

169 FERC ¶ 61,200
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 13, 2019

In Reply Refer To:
Dominion Energy Cove Point LNG, LP
Docket No. RP20-232-000

Dominion Energy Cove Point LNG, LP
707 East Main Street, 20th Floor
Richmond, VA 23219

Attention: Mary Catherine Kemp
Manager, Regulation

Dear Ms. Kemp:

1. On November 15, 2019, Dominion Energy Cove Point LNG, LP (Cove Point) filed the tariff records listed in the Appendix to remove references to an expired non-conforming service agreement for service under Rate Schedule LTS, and to set forth the details of a new non-conforming service agreement with Mattawoman Energy LLC (Mattawoman) for service under the limited-firm Rate Schedule LTS.¹ As discussed below, the Commission accepts the tariff records, subject to conditions, effective December 15, 2019.
2. Cove Point states that Section 3.4(b) of Cove Point's currently effective Rate Schedule LTS provides that, on days that service is listed as "unavailable," Cove Point may accept nominations if it determines that such nominations would alleviate the conditions that lead to Cove Point declaring it an unavailable day. Cove Point states that such nominations would be scheduled under section 15(a)(3) of the General Terms and Conditions (GT&C) of its tariff, which applies to service using secondary points.
3. Cove Point further states that its proposed Rate Schedule LTS agreement with Mattawoman contains both negotiated rates and material deviations from the *pro forma*

¹ Under Rate Schedule LTS, Cove Point has the right to declare the shipper's service to be unavailable for up to 30 consecutive or non-consecutive days in a calendar year.

service agreement in its tariff. Cove Point states that the first material deviation would allow Mattawoman the ability to nominate gas at the Cove Point terminal for delivery to the Mattawoman plant (east-to-west), as if it was not an LTS Unavailable Day, on any day when Cove Point posts an LTS Unavailable Day due to west-to-east gas flow constraints. Cove Point argues this provision is generally consistent with the changes proposed to Rate Schedule LTS in Docket No. RP20-87-000.² Cove Point states that the provision in the Mattawoman service agreement provides that, when an LTS Unavailable Day is established due to west-to-east gas flow constraints, Mattawoman's nominations from the terminal to Mattawoman's plant will be scheduled under GT&C section 15(a)(1), which generally applies to service utilizing primary points. Cove Point avers that this provision provides Mattawoman increased assurance that it will be able to supply its power plant, and in these specific circumstances, Cove Point can provide the transportation on a primary basis without operational concern or any impact on other customers.

4. Cove Point states that the second material deviation would allow Mattawoman a one-time right to terminate (or partially terminate) its LTS service agreement to the extent that Mattawoman enters into a comparable service agreement under Rate Schedule FTS prior to the expiration of Mattawoman's LTS service agreement. Cove Point states that this termination is limited to only those volumes contracted under the replacement FTS service agreement at the same primary receipt and delivery points (west-to-east) that must have a contract term that coincides with the remaining term of the LTS service agreement.

5. Public notice of the filing was issued on November 18, 2019. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.³ Pursuant to Rule 214,⁴ all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting

² In Docket No. RP20-87-000, Cove Point proposed to make section 3.4(b) less restrictive by adding the following language: "... unless Operator in its sole discretion determines the submitted nominations will alleviate the conditions that required the posting of the LTS Unavailable Day." Cove Point stated that the previous tariff language was unnecessarily restrictive because it disallowed LTS nominations that may in fact alleviate the conditions that caused Cove Point to provide notice of an Unavailable Day. The Commission accepted Cove Point's proposed tariff revision in Docket No. RP20-87-000 in an order issued November 22, 2019. *See Dominion Energy Cove Point LNG, LP*, 169 FERC ¶ 61,149 (2019).

³ 18 C.F.R. § 154.210 (2019).

