooling Cargo Settlement, and requests Commission approval by March 12, 2012. We find the settlement fair and reasonable and in the public interest and approve it accordingly; we also find good cause to grant the accompanying request for limited, temporary waivers.
2. On May 27, 2011, pursuant to section 4 of the Natural Gas Act (NGA), Dominion Cove Point LNG, LP (Cove Point) filed revised tariff records in this docket proposing changes to certain terms and conditions of service, to be effective June 26, 2011. On the same day, Cove Point filed a general section 4 rate case in Docket No. RP11-2137-000. In its transmittal explaining each of these filings, Cove Point stated that it is currently experiencing a significant decline in usage of its Cove Point LNG Terminal in Lusby, Maryland and related facilities (Terminal), largely due to the development of large quantities of shale gas domestically and the consistent demand for LNG outside of the United States. Cove Point asserted that the resulting decline in LNG cargoes to the Terminal is causing significant operating concerns because unless Cove Point receives periodic deliveries of LNG cargoes, it will be unable to keep the cryogenic portions of the Terminal cooled to the temperature necessary to receive LNG imports.

3. Cove Point therefore proposed to modify certain tariff provisions to encourage the arrival of LNG cargoes by 1) providing for Cove Point's right to issue an Operational Flow Order (OFO) requiring the tender of LNG at the Terminal if Cove Point determines that the integrity and performance capability of its system is threatened and to allow Cove Point to bill the responsible buyer for the costs incurred in obtaining the LNG that have not been collected through any applicable OFO penalties; 2) allowing the prepayment of fuel obligations; 3) removing current barriers to the availability of interruptible discharging service; and 4) modifying the Scheduling Provisions in Rate Schedule LTD-1 to encourage more accurate nominations and to provide for a \$10,000 per occurrence scheduling penalty for its Rate Schedules LTD-1 and LTD-2 shippers.

4. On June 24, 2011, the Commission issued an order rejecting Cove Point's tariff revisions regarding Operational Flow Orders, without prejudice to a future filing proposing to amend Cove Point's authority to recover operational costs, and accepting and suspending for the maximum suspension period all other revised tariff records, to be effective November 26, 2011, subject to refund and the outcome of the technical conference.¹ Commission Staff convened a technical conference on July 14, 2011 to address issues raised by Cove Point's filing. According to Cove Point, at the conclusion of the technical conference it and the Firm Import Shippers² agreed upon a timely but interim solution to settle the imminent operational issues at the Terminal.

5. On July 22, 2011, Cove Point submitted the first Stipulation and Agreement of Interim Partial Settlement (July 2011 Settlement) in this docket. Under the July 2011 Settlement, the parties to this docket arranged for a one-time delivery of LNG cargo in order to provide the LNG needed to keep the Terminal operational. The Commission found the July 2011 Settlement to be uncontested and approved it on July 27, 2011.³

6. On November 25, 2011, the Commission issued an Order on Technical Conference that accepted certain of Cove Point's tariff proposals subject to conditions, and rejected others.⁴ In particular, the November 2011 Order accepted the proposed prepayment option, rejected Cove Point's proposed revisions to Rate Schedule LTD-2, accepted the proposed scheduling flexibility revisions, accepted the proposed scheduling penalty subject to conditions, accepted the authorized overrun revision, and directed

¹ *Dominion Cove Point LNG, LP*, 135 FERC ¶ 61,261 (2011).

² The Firm Import Shippers are BP Energy Company, Shell NA LNG LLC, and Statoil Natural Gas, LLC.

³ *Dominion Cove Point LNG, LP*, 136 FERC ¶ 61,059 (2011).

⁴ *Dominion Cove Point LNG, LP*, 137 FERC ¶ 61,158 (2011) (November 2011 Order).

Cove Point to file revised tariff records to bring its reservation charge crediting provisions into line with Commission policy.

7. In December 2011, the parties reached an agreement in principle which addresses the cooling issues and several other outstanding concerns. On December 22, 2011, the Chief Administrative Law Judge suspended the procedural schedule in Docket No. RP11-2137-000 to allow the parties additional time to continue to finalize the settlement in principle. On December 30, 2011, Cove Point filed tariff records to adjust, on an interim basis, the cost responsibility and establish other pertinent terms associated with the immediate implementation of expanded utilization of Cove Point's existing liquefier to assist in addressing the operational issues associated with the declining LNG inventory levels at the Cove Point Terminal.

8. Cove Point states that the parties intend to file a comprehensive settlement soon, which would supersede the outstanding filings and settle the unresolved issues in this proceeding. However, Cove Point states that it will not be able to submit the comprehensive settlement to the Administrative Law Judge until later this month. Before that settlement can be reviewed and approved by the Commission, Cove Point states, its Terminal will require another LNG cargo in order to remain fully operational.

