

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Cove Point LNG, LP

Docket No. CP05-395-001

ORDER DENYING REHEARING AND CLARIFICATION

(Issued January 4, 2007)

1. This order addresses a request for rehearing filed by the Public Service Company of North Carolina, Inc. (North Carolina) of two Commission orders issued on June 16, 2006, which authorized Dominion Cove Point LNG, LP (Cove Point) to expand its liquefied natural gas (LNG) terminal in Lusby, Maryland. In Docket No. CP05-130-000, *et al.*,¹ the Commission authorized Cove Point to begin a major expansion of its LNG terminal and its downstream infrastructure to transport the expansion gas to market. A companion order in Docket No. CP05-395-000,² authorized Cove Point to refurbish two waste heat vaporizers located at the terminal so that the facility can deliver up to its current peak-day send-out capacity on a year-round basis.³

¹ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006).

² *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,336 (2006).

³ Washington Gas Light Company (Washington Gas) filed requests for rehearing of the orders in Docket Nos. CP05-130-000, *et al.* and CP05-395-000 concerning the gas quality of the LNG supplies that will enter its system as a result of the expansion projects. All gas quality and safety issues are being addressed in the order on rehearing of the order in Docket No. CP05-130-000, *et al.* which is being issued contemporaneously with this order.

2. North Carolina requests rehearing of the order in Docket No. CP05-130-000, *et al.*, asking that the Commission require Cove Point to make a three-year rate filing to support its expansion and file an unredacted version of the LTD-1 Settlement, an agreement that it entered into with its expansion customers prior to filing the expansion applications. North Carolina also requests the Commission to clarify or grant rehearing to find that Cove Point must file a full general section 4 rate case when it implements a new off-peak semi-firm transportation service on the Cove Point Pipeline to accommodate the increased volumes associated with the authorization granted in Docket No. CP05-395-000. Finally, North Carolina requests the Commission to find that the in Docket No. CP05-395-000, it should not have treated the proposal to reactivate the waste heat vaporizers as an expansion under section 3(e) of the Natural Gas Act (NGA).
3. For the reasons discussed herein, the Commission denies North Carolina's request for rehearing and clarification in part and dismisses it as moot in part.

Background

4. Cove Point owns and operates an LNG import terminal in Lusby, Calvert County, Maryland, and the Cove Point Pipeline, which extends approximately 87 miles from the terminal to interconnections with several interstate pipelines in Loudon County, Virginia. The LNG terminal and pipeline were authorized in 1972. LNG shipments to Cove Point ended in 1980 and for the next fourteen years the facilities were used only to provide a small amount of interruptible transportation through the Cove Point Pipeline.
5. In 1994, the facilities were reactivated and adapted for the purpose of storing domestic natural gas during the summer for use at peak times during the winter.⁴ Cove Point continues to provide 10-day, 5-day and 3-day firm peaking services under Rate Schedules FPS-1, FPS-2, and FPS-3, respectively, and provides firm and interruptible transportation services on the Cove Point Pipeline under Rate Schedules FTS and ITS.⁵ Under a one-time election, the FPS customers chose to receive transportation service on

⁴ *Dominion Cove Point LNG Limited Partnership*, 68 FERC ¶ 61,377 (1994), *reconsideration denied*, 69 FERC ¶ 61,292 (1994).

⁵ Under the FPS rate schedules, the customer may inject domestic gas for storage as LNG during an injection season from April 16 to December 14, which gas is later vaporized and redelivered during a withdrawal season from December 15 to April 15. The FPS rate schedules include a bundled transportation service under which FPS customers receive transportation service on the Cove Point Pipeline from the LNG terminal to the interconnection with other interstate pipelines in Virginia.

the Cove Point Pipeline on an unbundled basis under Rate Schedule FTS, which is a Part 284 open-access transportation service.⁶

6. In 2001 the Commission authorized⁷ Cove Point to construct new facilities and to reactivate and operate existing facilities to recommence the importation of LNG, and to provide LNG terminalling services for shippers importing LNG under Rate Schedules LTD-1 and LTD-2.⁸ As part of that authorization, the Commission approved a settlement (2001 Settlement) among all the parties that established initial rates for the new LTD import customers and lower rates for the existing FPS and FTS customers.

