

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeem G. Kelly.

Dominion Cove Point LNG, LP

Docket No. CP06-26-000

ORDER GRANTING AUTHORIZATION UNDER SECTION 3
OF THE NATURAL GAS ACT

(Issued June 16, 2006)

1. On November 16, 2005, Dominion Cove Point LNG, LP (Cove Point) filed an application under section 3 of the Natural Gas Act requesting authority to construct and operate two air separation units, a liquid nitrogen storage tank, an electric generation unit, and appurtenant facilities at its existing liquefied natural gas (LNG) import terminal in Calvert County, Maryland.
2. The Commission will authorize Cove Point's proposals, with appropriate conditions, as discussed below.

I. Background

A. The LNG Import Terminal

3. Cove Point owns and operates an LNG import facility near Lusby, in Calvert County, Maryland and a pipeline, known as the Cove Point pipeline, that extends approximately 88 miles from the LNG terminal to connections with several interstate pipelines in Loudoun and Fairfax, Counties Virginia. Currently, the LNG terminal has a storage capacity of 7.8 Bcf and a peak send-out capacity of 1.0 Bcf per day.
4. We authorized the construction and operation of the LNG terminal and the Cove Point pipeline in 1972 as part of a project to import LNG and transport gas to domestic markets.¹ In 1980, however, LNG shipments to Cove Point ended. Between 1980 and 1994, the facilities were not used except for a small amount of interruptible transportation service provided through the Cove Point pipeline.

¹ Opinion No. 622, 47 F.P.C. 1624, *aff'd and modified*, 48 F.P.C. 723 (1972).

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5. In 1994, we authorized Cove Point to reactivate the LNG facilities and construct a liquefaction unit for the purpose of storing domestic natural gas during the summer for use at peak times in the winter.² Under the authorization, Cove Point provides ten-, five-, and three-day firm peaking service under Rate Schedules FPS-1, FPS-2, and FPS-3, respectively, and firm and interruptible transportation service under Rate Schedules FTS and ITS.

6. In 2001, we authorized Cove Point to construct facilities and reactivate the existing LNG terminal in order to resume LNG imports at the terminal.³ Currently, Cove Point provides open-access LNG terminalling service under Rate Schedules LTD-1 and LTD-2.

B. Related Settlements

7. In 2002, Cove Point filed two uncontested settlement agreements, known as the five-party settlement and the four-party settlement, that addressed issues related to the reactivation of the Cove Point LNG terminal. We approved the settlements in *Cove Point LNG Limited Partnership*, 102 FERC ¶ 61,227 (2003).

8. The five-party settlement among Cove Point, BP Energy Company (BP Energy), Shell NA LNG LLC (Shell), Statoil Natural Gas LLC, (collectively known as the LNG tanker discharging shippers or the LTD-1 shippers), and Washington Gas Light Company (Washington Gas) resolved a dispute concerning LNG interchangeability and heat content. Under the settlement, Cove Point, Washington Gas, and the LTD-1 shippers sponsored a study to evaluate gas interchangeability to establish acceptable compositions for re-vaporized LNG to be supplied to the Washington Gas service area. The gas quality tariff provisions that resulted from the study were incorporated into Cove Point's tariff. One provision required that the British thermal unit (Btu) value of gas discharged from Cove Point's LNG terminal not exceed 1100. In addition, the five-party settlement recognized that additional nitrogen injection facilities were required in order to meet the gas quality specifications in Cove Point's tariff.

9. The four-party settlement between Cove Point and the LTD-1 shippers contained, among other things, the procedures Cove Point would follow in constructing the nitrogen injection, power, and related facilities needed to accommodate the gas quality

² *Cove Point LNG Limited Partnership*, 68 FERC ¶ 61,377, *reconsideration denied*, 69 FERC ¶ 61,292 (1994).

³ *Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043; *order granting and denying reh'g and granting and denying clarification*, 97 FERC ¶ 61,276 (2001); *order denying reh'g and granting and denying clarification*, 98 FERC ¶ 61,270 (2002).

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specifications adopted in the five-party settlement. The settlement also provided that the LTD-1 shippers would support Cove Point's filings with the Commission to construct and operate the facilities.

C. Related Proceedings

10. On April 15, 2005, Cove Point filed an application under section 3 to construct and operate two storage tanks and associated facilities at its LNG import terminal (Docket No. CP05-130-000) and an application under section 7 of the Natural Gas Act to expand the Cove Point pipeline by adding looping and related facilities (Docket No. CP05-132-000). In addition, Dominion Transmission, Inc., an affiliated interstate pipeline, filed an application under section 7 to construct and operate pipeline and storage facilities (Docket No. CP05-131-000). These applications are known as the Cove Point Expansion Project.

11. On July 26, 2005, Cove Point filed an application under section 3 for authority to reactivate two waste heat vaporizers at its existing LNG terminal to ensure that the terminal can deliver its peak-day capability of 1.0 Bcf per day on a year-round basis (Docket No. CP05-395-000). This application is known as the Vapor Reactivation Project.