⁴ 18 C.F.R. § 385.214 (2019).

late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

6. Section 154.1(d) of the Commission's regulations requires pipelines to file with the Commission any contract that materially deviates from the pipeline's form of service agreement.⁵ In *Columbia Gas Transmission Corp.*,⁶ the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (b) affects the substantive rights of the parties. A material deviation is permissible only if the Commission finds that such deviation does not constitute a substantial risk of undue discrimination.⁷ "Undue discrimination occurs when two classes of customers are similarly situated and the two classes of customers are afforded different treatment."⁸

7. In this case, we find that both of Cove Point's proposed non-conforming provisions offer a special right to the shipper and present a substantial risk of undue discrimination among shippers. Cove Point's first proposed material deviation would allow Mattawoman to make nominations during an LTS Unavailable Day. Unlike other LTS nominations, Mattawoman's nominations would be scheduled under section 15(a)(1) of the GT&C of its tariff, which generally applies to service utilizing primary points. We find that allowing Mattawoman to nominate gas on LTS Unavailable Days under its primary point authority, while other shippers nominating gas on unavailable days must do so under their secondary point authority, is a special right that presents a risk of undue discrimination. Further, we find that allowing Mattawoman a permanent exemption from certain of the limitations of Rate Schedule LTS would directly contradict the grounds for approving the revisions to Rate Schedule LTS that Cove Point submitted one month ago in Docket No. RP20-87-000. At that time, Cove Point assured that any exemption from the limitations of an LTS Unavailable Day would be "based on forecasted system conditions,"⁹ not discretionary favor. If Cove Point is confident that it can offer

⁵ 18 C.F.R. § 154.1(d) (2019).

⁶ 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*).

⁷ *Columbia*, 97 FERC at 62,003-04; see also *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

⁸ *Equitrans, L.P.*, 161 FERC ¶ 61,017, at P 7 (2017) (citing *Energy Transfer Partners*, 120 FERC ¶ 61,086, at P 169 (2007); *Sebring Util. Comm'n v. FERC*, 591 F.2d 1003, 1009 & n.24 (D.C. Cir. 1979); *Transwestern Pipeline Co.*, 36 FERC ¶ 61,175, at 61,433 (1986); *Tennessee Gas Pipeline Co.*, 77 FERC ¶ 61,215, at 61,877 (1996)).

⁹ *Dominion Energy Cove Point LNG, LP*, 169 FERC ¶ 61,149 at P 4.

Mattawoman Rate Schedule LTS service on a firm basis on Unavailable Days under certain conditions, then it should offer a similar service on a firm basis to all shippers under those conditions.

8. The second proposed material deviation would allow Mattawoman a one-time right to terminate its service agreement early. The Commission has long prohibited granting early and/or partial termination through preferential contract terms.¹⁰ We find that Mattawoman's right to terminate its contract early and convert its capacity to Rate Schedule FTS service impermissibly represents a valuable special right that is not available to other shippers on Cove Point's system under a generally applicable tariff provision.

9. As such, we require Cove Point to either eliminate the two non-conforming provisions from its agreement with Mattawoman, or revise Rate Schedule LTS to offer the same provisions to all LTS shippers in a non-discriminatory manner. We accept the proposed tariff records setting forth the negotiated rate agreement with Mattawoman, subject to Cove Point making such a compliance filing within 15 days of the date of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹⁰ See *Granite State Gas Transmission, Inc.*, 141 FERC ¶ 61,170, at P 8 (2012); *Equitrans, L.P.*, 134 FERC ¶ 61,241, at P 6 (2011); *Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,146, at P 19 (2015); *WBI Energy Transmission, Inc.*, 148 FERC ¶ 61,119, at P 6 (2014).

Appendix

Dominion Energy Cove Point LNG, LP
FERC NGA Gas Tariff
Dominion Energy Cove Point LNG, LP Tariffs

Accepted effective December 15, 2019, subject to conditions

[Tariff Record No. 40.34, GT&C - Non-Conforming Service Agreements, 2.0.0](#)
[Tariff Record No. 40.34.1, GT&C - Non-Conforming Service Agreements - Reserved,](#)
[1.0.0](#)
[Tariff Record No. 40.34.5, GT&C - Non-Conforming Service Agreements -](#)
[Mattawoman, 0.0.0](#)
[Tariff Record No. 45.4, Negotiated Rates, 1.0.0](#)
[Tariff Record No. 45.8, Negotiated Rates, 0.0.0](#)