

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 30, 2006

In Reply Refer To:  
Dominion Cove Point LNG, LP  
Docket No. RP06-237-000

Dominion Cove Point LNG, LP  
120 Tredegar Street  
Richmond, VA 23261

Attention: Mabelle F. Grim, Manager  
Regulatory & Pricing

Reference: Request to Modify Revenue Crediting Mechanism

Dear Ms. Grim:

1. On February 28, 2006, Dominion Cove Point LNG, LP (Cove Point) filed to change a provision in a previously-approved Stipulation and Agreement (the 2001 Settlement) in Docket No. CP01-76,<sup>1</sup> to be effective March 30, 2006. Cove Point proposes to alter its settlement obligation to credit certain revenues from Authorized Overrun Service to its customers. Cove Point states that all the LTD-1 Shippers<sup>2</sup> have agreed to revise the percentage of those revenues that it is required to credit back to the LTD-1 Shippers from one hundred percent (100%), as required by the 2001 Settlement, to fifty percent (50%). As discussed below, the Commission rejects Cove Point's proposal without prejudice to Cove Point filing the agreement with the LTD-1 Shippers and a *pro forma* tariff sheet to reflect the credit proposal in a petition for approval of the agreement and tariff proposal.

---

<sup>1</sup> *Cove Point LNG Limited Partnership*, 97 FEC ¶ 61,043; *order granting and denying reh'g in part, granting and denying clarification*, 97 FERC ¶ 61,276 (2001); *order denying reh'g and granting and denying clarification*, 98 FERC ¶ 61,270 (2002).

<sup>2</sup> The LTD-1 Shippers consist of: Shell NA LNG LLC (Shell), BP Energy Company (BP), and Statoil Natural Gas LLC (Statoil).

## **Background**

2. The 2001 Settlement currently provides at section II.9.(a) that Cove Point “shall refund annually one hundred percent (100%) of the reservation rate components of all Authorized Overrun Service revenues received under Rate Schedules LTD-1, FPS-1, FPS-2, FPS-3, and LTD-2 plus interest . . . to the Rate Schedules LTD-1, FPS-1, FPS-2, and FPS-3 customers.” Under this section of the 2001 Settlement, the Rate Schedule FPS customers receive a percentage of the refund amount computed by formula,<sup>3</sup> and the LTD-1 Shippers receive the balance.

3. On April 15, 2005, Cove Point filed in Docket Nos. CP05-130-000 and CP05-132-000 applications to expand its LNG import terminal at Cove Point, Maryland. Dominion Transmission, Inc. filed concurrently in Docket No. CP05-131-000 to expand its natural gas pipeline facilities (the Expansion Proceedings). On May 27, 2005, Cove Point filed, in Docket No. CP05-130, *et al.*, a “Notice of Terms of Settlement of Matters Related to the Cove Point Expansion Proceedings” (May 27, 2005 Notice) which recounted certain agreements between Cove Point and the LTD-1 Shippers regarding the proposed expansions.<sup>4</sup> The May 27, 2005 Notice, among other things, contained a statement that Cove Point and its LTD-1 Shippers agreed on “certain terms related to” Cove Point’s filing “to modify its existing obligations to credit LTD-1 overrun charges to the LTD-1 Shippers,”<sup>5</sup> but did not specify how the existing obligations to credit LTD-1 Shippers would be modified.

## **Proposal**

4. Cove Point submitted its proposal in a transmittal letter without any accompanying material. The transmittal letter states that, as stipulated under the May 27, 2005 Notice, Cove Point and its LTD-1 Shippers have agreed to modify the revenue crediting mechanism to allow a sharing of revenues generated from Authorized Overrun Service

---

<sup>3</sup> The percentage is the ratio of the total of all FPS customers’ Maximum Contract Peaking Quantities (MCPQs) under Rate Schedule FPS to the annualized daily LTD-1 maximum daily delivery quantities plus the Rate Schedule FPS MCPQs.

<sup>4</sup> The May 27, 2005 Notice did not seek specific Commission approval of the agreement reached by Cove Point, BP, Shell and Statoil. The applications and the amendments filed in Docket Nos. CP05-130-000, CP05-131-000 and CP05-132-000 are pending before the Commission.

<sup>5</sup> May 27, 2005 Notice at 3.

under Rate Schedule LTD-1 between the LTD-1 Shippers and Cove Point. Cove Point asserts that overruns under Rate Schedule LTD-1 would result in additional send-out from Cove Point's LNG terminal, making it possible to import additional gas through the facility. Cove Point contends that the resulting additional gas supply opportunities would benefit not only the LTD-1 Shippers but the market generally.

