

170 FERC ¶ 61,157  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Dominion Energy Cove Point LNG, LP

Docket No. RP20-467-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS, SUBJECT TO  
REFUND, AND ESTABLISHING HEARING PROCEDURES

(Issued February 27, 2020)

1. On January 30, 2020, Dominion Energy Cove Point LNG, LP (Cove Point) filed revised tariff records<sup>1</sup> pursuant to section 4 of the Natural Gas Act (NGA), Part 154 of the Commission's regulations, and the settlement of its last rate case in Docket No. RP17-197-000.<sup>2</sup> Cove Point's proposed tariff revisions include rate increases for all of Cove Point's jurisdictional services. As discussed below, the Commission accepts and suspends the tariff records listed in the Appendix to be effective August 1, 2020, subject to refund and the outcome of a hearing established herein.

**I. Background and Proposal**

2. Cove Point states that its facilities consist of an LNG import/export and storage facility located in Lusby, Maryland (LNG Terminal) and an 88-mile natural gas pipeline system that interconnects the LNG Terminal with the interstate pipeline grid (Cove Point pipeline).<sup>3</sup> Cove Point states that its facilities include those constructed pursuant to section 7 of the NGA (Jurisdictional Facilities) and facilities constructed pursuant to section 3 of the NGA that are not subject to the Commission's regulations.<sup>4</sup> Cove Point notes that the costs and revenues for services provided by the NGA section 3 facilities are

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<sup>1</sup> See Appendix.

<sup>2</sup> *Dominion Cove Point LNG*, 161 FERC ¶ 61,221, at P 15 (2017).

<sup>3</sup> Ex. DCP-0068 at 7-8.

<sup>4</sup> *Id.* at 7.

not part of this proceeding because the rates and terms and conditions associated with these services are not subject to FERC jurisdiction.<sup>5</sup>

3. Cove Point states that in the settlement of its last rate case in Docket No. RP17-197-000, Cove Point agreed to file an NGA section 4 general rate case with rates to be effective August 1, 2020.<sup>6</sup> Cove Point states that the instant rate filing fulfills that requirement.

4. Cove Point proposes overall rate increases for each of its jurisdictional services, namely:

- firm, interruptible, off-peak, and limited firm transportation services under Rate Schedules FTS, ITS, OTS, and LTS;
- peaking services under Rate Schedules FPS-1, FPS-2 and FPS-3;
- firm and interruptible LNG tanker discharging services under Rate Schedules LTD-1 and LTD-2, respectively;
- incrementally priced firm transportation projects identified as the Cove Point East Project, the Cove Point Expansion Pipeline, the Liquefaction Pipeline, the St. Charles Project, the Keys Energy Project, and the Eastern Market Access Project;
- the Incremental Port Facilities component in Rate Schedules LTD-1 and LTD-2; and
- the incrementally priced Incremental Send-out Quantity Project and the Air Separation Unit Project.

Cove Point proposes to continue its existing rate design for all its services.<sup>7</sup>

5. Cove Point explains that its proposed rates are based on a cost of service for the 12-month base period ending September 30, 2019, adjusted for known and measurable changes anticipated to occur during the nine-month period ending June 30, 2020. Cove Point proposes to design rates based upon an overall annual cost of service of

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<sup>5</sup> Ex. DCP-0068 at 17.

<sup>6</sup> *Dominion Cove Point LNG, LP*, 161 FERC ¶ 61,221.

<sup>7</sup> Transmittal at 4.

\$181,796,234 and a rate base of \$640,754,886.<sup>8</sup> Cove Point states that its proposed cost of service reflects a return on equity (ROE) of 15.55%, a cost of debt of 3.63 percent, and a capital structure of 34.22% debt and 65.78% equity.<sup>9</sup> Based on these components, Cove Point states that its overall rate of return would be 11.47%.<sup>10</sup> Cove Point also proposes to update its depreciation and amortization rates to account for changes in its assets' physical and economic lives.<sup>11</sup>

6. Cove Point states that it is not affiliated with any master limited partnerships (MLPs) and that its proposed income tax allowance reflects only the tax liabilities of its C Corporate owners.<sup>12</sup> Cove Point states that as of December 31, 2017, its excess accumulated deferred income tax (ADIT) balance resulting from the reduction of applicable income tax rates implemented by the Tax Cuts and Jobs Act of 2017 was greater than that needed to meet Cove Point's income tax obligations due in future years and Cove Point has moved the excess ADIT in the regulatory liability Account No. 254, as required by FERC policy.<sup>13</sup>