7. In 2003, the Commission authorized Cove Point to construct and operate two new compressor stations on the Cove Point Pipeline to provide additional west-to-east firm transportation capacity.⁹ In 2004, the Commission authorized Cove Point to place into service a fifth LNG storage tank with a capacity of 2.8 Bcf that was approved in the 2001 reactivation orders. Thus, the LNG import terminal currently has a total storage capacity of 7.8 Bcf and 1.0 MMDth/day of peak send-out capacity.

8. In 2005, Cove Point filed a series of applications to significantly expand the LNG terminal. These applications are addressed in the June 16, 2006 Orders in Docket No. CP05-130-000, *et al.* and Docket No. CP05-395-000.

9. Among other things, the Docket No. CP05-130-000, *et al.* Order permits Cove Point to increase LNG storage tank capacity by 87 percent to 14.6 Bcf and to expand its daily regasification capacity by 80 percent to 1.8 MMDth/day of peak send-out capacity. Cove Point will provide the expansion capacity and services to one import shipper,

⁶ The FPS customers are: Washington Gas, North Carolina, Virginia Natural Gas Inc., and Atlanta Gas Light Company.

⁷ *Dominion Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043 (2001), *order on reh'g*, 97 FERC ¶ 61,276 (2001), *order on reh'g*, 98 FERC ¶ 61,270 (2002).

⁸ The current LNG import shippers receiving LTD service are Statoil Natural Gas LLC (Statoil), Shell NA LNG LLC and BP Energy Company. The LTD service consists of the receipt of LNG from tankers, the temporary storage of LNG, vaporization of the LNG and delivery of natural gas to points along the Cove Point Pipeline.

⁹ *Dominion Cove Point LNG, LP*, 105 FERC ¶ 61,234 (2003).

Statoil, under deregulated rates and services based on the *Hackberry*¹⁰ policy and the new NGA provisions of the Energy Policy Act of 2005 (EPAAct 2005),¹¹ while continuing to provide service to other customers using the existing terminal capacity on a regulated basis.

10. The order in Docket No. CP05-395-000 enables Cove Point to reactivate two waste heat vaporizers to deliver an additional 250,000 Dth/day of firm send-out capacity to meet its current peak day send-out capacity of 1 Bcf/day. That order also finds that the EPAAct 2005 provisions prevent the Commission from imposing conditions on Cove Point's proposal to allocate the additional send-out capacity at the terminal to its existing LTD-1 shippers under a new incremental send-out service (ISQ). The Commission stated that it would defer acting on Cove Point's proposal to deliver the increased volumes made available under the ISQ service under an off-peak firm transportation service (OTS) on the downstream Cove Point Pipeline until Cove Point submits a fully supported section 4 rate filing to implement the service.

11. North Carolina is a firm transportation customer of the Cove Point Pipeline under Rate Schedules FPS-1 and FTS. It requests rehearing of the orders in Docket Nos. CP05-130-000, *et al.* and CP05-395-000 because it is concerned that FTS shippers paying regulated rates may end up shouldering some of the expansion costs and that their FTS service may be degraded by the expansion capacity being allocated to the LNG import shippers. A discussion of North Carolina's rehearing requests follows.

Discussion

Should Cove Point be Required to Propose the Off-Peak Firm Transportation Service (OTS) in a full Section 4 Rate Filing?

