

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Southern LNG Inc.

Docket No. RP04-148-000

ORDER ACCEPTING TARIFF SHEETS

(Issued February 27, 2004)

1. On January 30, 2004, Southern LNG Inc. (SLNG) filed revised tariff sheets<sup>1</sup> proposing to increase its demand surcharge to maintain the Elba Island turning basin for LNG ships pursuant to its annual maintenance dredging costs tracker. SLNG proposes to make the revised tariff sheets effective on March 1, 2004, the beginning of the next annual period. Point Fortin LNG Exports Ltd. (PFLE) filed a protest. This order accepts the revised tariff sheets to be effective March 1, 2004, for the reasons discussed below. This order benefits the public because it will ensure that the proposed dredging surcharge cost adjustment accurately reflects SLNG's tariff provisions.

**Instant Filing**

2. SLNG states that this filing increases the demand surcharge for the maintenance costs from the current \$0.0529 to the proposed \$0.0947 per Dth. SLNG further states that the increase recovers the projected costs of \$4,050,000 plus a \$591,279 shortfall under the current charge. SLNG asserts that the maintenance activities include dredging silt and sand that the river deposits in the turning basin, surveying the depth of the turning basin, and building up the capacity of the containment areas on Elba Island, where SLNG disposes of dredge spoil.

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<sup>1</sup>Eighth Revised Sheet No. 5 and Eighth Revised Sheet No. 6, to its FERC Gas Tariff, Original Volume No. 1.

3. SLNG states that, on October 10, 2002,<sup>2</sup> the settlement in Docket in RP02-129-000, et al., was accepted (Settlement). SLNG quotes from a portion of that order which states that:

Article II of the S&A provides for the adoption of Original Sheet Nos. 105a and 105b, which institute a mechanism designed to track SLNG's maintenance costs associated with dredging, including the spoil disposal costs involved in such dredging. [<sup>3</sup>]

SLNG further states that Article II of the Settlement states that "SLNG shall place into effect the tracker of maintenance dredging costs set forth on Original Sheet Nos. 105a and 105b."

4. SLNG states that it has determined the Estimated Maintenance Dredging Costs for the upcoming Maintenance Dredging Annual Period, and that it projects \$4,050,000 of maintenance costs to maintain the required depth and integrity of the turning basin and berth, including the cost to dispose of dredge spoil. SLNG further states that it contracts for the dredging, surveying, and disposal services to maintain the turning basin and plans to bid out the 2004 dredging before starting this spring's session. SLNG asserts that based on the trend of river siltation shown by recent depth surveys and on last year's quantities and experience during prior operations, SLNG estimates a total of \$3,000,000 for two dredging sessions, one in spring and another in fall 2004, using a total volume of 1,500,000 cubic yards. SLNG further asserts that this volume is the average experienced during past operations in the 1970s and 1980s, the same quantity used in last year's filing, and less than the quantity actually dredged in 2003. SLNG states that it adds to that amount the \$950,000 cost of maintaining the disposal areas, including costs to raise the dike walls for expected dredge spoil, and also the \$100,000 cost of surveying the river depth each year, both to comply with Coast Guard and river pilot requirements and to calculate volumes under the dredging contract. SLNG asserts that the combination of years of drought followed by heavy rains in 2003 increased costs by making it more difficult to build up the disposal areas, by depositing more silt in the turning basin, and by increasing the frequency of surveys to ensure adequate depth for LNG ships. SLNG also asserts that it experienced higher costs to maintain the disposal areas in 2003 because old spoil from prior years' dredging was not removed in expected quantities for construction projects and that the higher cost resulted from having to build up capacity to accommodate new spoil. SLNG states that, since the dredge volumes and disposal costs exceeded the projections in last year's filing, the current

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<sup>2</sup> Citing 101 FERC ¶ 61,009 (2002).

<sup>3</sup> Citing 101 FERC ¶ 61,009 at P 3.

rate of \$0.0529 resulted in SLNG undercollecting \$591,279. SLNG further states that the proposed rate of \$0.0947 includes this shortfall.