## **II. Notice of Filing and Responsive Pleadings**

7. Public notice of Cove Point's filing was issued on February 4, 2020. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>14</sup> Pursuant to Rule 214,<sup>15</sup> all timely motions to intervene and any unopposed 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 this proceeding or place additional burdens on existing parties. Washington Gas Light Company (WGL), Shell NA LNG LLC (Shell), PSEG Energy Resources and Trade LLC (PSEG), Equinor

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<sup>8</sup> Transmittal at 2.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 3; Ex. DCP-0090 at 4.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.*

<sup>14</sup> 18 C.F.R. § 154.210 (2019).

<sup>15</sup> 18 C.F.R. § 385.214 (2019).

Natural Gas LLC (Equinor), BP Energy Company (BP), and the FPS Customer Group<sup>16</sup> each filed timely protests; Public Service Company of North Carolina, Incorporated (PSNC) filed timely comments.

8. On February 18, 2020, Cove Point filed an answer to the protests in this filing. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,<sup>17</sup> answers to protests are prohibited unless otherwise ordered by the decisional authority. We accept the answer because it provides information that will assist us in our decision-making process. In its answer, Cove Point provides additional information regarding its negative salvage rate, cost allocation, proxy group, income tax allowance, accumulated deferred income taxes, and potential modernization proposals.<sup>18</sup> Cove Point recognizes that the protestors raise typical rate case issues that would be more appropriately addressed at a hearing and thus does not oppose the requests for an evidentiary hearing to address the issues.<sup>19</sup>

9. WGL, PSNC, PSEG, and the FPS Customer Group each argue that Cove Point's proposed rates, such as Rate Schedule FPS-1, reflect a significant increase that Cove Point has not yet justified. Each argue that the Commission should suspend the proposed rates for the full five-month statutory period and allow a thorough investigation of Cove Point's filing with full rights of discovery and hearing.<sup>20</sup> WGL and the FPS Customer Group state that Cove Point has constructed a new liquefier that is primarily for the benefit of new LNG export shippers and has begun providing LNG export service pursuant to section 3 of the NGA. The FPS Customer Group and WGL claim that Cove Point appears to have fully shifted cost responsibility for the facility's older, existing liquefier entirely onto peaking customers.<sup>21</sup> The FPS Customer Group states that because the Cove Point facility now offers export service, it is important to ensure that customers of the non-export services are not bearing any costs to support the export services.<sup>22</sup> PSEG in particular argues that because its status as the lone incremental Keys Energy

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<sup>16</sup> In this docket, the FPS Customer Group refers to WGL, Atlanta Gas Light Company, and Virginia Natural Gas, Inc.

<sup>17</sup> 18 C.F.R. § 385.213(a)(2).

<sup>18</sup> Cove Point Answer at 3-7.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> WGL Protest at 2-3; PSNC Comments at 2-3.

<sup>21</sup> FPS Customer Group at 5; WGL Protest at 2.

<sup>22</sup> FPS Customer Group at 5.

FTS customer has remained unchanged since the last rate case, it would expect that incremental service to “enjoy a general trajectory of rate reductions because of accumulated depreciation.”<sup>23</sup> However, that is not the case and PSEG requests that the Commission ensure that the new services and customers added by Cove Point since the last rate case do not produce an increase in rates or degradation of services for pre-existing customers. PSEG also questions whether costs are properly allocated between negotiated and recourse rate agreements under incremental FTS services.<sup>24</sup> PSEG asks the Commission to confirm that no modernization or similar costs are included in any of Cove Point’s proposed rates.<sup>25</sup>

10. The protesters also list several aspects of Cove Point’s factual circumstances and rate calculations that they believe warrant further investigation and call for evidentiary proceedings to address items including the proposed ROE and capital structure, proposed ADIT, income tax rate, depreciation rates, cost allocation, and billing determinants and throughput.

