

125 FERC ¶ 61,281
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

December 10, 2008

In Reply Refer To:
Dominion Cove Point LNG, LP
Docket No. RP09-62-000

Dominion Cove Point LNG, LP
P.O. Box 26532
Richmond, VA 23261

Attention: Daniel L. Verdun
Manager – Regulation, Dominion Transmission, Inc.

Reference: Order Accepting Tariff Sheets

Dear Mr. Verdun:

1. On November 10, 2008, Dominion Cove Point LNG, LP (Cove Point) filed tariff sheets¹ to comply with the Commission's Order on Remand issued October 7, 2008,² requiring Cove Point to submit revised tariff sheets, consistent with the Commission's order issued June 16, 2006.³ As discussed below, the tariff sheets listed in footnote 1 satisfactorily comply with the Commission's October 7 Order on Remand and are accepted effective the later of December 11, 2008, or the actual date on which the facilities are placed into service. Cove Point must notify the Commission of the exact date that the tariff sheets should be placed into effect.

2. Cove Point submitted its revised tariff sheets to comply with the Commission's October 7 Order on Remand. The October 7 Order on Remand reauthorized Cove Point's and Dominion Transmission Inc.'s (Dominion) construction of all the facilities

¹ Seventh Revised Sheet No. 200, Original Sheet No. 284 and Original Sheet No. 285 to its FERC Gas Tariff, Third Revised Volume No. 1.

² *Dominion Cove Point LNG, LP*, 125 FERC ¶ 61,018 (2008) (October 7 Order on Remand).

³ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006), *order on reh'g* 118 FERC ¶ 61,007 (2007).

that comprise the Cove Point Expansion Project.⁴ Section 30 of the General Terms and Conditions (GT&C) of Cove Point's FERC Gas Tariff, Original Volume 1 reflects the only tariff change required for the LNG portion of the Expansion Project, which was required by the previous orders, namely, the removal of a reference to the May 24, 2005 Settlement from section 30(a) of the GT&C.

3. Public notice of the filing was issued on November 12, 2008. Interventions and protests were due on or before November 24, 2008 as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2008)), 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 the proceeding or place additional burdens on existing parties. A protest was filed by Washington Gas Light Company (Washington Gas). Cove Point filed an answer to the protests. While the Commission's regulations do not permit the filing of answers to protests,⁵ the Commission will accept the answer because it provides additional information which aids in our decision-making process.

4. Washington Gas urges the Commission to reject Cove Point's compliance filing. Washington Gas argues that Cove Point's filing does not comply with the Commission's orders, and further argues that Cove Point has no legal authority to operate the expansion facilities. Washington Gas asserts that the October 7 Order on Remand was deficient because of its failure to adequately address and resolve Washington Gas's safety concerns and because the order itself was *ultra vires*. Washington Gas states that the tariff sheets do not comply with the Commission's orders and fail to address Washington Gas's concerns with respect to Gas Quality provisions and restrictions on deliveries to Cove Point's interconnection with Columbia Gas Transmission Corporation at Loudoun, Virginia. Finally, Washington Gas states that if the Commission does not reject the filing, it should clarify the meaning of proposed section 30(a)(2) of Cove Point's tariff.

5. In its answer, Cove Point dismisses Washington Gas's protest as "frivolous" and rejects its assertion that Cove Point has no legal authority to operate the expansion facilities. Cove Point states that the Commission's October 7 Order on Remand "unquestionably reissued full authorization" for Cove Point and Dominion to construct and operate the Expansion Project. Cove Point asserts that the authorizations contained in the October 7 Order on Remand are legally effective unless and until the Commission rules otherwise or if and when a court reverses the Commission's action upon judicial review. Additionally, Cove Point argues that it has complied with Commission orders with respect to Cove Point's LNG Terminal Expansion, under Docket No. CP05-130. Cove Point states that the objections Washington Gas raises with the submitted tariff

⁴ See 125 FERC ¶ 61,018, at P 3 (2008).

⁵ 18 C.F.R. § 385.213 (2008).

sheets are not valid because these objections will be addressed in a future compliance filing dealing with the Cove Point transportation facilities and associated service for the Expansion Project under Docket No. CP05-132. Finally, Cove Point dismisses Washington Gas's request to clarify the meaning of section 30(a)(2) of Cove Point's proposed GT&C of its tariff since the Commission considered and approved section 30 over two years ago. Cove Point states that the only change to section 30 is the removal of the reference to the May 24, 2005 Settlement, which the Commission ordered, while the substance and language of section 30 remains the same as when the Commission approved it over two years ago.