12. The Commission is considering the Cove Point Expansion Project and the Vapor Reactivation Project concurrently with the proposals in this proceeding.

II. Proposals

13. As noted above, Cove Point's tariff requires that the Btu value of gas discharged from its LNG terminal not exceed 1100. According to Cove Point, there is one air separation unit in operation at the LNG terminal. This unit allows Cove Point to reduce the Btu values of imported LNG in excess of 1100 through the injection of nitrogen into the vaporized LNG before the gas is discharged into the Cove Point pipeline. Cove Point asserts that the unit is capable of producing 12 MMscf per day of gaseous nitrogen, which is not enough to sufficiently modify the heating value of vaporized high Btu LNG at the terminal's peak send-out rate of 1.0 Bcf per day. Specifically, Cove Point contends that the limitations involved with having only one air separation unit can reduce the terminal's send-out capacity to one-third of its peak send-out capacity. Cove Point asserts that the LTD-1 shippers anticipate more cargoes of high Btu LNG in the future. For this reason, the LTD-1 shippers requested that Cove Point install additional nitrogen injection facilities so that Cove Point can continue to meet its tariff requirements for gas quality without reducing the terminal's send-out capacity.

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14. Cove Point's proposals, known as the ASU project, involve the construction and operation of two air separation units, a liquid nitrogen storage tank, an electric generation unit, and appurtenant facilities. Specifically, Cove Point proposes to construct and operate:

- two air separation units that each produce 12 MMscf per day of gaseous nitrogen at a discharge pressure of 1,300 psig
- supporting equipment; control panels; and related equipment, including primary instrumentation, turbine and air separation unit control panels, plant controls (*i.e.*, remote sensing and control), emergency shutdown controls, and loading panels;
- a 62,825-gallon liquefied nitrogen tank (the same size and design as the existing liquefied nitrogen tank);
- HVAC equipment;
- fire and gas detection instruments for the gas turbine building, fuel gas equipment, and piping;
- utility equipment and piping;
- an electric generating unit with a nominal capacity of 12 MW; and
- automation and electric facilities associated with an electric substation and motor control sensor.

15. Cove Point states that all construction activities will take place within the existing LNG terminal facilities. Cove Point also states that the proposals will not result in any increase in the terminal's capacity to receive, store, or vaporize LNG and will not change the gas quality specifications in its tariff.

16. Cove Point contends that there will be more cargo loads of high Btu LNG shipments in the future, increasing the need for more air separation units to reduce the Btu values of imported LNG. By adding more air separation units, Cove Point contends that it can accept LNG from a wider variety of sources, provide the LTD-1 shippers with greater flexibility to deliver and market their supplies, and provide customers greater access to worldwide supplies of LNG. Cove Point asserts that the additional liquefied nitrogen tank will enhance reliability by providing liquid nitrogen storage in the event of maintenance of the air separation units. Cove Point also claims that the additional liquefied nitrogen tank provides a readily available source of nitrogen when needed to

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start an air separation unit in warm conditions and for maintaining the separation units in a state of readiness.

17. Cove Point estimates that the cost of construction of the ASU project will be \$63,099,990. Cove Point calculates a monthly incremental ASU project surcharge rate of \$1.5990 per Dth based on an annual cost of service of \$14,390,702 for the third full year of service. The cost of service for the proposed project is based on Cove Point's currently effective depreciation rate of five percent, capital structure of 60 percent equity and 40 percent debt, with an equity rate of return of 13 percent and a debt cost of 8.5 percent. Cove Point uses the Commission-approved pretax return rate of 16.28 percent. In addition, Cove Point estimates that operation and maintenance expenses will escalate at 2.75 percent per year and calculates other taxes at 2.5 percent.

18. Cove Point states that it will allocate the costs of the ASU project to the LTD-1 shippers, because the proposed facilities were requested by those shippers and the project will improve their service. For this reason, Cove Point asserts that under the provisions of the four-party settlement, it will make a limited Natural Gas Act section 4 rate filing, to be effective no earlier than the in-service date of the proposals, to adjust the currently effective LTD-1 settlement rates to reflect the costs of the ASU project.

19. Cove Point does not seek approval of the ASU project rates in this proceeding. Nevertheless, Cove Point requests that the Commission find that (1) the proposed facilities are prudently designed and appropriately sized to provide the requested nitrogen injection capacity; (2) that the cost of the proposed facilities are reasonable; and (3) rate treatment for the costs of the ASU project as established in the four-party settlement is in the public interest.

III. Interventions

20. Notice of Cove Point's application was published in the *Federal Register* on December 7, 2005 (70 Fed. Reg. 72806). BP Energy; ConocoPhillips Company; PSEG Energy Resources & Trade, LLC; Public Service Company of North Carolina, Inc.; Shell; Statoil Natural Gas LLC; and Washington Gas filed timely, unopposed motions to intervene.⁴ Atlanta Gas Light Company and Virginia Natural Gas, Inc. filed a timely, unopposed, joint motion to intervene.⁵ No protests or notices of intervention were filed. The motions to intervene of BP Energy and Shell included comments.

⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214.