### **Notice, Interventions, Protest and Answer**

5. Notice of the instant filing was issued on February 3, 2004, providing for the filing of interventions and protests in accordance with Section 154.210 of the Commission's regulations, 18 C.F.R. ' 154.210 (2003). Pursuant to Rule 214, 18 C.F.R. ' 385.214 (2003), all timely filed motions to intervene are granted and any motions to intervene out-of-time filed before the issuance of this order are granted. Granting late intervention at this stage of the proceedings will not disrupt the proceedings or place undue additional burdens on existing parties. PFLE filed a protest. On February 17, 2004, SLNG filed an answer to the protest.<sup>4</sup>

6. In its protest, PFLE argues that SLNG improperly includes the cost of constructing dike walls at its dredge spoil disposal site, which it asserts is a capital item, in the dredging surcharge. PFLE asserts that Exhibit K to SLNG's original application for authorization to recommission the Elba Island Terminal provides an estimate of the total capital cost of the proposed facilities for which SLNG sought authorization. PFLE further asserts that Sheet 2 of Exhibit K specifically includes raising the spoil dikes, repairing the basins, and reconfiguring the basin division dike, in the list of capital costs. PFLE contends that the Commission approved SLNG's application to recommission the Elba Island Terminal, including its proposed rates, without modification to the list of capital costs or to what items may be appropriately characterized as capital costs. PFLE further contends that the purpose of the dredging surcharge is to recover operation and maintenance expenses associated with the turning basin and berth. PFLE asserts that these costs are defined as "[t]he work required to maintain the required depth and integrity of the turning basin, channel and berths at the Elba Island Terminal, including the costs of disposing of spoil associated with such work."<sup>5</sup>

7. PFLE argues that, as indicated by SLNG's original certificate application, constructing dike walls is not an operation and maintenance expense, it is a capital investment. PFLE asserts that SLNG would be hard pressed to cite the Commission to a single instance in which it has approved a tracker for the purpose of reimbursing

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<sup>4</sup> The Commission's Rules of Practice and Procedure do not permit answers to either protests or answers (18 C.F.R. § 385.213(a)(2)(2003)). However, the Commission finds good cause to admit SLNG's answer since it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act.

<sup>5</sup> Citing Original Sheet No. 105a, Section 24.3(a)(i).

projected future capital expenditures and that even in a general Section 4 proceeding the Commission would not approve a request for a rate that reflected immediate reimbursement of capital costs, as opposed to the recovery of costs of service (depreciation, return and taxes) associated with a capital expenditure. PFLE further asserts that the Commission should disallow SLNG from recovering any costs associated with constructing dike walls through the dredging surcharge and that SLNG must remove the \$950,000 from the total Estimated Maintenance Dredging Cost. PFLE contends that the Commission should reject the January 30 Filing without prejudice to SLNG (1) re-filing a dredging surcharge that excludes the \$950,000 associated with constructing additional dike walls at the dredge soil disposal site, and (2) seeking to recover the cost of service associated with those capital expenditures in its next NGA Section 4 general rate case. In the alternative, should the Commission accept the January 30, 2004 filing, PFLE requests that the Commission suspend these increased rates for five months, to take effect on August 1, 2004, subject to refund, to permit further investigation of the issues raised by that filing.

8. SLNG contends, in its answer, that the costs which PFLE protests are maintenance costs to build up the earthen walls on Elba Island. SLNG states that these walls, known as dikes, surround areas that contain dredge spoil. SLNG further asserts that these areas, sometimes called “contained disposal facility” or “CDF,” are integrally involved with the maintenance dredging. SLNG states that, in 1999, it applied to recommission the Elba Island terminal, which had not provided LNG service since 1982. SLNG asserts that the record in that docket, Docket No. CP99-579-000, et al., indicated that SLNG would capitalize initial dredge and disposal costs to reestablish the depth of the turning basin and berth and that once service commenced, SLNG would incur dredging and disposal costs as an operating expense. SLNG further asserts that it agreed in the Settlement to track the costs of maintenance dredging and the tracker recognizes that disposing of spoil is integral to maintenance dredging. SLNG contends that the tracker defines maintenance dredging to include “the costs of disposing of spoil.”<sup>6</sup>

9. SLNG asserts that the Settlement included a new provision that would “track SLNG maintenance costs associated with dredging, including the spoil disposal costs involved in such dredging.”<sup>7</sup> SLNG argues that maintaining disposal capacity is inseparable from maintenance dredging. SLNG asserts that maintaining disposal capacity involves building up the dike walls around the containment areas to accommodate spoil from dredging each year and that the containment areas act as a

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<sup>6</sup> Citing Original Sheet No. 105a, General Terms and Conditions Section 24.3(a)(i).

<sup>7</sup> Citing 101 FERC ¶ 61,009 at P 3.

huge bowl, and as the bowl fills up each year, the sides must be raised to maintain sufficient capacity for the next dredge. SLNG further asserts that the U.S. Army Corps of Engineers has issued a permit to SLNG for maintenance dredging which specifies “the Elba Island CDF” for dredge spoil and requires SLNG to maintain the activity in good condition. SLNG maintains that building up the dike walls enables SLNG to comply with the permit. SLNG contends that last year’s dredging tracker in Docket No. RP03-244-000, which was accepted without modification or suspension, included costs to build up dike walls without any protests from PFLE. SLNG further contends that PFLE does not challenge the definition of maintenance dredging in the tracker provision and that definition specifies the cost of disposing of spoil for inclusion in the annual filing.