6. The tariff sheets filed by Cove Point comply with the requirements of the Commission's October 7 Order on Remand concerning the LNG Terminal Expansion. The revised sheets remove reference to the May 24, 2005 Settlement from section 30(a) of the tariff's GT&C, as required by the Commission's June 16 and January 4 Orders.⁶ Washington Gas's protest regarding the content of these tariff sheets is a collateral attack on the Commission's orders authorizing Cove Point's Expansion Project and approving section 30 of Cove Point's tariff.

7. Washington Gas asserts that Cove Point's compliance filing fails to comply with the requirements of the Commission's October 7 Order on Remand as it fails to propose tariff language reflecting the Commission's 530,000 Dth/d restriction on deliveries to its interconnection with Columbia Gas Transmission Corporation at Loudoun, Virginia.⁷ As Cove Point observes in its answer, this compliance filing relates solely to the expansion of its LNG terminal facilities and is unrelated to requirements regarding the construction of transportation facilities and services authorized in Docket No. CP05-132. The restriction on deliveries referenced by Washington Gas relates to a future compliance filing that will be made by Cove Point at such time as it determines the completion date for the transportation facilities. Cove Point is required to file revised tariff sheets and compliance with various provisions of Docket No. CP05-132, 60 to 30 days prior to the transportation services going into effect.⁸

8. Washington Gas requests that, if the Commission does not reject Cove Point's filing, the Commission clarify section 30(a)(2). This section provides that "Firm LNG Tanker Discharge Service – Expansion" NGA section 3 shippers are not subject to the gas quality provisions in Cove Point's tariff as they relate to nitrogen injection allocation priorities. Washington Gas states that the tariff provision does not address what happens

⁶ See 115 FERC ¶ 61,337, at P 148 (2006), *order on reh'g* 118 FERC ¶ 61,007 (2007).

⁷ See October 7 Order on Remand at Ordering Paragraphs (A) and (B).

⁸ 115 FERC ¶ 61,337, at P 130 (2006), *order on reh'g* 118 FERC ¶ 61,007, at P 123 (2007).

should needed nitrogen injection exceed the injection facilities capability and requests that the Commission clarify: 1) the provision of incremental services would be halted in such circumstances; and 2) nothing in section 30(a) limits or diminishes Cove Point's obligation to Washington Gas as provided for in section 8(j) of the General Terms and Conditions.⁹

9. Washington Gas did not raise these issues in the underlying proceedings or on rehearing. None of the Commission's orders in this proceeding modified the application of section 8(j) for deliveries to Washington Gas. Washington Gas's challenge to the terms of Cove Point's approved tariff language is beyond the scope of a compliance filing proceeding.¹⁰ Further, Washington Gas fails to understand the relationship between section 30(a)(2) and section 30(a)(6); which clarifies the points that Washington Gas claims need clarification. When read together, these sections clearly state that Section 3 Buyers only have access to nitrogen injection to the extent that it is available beyond what is required for the Rate Schedule LTD-1 services. Therefore this tariff condition remains applicable to all gas delivered to Washington Gas.

10. Washington Gas's assertion that the October 7 Order on Remand was *ultra vires* and of no legal effect because it was issued one day prior to the issuance of the court's mandate in *Washington Gas Light Co. v. FERC*,¹¹ is a matter Washington Gas has already raised in its November 6, 2008 request for rehearing of the October 7 Order on Remand, and the Commission will address that claim, as well as Washington Gas's assertion that the October 7 Order on Remand failed to adequately address and resolve safety concerns, when it issues its rehearing order in that proceeding.

The Commission orders:

(A) Cove Point's proposed tariff sheets listed in footnote no. 1 are accepted to be effective the later of December 11, 2008, or the actual date on which the facilities are placed into service.

⁹ See Sheet Nos. 233-237 of Cove Point's FERC Gas Tariff Volume 1.

¹⁰ See *Arizona Public Service Co. v. Idaho Power Co.*, 95 FERC ¶ 61,081 (2001); *Algonquin Gas Transmission Co.*, 75 FERC ¶ 61,351 (1996).

¹¹ 532 F.3d 928 (D.C. Cir. 2008).

(B) Cove Point is directed to notify the Commission of the exact date the tariff sheets are to be put into effect.

(C) Washington Gas's protest is rejected.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.