11. Shell, Equinor, and BP, which are primarily LNG customers, protest Cove Point’s rate increases generally as not yet justified and specifically protest several elements of Cove Point’s filing. Shell protests that Cove Point’s capital structure, at 65.78% equity, is unreasonably high in equity compared to both its previous filing and to its proxy group.<sup>26</sup> BP argues that Cove Point’s proposed 15.55% ROE does not reasonably reflect either market conditions or a properly constructed proxy group.<sup>27</sup> Shell argues that Cove Point’s quantification of its business risks overemphasizes LNG imports and underemphasizes LNG exports.<sup>28</sup> Shell also argues that Cove Point has improperly omitted its parent company, Dominion Energy Inc., from its proxy group.<sup>29</sup> Equinor and Shell call for further evidence to support Cove Point’s proposed depreciation and negative salvage rates.<sup>30</sup> Shell argues that Cove Point improperly claims an income tax

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<sup>23</sup> PSEG Protest at 2.

<sup>24</sup> *Id.* at 2-3.

<sup>25</sup> *Id.* at 4.

<sup>26</sup> Shell Protest at 3-4; BP at 6.

<sup>27</sup> BP Protest at 5-6.

<sup>28</sup> Shell Protest at 4.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> *Id.* at 2; Equinor at 10-11.

allowance when, Shell claims, its circumstances are substantially similar to those in a recent case in which the Commission denied an income tax allowance.<sup>31</sup> Shell argues that Cove Point's ADIT calculations may be accounting for a recent merger in a manner inconsistent with Commission regulations and calls for an examination of the relevant underlying transactions.<sup>32</sup> Equinor, also pointing to the recent merger, argues that the proposed capital structure and cost of debt require further examination at hearing.<sup>33</sup> BP argues that what Cove Point refers to as terminal decommissioning costs in fact refers to facilities that Cove Point can still re-contract or repurpose, to provide or support new or existing services; Equinor questions both the specific evidence in Cove Point's explanation, and also the manner and extent to which the proposed decommissioning affects rates.<sup>34</sup>

12. Finally, the LNG customers cite several other elements where they claim Cove Point has not yet met its evidentiary burden, and accordingly they request the Commission suspend the rate increases and establish a hearing to evaluate all issues raised by Cove Point's submission.

### III. Discussion

#### A. Hearing Procedures

13. Cove Point's filing raises many typical rate case issues that warrant further investigation. We find that there are material issues of fact in dispute concerning, among other things, the magnitude of the rate increase, that cannot be resolved based upon the record before us and which are best addressed in a hearing.<sup>35</sup> Accordingly, we will establish a hearing to explore all rate issues raised by Cove Point's filing, including but not limited to, those regarding cost of service, rate of return, throughput, cost allocation, and rate design.

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<sup>31</sup> Shell Protest at 5 (citing *Enable Mississippi River Transmission*, 164 FERC ¶ 61,075, at PP 33-34 (2018)).

<sup>32</sup> *Id.* at 6.

<sup>33</sup> Equinor Protest at 13-14.

<sup>34</sup> BP Protest at 7; Equinor Protest 11-12.

<sup>35</sup> *Cf. Dominion Cove Point LNG, LP*, 157 FERC ¶ 61,249 (2016) (establishing hearing in Cove Point's prior rate case, in Docket No. RP17-197-000).

**B. Suspension**

14. Based upon review of the filing, we find that Cove Point's proposed tariff records have not been shown to be just and reasonable and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, we shall accept for filing and suspend Cove Point's tariff records for five months, to be effective August 1, 2020, subject to refund and the outcome of the hearing proceeding as ordered herein.

15. The Commission's policy regarding suspension is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.<sup>36</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>37</sup> Such circumstances do not exist here. Therefore, we will suspend for the maximum period of five months the proposed tariff records listed in the appendix, to be effective August 1, 2020 subject to refund, and the outcome of the hearing ordered herein.

**The Commission orders:**

(A) The tariff records listed in the Appendix are accepted and suspended to be effective August 1, 2020, subject to refund and the conditions described in the body of this order and the ordering paragraphs below.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the NGA, particularly sections 4, 5, 8, 9, and 15 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the NGA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Cove Point's filing as discussed in the body of this order.

(C) A presiding judge, to be designated by the Chief Judge for that purpose, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to

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<sup>36</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>37</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.



## Appendix

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

*Tariff records accepted and suspended to be effective August 1, 2020:*

[Tariff Record No. 10.1, LTD ISQ Rates, 3.0.0](#)

[Tariff Record No. 10.10, FPS Rates, 3.0.0](#)

[Tariff Record No. 10.20, FTS OTS LTS ITS Rates, 4.0.0](#)

[Tariff Record No. 10.35, Incremental Rates, 8.0.0](#)

[Tariff Record No. 10.40, Capacity Release Rates, 9.0.0](#)