9. Accordingly, on March 2, 2012, Cove Point submitted the present Second Cooling Cargo Settlement. Cove Point states that the Second Cooling Cargo Settlement provides a limited solution to the operational issues at the Terminal by arranging for a one-time operational purchase of LNG by Cove Point. Cove Point states that the Second Cooling Cargo Settlement is limited and will apply only to the delivery of one LNG cargo to the Cove Point Terminal in April 2012. In addition, Cove Point states that the settlement will have no adverse economic impact on Cove Point's peaking or transportation shippers and will not change their services in any way. Cove Point states that the purpose of the settlement is to provide all of the parties in this proceeding with additional time to finalize and receive approval of a comprehensive settlement. Cove Point states that the Second Cooling Cargo Settlement in no way alters, amends, or limits the rights of any party in the captioned docket; all of the parties will retain all of their rights with respect to the outcome of the ongoing proceeding in this docket.

10. Cove Point further requests limited one-time waivers of certain sections of its tariff and of the Commission's regulations to effectuate the Second Cooling Cargo Settlement. In particular, Cove Point requests limited waiver of section 28 of its General Terms and Conditions (GT&C), and sections 4.3 and 5.4 of Rate Schedule LTD-1, which place conditions on operational purchases and on send-out of LNG inventory that work against the purpose of the settlement. Cove Point requests that the Commission approve the Second Cooling Cargo Settlement no later than March 12, 2012, given the commercial realities and time involved in shipping an LNG cargo to the United States.

11. The Commission granted Cove Point's request for a shortened comment period, making initial comments due on March 5, 2012 and reply comments due on March 6, 2012. No adverse comments were filed.

12. The main provisions of the Second Cooling Cargo Settlement may be summarized as follows.

13. Article I sets forth the procedural background, and Article II describes the scope of the Second Cooling Cargo Settlement.

14. Articles III, IV, and V respectively describe the operational purchase of the April Cooling Cargo, its operational sale, and the send-out of the operational sale quantities. The purchase party and sale party (or parties) will be determined by a bid process that will be implemented immediately upon the Commission's approval of this Second Cooling Cargo Settlement. Because the Firm Import Shippers will bear the costs of the LNG, the Firm Import Shippers will have the first opportunity to bid to sell the LNG to Cove Point, and to purchase the LNG from Cove Point. In the event no acceptable bids are received from the Firm Import Shippers, the Second Cooling Cargo Settlement also provides for a mechanism under which Cove Point will offer qualified third parties the opportunity to sell the necessary LNG quantities to Cove Point, or purchase such LNG from Cove Point. The purchaser of the Cooling Cargo quantities shall be required to nominate for vaporization and delivery as natural gas no more than 12,000 Dth/day, pursuant to Cove Point's Tariff. This nomination level is set based on the anticipated volume of boil off gas that must be sent out each day. The 12,000 Dth/day boil off figure is lower than the figure used in the previous settlement because Cove Point currently is using its liquefier to return boil off gas to a liquid state.

15. Article VI sets forth various cost recovery and billing and payment provisions. In particular, the Article provides that the Firm Import Shippers agree to reimburse Cove Point for the amount paid by Cove Point for the Article III Operational Purchase, and Cove Point agrees to refund the Firm Import Shippers the net proceeds for the Article IV Operational Sale, with the differential allocated to each Firm Import Shipper using specified percentages.

16. Article VII provides that, upon the effective date of the Second Cooling Cargo Settlement, Cove Point will allow Cap Period Under Recovery quantities described in GT&C section 1.42B to be fulfilled via tenders of Natural Gas for Under Recoveries incurred in the first and second quarters of 2012.

17. Article VIII provides that, in the event of a Commission order denying, modifying, or conditioning any provision of the Second Cooling Cargo Settlement or Expedited Motion that materially and adversely affects any Party, the parties will negotiate a good-faith resolution or else terminate the settlement. Article IX establishes the effectiveness of the settlement. Article X sets forth various reservations to the settlement, including that, to the extent the Commission considers any changes to the terms of the settlement while it is in effect, the standard for review of such changes shall be the most stringent standard permissible under applicable law.

18. The Second Cooling Cargo Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. In addition, for good cause shown, the Commission grants the limited, one-time waivers of Cove Point's tariff and of our regulations requested by Cove Point and necessary to effectuate the Second Cooling Cargo Settlement. The requested waivers are of limited scope, address a concrete problem, do not harm third parties, and were negotiated in good faith. The Commission's approval of the Second Cooling Cargo Settlement and grant of waiver does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission.

Kimberly D. Bose,
Secretary.