12. Cove Point proposed to offer a new semi-firm OTS service on the Cove Point Pipeline to transport the increased volumes associated with reactivating the waste heat vaporizers. The order in Docket No. CP05-395-000 did not rule on the merits of the proposal because Cove Point had not supported the proposed new rate schedule with the

¹⁰ *Hackberry LNG Terminal, LLC*, 101 FERC ¶ 61,294 (2002), *order issuing certificates and on reh'g, Cameron LNG, LLC*, 104 FERC ¶ 61,269 (2003)(Commission determines that light-handed regulation of LNG projects is needed to foster the development of LNG infrastructure and services).

¹¹ Energy Policy Act of 2005, Pub. L. No. 109-58, 199 Stat. 594 (2005).

information required by the Commission's regulations.¹² Instead, the order directed Cove Point to make an appropriate supported tariff filing to implement the OTS service.

13. North Carolina seeks clarification that Cove Point must submit a full general section 4 rate case, rather than a limited section 4 filing, when it files to establish Rate Schedule OTS. North Carolina explains that FPS peaking customers are limited to withdrawing gas from storage on a limited number of days per heating season and do not use their firm FTS transportation on the Cove Point Pipeline year round. It asserts that the OTS rate is tailored to resell the unused pipeline capacity of the FPS shippers, without providing the FPS shippers compensation for that revenue. Further, North Carolina states that the LTD-1 Settlement commits Cove Point to using a *United*¹³ rate design for Cove Point Pipeline's OTS rates, while the FPS Shippers have rates based on straight-fixed-variable (SFV) rate design,¹⁴ which North Carolina contends places more risk on Cove Point Pipeline for OTS throughput levels than for FTS service to the detriment of FPS Shippers. For these reasons, and because the Cove Point Pipeline is a small pipeline with limited capacity where the implementation of a semi-firm OTS service would have a large impact on other rates, North Carolina asserts that it would be inequitable to permit a limited section 4 filing to implement the OTS rate without adjusting the FTS rate of firm peaking customers.

14. On October 27, 2006, Cove Point submitted a filing in Docket No. RP07-36-000, proposing to implement Rate Schedule OTS. The Commission issued an order on December 13, 2006,¹⁵ accepting the *pro forma* tariff sheets in that docket, subject to conditions, and further consolidated that proceeding with Cove Point's ongoing general

¹² 18 C.F.R. § 154.202 (2006).

¹³ *United Gas Pipe Line Company*, Opinion No. 671, 50 F.P.C. 1348 (1973), *reh'g denied*, 51 F.P.C. 1014 (1974), *aff'd sub nom. Consolidated Gas Supply Corporation v. FPC*, 520 F.2d 1176 (D.C. Cir. 1975). The *United* rate design, which was instituted by the Commission during a period of natural gas shortages, is a rate design that places 75 percent of the pipeline's fixed costs in the commodity (usage) charge and 25 percent in the demand (reservation) charge.

¹⁴ Under the SFV rate design methodology variable costs (*i.e.*, those that fluctuate depending on throughput) are assigned to the usage charge and fixed costs (those that do not vary with throughput) are assigned to the reservation charge.

¹⁵ *Dominion Cove Point LNG, LP*, 117 FERC ¶ 61,289 (2006).

section 4 rate proceeding in Docket No. RP06-417-000.¹⁶ Therefore, North Carolina's request on rehearing that Cove Point be required to submit Rate Schedule OTS in a general section 4 rate case has been rendered moot.

**Should Cove Point be Required to Make a Rate Filing Within
Three Years of the In-Service Date of the Expansion Facilities?**

15. North Carolina states that when Congress enacted EPAct 2005 to amend the NGA to allow LNG terminal operators to collect unregulated rates from expansion customers, it included new NGA section 3(e)(4) to assure that the non-expansion open-access customers will not subsidize the unregulated service or otherwise have their service degraded by the expansion.¹⁷

16. North Carolina notes that within weeks of receiving its expansion authorization, Cove Point submitted a new general section 4 rate case filing in Docket No. RP06-417-000, to be effective on October 1, 2007, which adopts a new cost allocation and rate design. However, this recent filing does not reflect the semi-firm OTS service, or allocate any costs to such service. North Carolina states that if the OTS expansion service is implemented while the rates are based on the Docket No. RP06-417-000 test period data, the FPS shippers will be forced to subsidize the expansion capacity contrary to NGA section 3(e)(4).