10. In answer to PFLE’s argument that SLNG had classified dike construction as a capital cost in its recommissioning docket and that the costs should therefore be excluded from the dredging tracker, SLNG asserts that the record in the recommissioning docket contains ample evidence that it expected to incur costs to build up the dike as an operating expense once service commenced. SLNG further asserts that labeling the cost of dike construction as either “capital” or “operating” has no bearing in this case. SLNG argues that the tracker governs and makes no such distinction and that PFLE cites no Commission policy to the contrary. SLNG argues that Exhibit K to the recommissioning application on July 13, 1999 in Docket No. CP99-579-000 does estimate the cost of an initial buildup of the dike walls around the containment areas on Elba Island, and that Resource Report 13 to the application at 42, § 10.0, explained that this was for an initial dredge to reestablish the river depth. SLNG further argues that just because a cost was capitalized before the terminal returned to service in 2001 did not set that characterization in stone for future operations. SLNG contends that without ongoing maintenance dredging and disposal, the Savannah River deposits sediment that makes the turning basin and berth shallower and it removes the sediment by dredging to comply with the U.S. Coast Guard’s minimum clearance between ship hulls and the river bed. SLNG further contends that it must dredge according to its permit from the Army Corps of Engineers, which specifies spoil disposal in the Elba Island CDF and the dredging and disposal operation consists of an ongoing expense, similar to painting or right-of-way maintenance.

11. SLNG’s argues that its application in the recommissioning docket also estimated the ongoing expense to build up the dike walls for maintenance dredging each year. SLNG asserts that, on October 29, 1999, in that proceeding, the Commission Staff asked SLNG to derive the operating expenses estimated in the application, and, on November 5, 1999, in response to the data request SLNG broke down “Structures and Improvements” expenses, Account 847.2. SLNG further asserts that the expenses included the cost to build up spoil dikes.

12. SLNG contends that building up dike walls to maintain disposal capacity is an integral part of spoil disposal associated with maintenance dredging and the tracker in its tariff allows recovery of costs for maintenance dredging, “including the costs of disposing of spoil associated with such work.” SLNG further contends that, therefore, the tracker allows recovery of costs to build up the dike walls. SLNG argues that omitting and misinterpreting evidence from the recommissioning docket causes PFLE to label the cost of building up the dike walls as “capital” and ineligible for tracking.

### **Discussion**

13. Upon review of the record in this proceeding, including SLNG’s February 17, 2004 answer, the revised tariff sheets listed in footnote No. 1 of this order are accepted to be effective March 1, 2004. As SLNG points out, the tracker defines maintenance dredging to include “the costs of disposing of spoil”<sup>8</sup> and the Commission stated, in the October 10, 2002 order in Docket No. RP02-129-000, et al., that the Settlement included a new provision that would “track SLNG maintenance costs associated with dredging, including the spoil disposal costs involved in such dredging.”<sup>9</sup> As explained in SLNG’s answer, the inclusion in Exhibit K to the July 13, 1999 recommissioning application in Docket No. CP99-579-000 of the estimate of the costs of an initial buildup of the dike walls around the containment areas on Elba Island for an initial dredge to reestablish the river depth is unrelated to the consideration of the maintenance dredging costs related to maintaining disposal capacity under consideration here. As SLNG asserts, the November 5, 1999 data response in Docket No. CP99-579-000, et al., included the costs of dredging, spoil dikes, and bank erosion as part of an explanation of estimated operations and maintenance expenses in structures and improvements.<sup>10</sup>

14. Accordingly the Commission finds that the challenged costs related to the building up of dike walls to maintain disposal capacity are, as SLNG asserts, an integral part of the spoil disposal related costs reflected in this tracker filing. The tracker in SLNG’s tariff allows recovery of costs for maintenance dredging, “including the costs of disposing of spoil associated with such work.” Therefore, these maintenance dredging costs are properly included in this tracker filing.

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<sup>8</sup> Original Sheet No. 105a, General Terms and Conditions Section 24.3(a)(i).

<sup>9</sup> 101 FERC ¶ 61,009 at P 3.

<sup>10</sup> Exhibit B in SLNG’s Answer.

The Commission orders:

The revised tariff sheets listed in footnote No. 1 of this order are accepted to be effective March 1, 2004.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.