5. Cove Point states that the LTD-1 Shippers have agreed to permit Cove Point to retain 50 percent of the portion of the LTD-1 overrun charges that would otherwise be credited back to the LTD-1 Shippers under the 2001 Settlement. Cove Point contends that the change in revenue crediting agreed to by Cove Point and the LTD-1 Shippers will have no effect on crediting the portion of the LTD-1 overrun charges that must be refunded to Rate Schedule FPS customers. Cove Point contends that the proposal will have no effect on the revenue crediting required for overrun revenues under Rate Schedule FPS. Cove Point states that the agreement affects only Cove Point and the LTD-1 Shippers and will not adversely affect any other Cove Point shippers. Cove Point further states that to the extent the revenue sharing agreement implemented here results in incremental LTD-1 overrun service, it will result in additional revenue crediting to the FPS customers.

6. Cove Point also contends that the change in the revenue crediting obligation is not opposed by the only parties that will be affected by the change, and will not adversely affect any other customers. Cove Point states that the change is in the public interest since it provides an incentive for Cove Point to help maximize the amount of gas that may be imported through the terminal.

7. Cove Point states that the settlement revenue crediting requirement is not reflected in Cove Point's tariff and that no tariff filing is required to implement the new revenue crediting approach. Accordingly, Cove Point states that its filing did not include any revised tariff sheets. Cove Point requests any waivers that may be deemed necessary to permit the implementation of this change in revenue crediting.

### **Notice and Protests**

8. Public notice of the filing was issued on March 7, 2006. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any motion 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. Cove Point filed a motion for leave to answer and an answer to the FPS Shippers' protest. The Commission's Rules of Practice

and Procedure generally prohibit answers to protests or answers.<sup>6</sup> The Commission will waive the Commission's rules and accept Cove Point's answer because it provides information that may assist the Commission in its decision-making process.

9. Statoil filed in support of the proposal, requesting that the Commission accept and approve the provisions without condition or modification.

10. The FPS Shippers<sup>7</sup> filed a joint protest and request that the filing be rejected without prejudice to Cove Point filing a new application which conforms to the Commission's regulations. The FPS Shippers state that the 2001 Settlement was an agreement that included Cove Point, and its expected LTD-1 Shippers, as well as the FPS Shippers. The FPS Shippers contend that the sole purpose of section II.9(a) of the 2001 Settlement was to prevent an unjust over-recovery of costs associated with the reservation component of Cove Point's rates, and that if Cove Point were to retain the revenues from Cove Point's Authorized Overrun Service reservation rates, there would be an over-recovery of Cove Point's fixed costs. The FPS Shippers state that there may be circumstances where the parties could enter into a settlement which would allow Cove Point to retain 50 percent of the reservation component revenues. However, the FPS Shippers state that pursuant to Rule 602 of the Commission's regulations, such a settlement would be filed with the Commission, and all of the parties would have an opportunity to argue whether the proposed settlement is fair. The FPS Shippers contend that Cove Point and the LTD-1 Shippers negotiated a secret agreement and the *quid pro quo* for the 50 percent revenue retention by Cove Point remains undisclosed.

11. FPS Shippers state that the Commission should honor the 2001 Settlement and require Cove Point to make a *Mobile-Sierra*<sup>8</sup> "public interest" showing that such a modification is necessary, that a mere allegation that the LTD-1 Shippers may like it, or even an allegation that the result will be "just and reasonable" is not enough. The FPS Shippers assert that Cove Point has failed to provide any workpapers or projections to back up its claim that it provides an incentive to Cove Point to help maximize the amount

---

<sup>6</sup> 18 C.F.R. § 385.213(a)(c) (2005)

<sup>7</sup> FPS Shippers consist of: Washington Gas Light Company, Public Service Company of North Carolina, Inc., Virginia Natural Gas Inc., and Atlanta Gas Light Company.

<sup>8</sup> *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

of gas that may be imported through the terminal, nor does the filing explain why the incentive is needed. FPS Shippers assert that the filing leaves the clear impression that Cove Point will be in a position to over-recover its reservation-component related costs.

12. The FPS Shippers further state that Cove Point does not offer a cost and revenue study as required by 18 C.F.R. § 154.204(e) or 18 C.F.R. § 154.303 and 154.312, and, that the filing does not comply with Part 154 at all. The FPS Shippers also state that Cove Point did not even tender the proposed revisions to section II.9(a) so that the Commission can understand the details of its proposal.