17. Rather than relying on speculative future section 4 rate case filings to ensure that LNG expansions are not being subsidized by existing customers, North Carolina urges the Commission to require Cove Point to file a full section 4 rate case within three years of the in-service date for the facilities when the actual costs and volumes for the expansion service will be ascertainable. At the very least, North Carolina asserts that Cove Point should be required to submit a full cost and revenue study at the end of three years.

¹⁶ *Dominion Cove Point LNG, LP*, 116 FERC ¶ 61,110 (2006).

¹⁷ NGA section 3(e)(4) states that an order authorizing an expansion at an LNG terminal where the terminal operator already offers open-access service, "shall not result in subsidization of expansion capacity by existing customers, degradation of service to existing customers, or undue discrimination against existing customers as to their terms or conditions of service at the facility."

18. North Carolina recognizes that the periodic rate case filing requirement was rejected in *Public Serv. Comm'n v. FERC (PSC)*.¹⁸ The court found that the requirement blurred the distinctions between NGA sections 4 and 5 by shifting the Commission's section 5 burden to prove that an existing rate is no longer just and reasonable to the proponent of the rate who had already met its burden with its section 4 proposal. However, North Carolina states that in a section 3 proceeding such as this, the burden is on the applicant to justify any proposed cost allocation. It argues that because the Commission has deferred acting on any allocation issues until a future section 4 proceeding when costs are known, requiring a section 4 filing after the relevant data is known would not eviscerate section 5 as feared by the court in *PSC*.

19. North Carolina's attempt to distinguish the facts here from those in *PSC* is unavailing. In *PSC*, the pipeline's rate base was expected to decline leading to the pipeline's over recovering its costs. As a remedy, the Commission read the provisions of section 16 of the NGA¹⁹ as granting authority for requiring the pipeline company to refile its rates every three years in a section 4 filing so that the rates could be examined and adjusted. In rejecting this approach to the problem of cost over recovery, the *PSC* court clearly stated that no other provision of the NGA should be read to alter the separate obligations of NGA sections 4 and 5.²⁰ We find North Carolina's argument that the Commission should rely on the protective provisions of NGA section 3(e)(4) to support requiring Cove Point to make a section 4 filing within three years is analogous to what court prohibited in *PSC*.

20. Further, as discussed above, Cove Point's filing to implement Rate Schedule OTS has been consolidated with Cove Point's ongoing rate proceeding in Docket No. RP06-417-000. North Carolina may raise any and all issues, including those concerning cost subsidization, in that proceeding.

Should Cove Point be Required to File the Unredacted LTD-1 Settlement?

21. Next, North Carolina contends that the Commission should have required Cove Point to provide an unredacted version of the LTD-1 Settlement which was entered into

¹⁸ 866 F.2d 487 (D.C. Cir. 1989).

¹⁹ Section 16 gives the Commission the power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of the NGA.

²⁰ *PSC*, 866 F.2d 487, 490 (1989).

between Cove Point and its expansion shippers before Cove Point filed its expansion applications. North Carolina asserts that the LTD-1 Settlement is a document that affects the rates and services that Cove Point will charge for expansion capacity that must be filed for Commission review under the just and reasonable standard of NGA section 4. In addition, it asserts that the complete LTD-1 Settlement is needed for the Commission to exercise its duty to eliminate any anticompetitive provisions of the settlement.²¹

22. North Carolina contends that the LTD-1 Settlement attempts to make important changes to the 2001 Settlement, to the circumstances surrounding the FPS shippers' contract extension rights, to the timing of Cove Point's general section 4 rate filing and to the quality of the FPS shippers' service. North Carolina also states that the LTD-1 Settlement appears to impermissibly tie the parties' commercial interests in unregulated section 3(e)(3) matters with Cove Point's regulated conduct that remains protected under sections 3(e)(4), 4 and 5 of the NGA. For these reasons, North Carolina requests the Commission to require Cove Point to file the complete LTD-1 Settlement under section 4 of the NGA.

23. The order in Docket No. CP05-395-000 found that the LTD-1 Settlement sets forth the parties agreements and respective obligations regarding future expansion certificate filings and that when the filings are made the Commission and interested parties will have the opportunity to review each filing for sufficiency. We further found that the proposals being made in the expansion applications before us did not amend or alter the FPS customers' rights under the 2001 Settlement. The Commission is unpersuaded that the LTD-1 Settlement is necessary or required to review the expansion rates.

24. We are likewise unconvinced that the LTD-1 Settlement impermissibly ties the parties' commercial interest in unregulated matters with Cove Point's regulated conduct. Rather, the LTD-1 Settlement contemplates future filings, some of which are subject to traditional regulation such as the expansion services on the Cove Point Pipeline; others which fall under lightly regulated conduct established by *Hackberry* and EAct 2005 such as the expansion services at the terminal.

²¹ *Citing Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 at 62,341 (1998), *order on reh'g*, 87 FERC ¶ 61,110 (1999), *reh'g denied*, 88 FERC ¶ 61,168.

Does Refurbishment of Waste Heat Vaporizers Qualify for Treatment as Expansion under Section 3(e)?

25. Finally, North Carolina states that the Commission erred in determining in Docket No. CP05-395-000 that the proposal to refurbish the two waste heat vaporizers was an expansion subject to deregulated treatment under section 3 of the NGA as amended by EAct 2005. It states that the vaporizers originally were installed in 1972 and that their overhaul does not increase peak-day send-out capacity but only allows Cove Point to operate at or near its peak-day send-out capacity on more days during the year. It contends that these facilities which were subject to the Commission's section 7 jurisdiction when built should remain so now. North Carolina adds that requiring Cove Point to keep separate books for the waste heat vaporizer project will not protect existing shippers from subsidizing the unregulated service.

26. The Commission notes that the waste heat vaporizers have been dormant since Cove Point terminated LNG imports in 1980. They were not a part of Cove Point's reactivation of the terminal in 2001. Therefore, Commission authorization is required to put the refurbished facilities into service. Prior to the issuance of EAct 2005, the Commission clarified that section 3 authority alone was sufficient to authorize the siting, construction, expansion and operation of LNG import terminals.²² Moreover, the vaporizers qualify as "LNG terminal" facilities as defined by EAct 2005, because they will be used to gasify natural gas imported to the United States from a foreign country.²³ Further, these facilities are not "pipeline or storage facilities subject the jurisdiction of the Commission under section 7," which would exclude them from definition as LNG terminal facilities.²⁴ Accordingly, we find that the waste heat vaporizers are LNG terminal facilities as defined in amended NGA section 3 and will deny North Carolina's request for rehearing on this issue.

27. Finally, we reject North Carolina's contention that requiring Cove Point to maintain separate books for the waste heat vaporizer expansion project will not protect the FPS shippers from subsidizing the unregulated service at the LNG terminal that is associated with this expansion. The separate books will allow the parties to determine the costs attributable to the services provided to the FPS customers and to the LNG

²² *Sabine Pass LNG, L.P. and Cheniere Sabine Pass Pipeline Company*, 109 FERC ¶ 61,324 (2004), *Southern LNG Inc.*, 103 FERC ¶ 61,029 (2003).

²³ NGA section 2(11).

²⁴ NGA section 2(11)(B).

import shippers. Thus, in a future rate proceeding the parties will be able to evaluate the costs and make all arguments concerning the appropriate rate calculations.

28. We find these requirements are sufficient to protect non-expansion customers from impermissible cross-subsidization and to ensure that the expansion is in the public interest.

The Commission orders:

North Carolina's requests for rehearing and clarification are denied in part and dismissed as moot in part.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.