### **Cove Point's Answer**

13. Cove Point states it has filed its agreement with the LTD-1 customers in a different Commission proceeding so there is no basis to FPS Shippers' contention of a "secret agreement."<sup>9</sup> As to how the modification operates, Cove Point states that the modification in no way changes the existing allocation of authorized overrun charges between LTD-1 Shippers and FPS Shippers, nor does it in any way affect the portion of the overrun charges under Rate Schedules LTD-1 and LTD-2 that must be refunded to Rate Schedule FPS customers. The modification alters the amount of the overrun charges under Rate Schedule LTD-1 actually credited back to the LTD-1 Shippers. As such, Cove Point states that the filing is related to the distribution of revenue-credits for authorized overruns of jurisdictional natural gas service under its contracts with the LTD-1 customers. Accordingly, Cove Point states that it filed the modification under Part 154. Moreover, since there is no pending Commission proceeding related to this proposal, it states that there is no basis to file the proposal under settlement Rule 602, citing *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 at P 31.

14. Cove Point asserts that its filing satisfies the requirement of a Part 154 filing, and that the various sections FPS Shippers refer to in their protest, such as sections 154.204, 154.303 and 154.312 have no applications in this case. They are inapplicable, it contends, because the filing is not a change in rate schedules, forms of service agreements, or the general terms and conditions.

---

<sup>9</sup> On January 11, 2006, in response to a Commission Staff data request in Docket No. CP05-395-000, Cove Point submitted a redacted version of an agreement with the LTD-1 Shippers. Cove Point states that the proposed revisions to the credit provision for authorized overrun service are addressed in section 8.4 of that LTD-1 agreement. Cove Point Answer at pages 5-6, note 8. Cove Point did not seek Commission approval of that agreement, and requested confidential treatment of that submission.

15. Cove Point further contends that the *Mobile-Sierra* doctrine does not apply to this filing because *Mobile-Sierra* only applies to unilateral filings to modify rate contracts, and this filing is not unilateral and does not seek to modify any rate. Cove Point asserts that the filing is in the public interest because it provides a new benefit to the public by creating an incentive to maximize gas flow without cost to anyone and that the parties have agreed upon the amendment to the 2001 Settlement. Cove Point urges the Commission to implement the new revenue-credit distribution approach effective as proposed, on March 30, 2006.

### **Discussion**

16. Cove Point may implement a change in the 2001 Settlement by bilateral agreement with the LTD-1 Shipper parties to that settlement provided that the change does not adversely affect the rates or services of the FPS Shipper parties. However, Cove Point's filing is deficient as it did not follow Commission policy regarding the implementation of such an agreement.

17. In *Dominion Transmission, Inc.*,<sup>10</sup> the Commission explained that in situations where the pipeline has filed a negotiated agreement regarding rates or services with its customers, but there is no pending "proceeding" and, as such, Rule 602 would not apply,<sup>11</sup> and the pipeline seeks approval of the agreement before making a section 4 filing that would implement the agreed to rates or services, "the pipeline should simply file pursuant to section 385.207(a)(5), [footnote omitted] a petition for approval of the agreement, along with *pro forma* tariff sheets showing how the agreement would be implemented."<sup>12</sup> Cove Point is in a different posture here insofar as it has not filed its agreement with the LTD-1 Shippers or otherwise sought Commission approval of that agreement, and has taken the position that its proposal does not call for a tariff change. Cove Point is in error and should have followed the requirements set forth above in *Dominion*. Accordingly, Cove Point's filing is deficient since it did not include the underlying agreement with the LTD-1 Shippers for Commission approval; nor did it include *pro forma* tariff provisions reflecting its proposed change in a petition for approval of the agreement and tariff provision.

---

<sup>10</sup> 111 FERC ¶ 61,285 (2005 (*Dominion*)).

<sup>11</sup> Rule 602 applies to settlement agreements filed in a "proceeding pending before the Commission or set for hearing under subpart E." 18 C.F.R. § 385.602(a) (2005).

<sup>12</sup> 111 FERC ¶ 61,285 at P 31-32.

18. Although Cove Point asserts in its Answer<sup>13</sup> that it “filed” the underlying agreement in materials included as part of its response to a Staff data request in Docket No. CP05-130-000, it did not seek Commission approval of the agreement and did not file it in this proceeding. Further, in its filing here, Cove Point never specified what exact language change in the crediting mechanism it is proposing, which should be clearly reflected in precise tariff language that is drafted to ensure that the FPS Shippers’ rates and services will not be adversely affected by the proposal.<sup>14</sup>

19. For the reasons discussed above, the Commission rejects Cove Point’s filing, without prejudice to Cove Point submitting a fully supported petition for approval of the underlying agreement with the LTD-1 Shippers, including *pro forma* proposed tariff provisions, that fully satisfies the requirements described above.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

---

<sup>13</sup> Cove Point Answer at page 5, n. 8.

<sup>14</sup> Cove Point should include the entire section II.9.(a) credit mechanism, as modified to reflect its proposed changes, as a proposed *pro forma* tariff provision, rather than only the changed portions of that provision.