⁵ *Id.*

21. Norton McMurray Manufacturing Company (Norton Manufacturing) filed an untimely motion to intervene. Norton Manufacturing has demonstrated an interest in this proceeding and has shown good cause for intervening out of time. Further, Norton Manufacturing's untimely motion will not delay, disrupt, or otherwise prejudice this proceeding. Thus, we will grant Norton Manufacturing's untimely motion to intervene.

IV. Discussion

22. Since the proposed facilities will be used to import natural gas from a foreign country, the construction and operation of two air separation units, a liquid nitrogen storage tank, an electric generation unit, and appurtenant facilities is subject to the Commission's jurisdiction under section 3 of the Natural Gas Act.

23. Cove Point is an existing LNG terminal that offers open access service to its customers. Section 3(e)(4) of the Natural Gas Act, added by the Energy Policy Act of 2005 (EPAAct 2005),⁶ provides that:

An order issued for an LNG terminal that also offers service to customers on an open access basis 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

24. In accordance with the four-party settlement, Cove Point's proposals require that only the LTD-1 customers will pay for the ASU project. Thus, we find that Cove Point's other existing customers will not subsidize the proposals. In addition, we find that the proposals will result in no degradation of service to Cove Point's existing customers or undue discrimination against existing customers as to their terms or conditions of service.

25. Further, the proposed facilities meet the requirements established in the four-party settlement. The proposals will increase Cove Point's ability to inject nitrogen into the vaporized LNG to meet its tariff requirements for Btu content. Cove Point's proposals will also enhance the reliability of service at its LNG terminal and provide the Rate Schedule LTD-1 customers with more flexibility to acquire and schedule LNG cargoes from a wider variety of supply sources to meet the nation's growing demand for natural gas.

⁶ Energy Policy Act of 2005, Pub. L. No. 109-58, § 311, 119 Stat. 594, 685 (2005).

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26. Section 3 of the Natural Gas Act provides that the Commission shall issue an order approving an applicant's proposals unless it finds that the proposals "will not be consistent with the public interest." For the reasons stated above, we find that approval of Cove Point's ASU proposals will be consistent with the public interest.

27. EPCRA 2005 also amended the Natural Gas Act to provide that "[b]efore January 1, 2015, the Commission shall not . . . condition an order [approving an application for the siting, construction, expansion, or operation of an LNG terminal] on . . . any regulation of the rates, charges, terms, or conditions of service of the LNG terminal."⁷ Here, Cove Point states that it will allocate the costs of the ASU project to the LTD-1 shippers and make a limited Natural Gas Act section 4 rate filing to adjust the currently effective LTD-1 settlement rates to reflect the costs of the ASU project. However, the above-cited provision of the Natural Gas Act precludes us from conditioning the authorization herein on Cove Point's implementation of cost-based rates for its service. Nevertheless, Cove Point is free to file a limited section 4 rate case to reflect a surcharge rate for the ASU project.⁸ If it does so, Cove Point is bound to follow the Commission's regulations and the provisions in its tariff.

28. BP Energy and Shell requested that we condition any authorization on Cove Point's compliance with Parts 154 and 284 and section 157.20(a), (c), (e), and (f) of the regulations. The conditions requested deal directly with rates, charges, terms, or conditions of service. As indicated above, the revised provisions of the Natural Gas Act preclude us from conditioning Cove Point's authorization as requested. However, to the extent Cove Point offers services pursuant to its tariff, it must comply with all applicable Commission regulations.

V. Environmental Review

29. On January 6, 2006, we issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). We received two responses to the NOI.

30. Our staff prepared an environmental assessment (EA) for the ASU project. The EA addresses the comments to the NOI as well as vegetation and wildlife, soils, air quality, noise, reliability, safety and security, and alternatives to Cove Point's proposal. Based on the discussion in the EA, we conclude that approval of Cove Point's proposal would not constitute a major federal action significantly affecting the quality of the human environment, if the ASU project is constructed and operated in accordance with

⁷ Section 3(e)(3)(B)(ii)(II) of the Natural Gas Act.

⁸ The proposed rate treatment accurately reflects the costs of the ASU project.

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Cove Point's application and the environmental mitigation measures included in the appendix to this order.

31. The operation of the proposed air separation units will have no effect on the existing LNG operations at the terminal, other than to improve service as described above. Since there is no LNG in the proposed equipment, the new air separation units are not subject to thermal and dispersion siting requirements. Besides being a cryogenic liquid, nitrogen does not pose the same safety hazards as LNG. The air separation units and appurtenant equipment will be entirely within the terminal site. The existing air separation unit has operated safely and reliably and the proposed units will use a similar design. The ASU project does not increase the footprint of the site and the existing security personnel and procedures already address the process area. The current security arrangement will also manage the additional workers required during construction and will be sufficient during normal operation of the proposed facilities. Thus, we find that Cove Point's proposal will have no significant impact on the facility's security. However, to be consistent with the operational reporting requirements for the remainder of the LNG facility, we will require Cove Point to report significant non-scheduled events, including safety related incidents, and to comply with the requirements of environmental condition No. 6.

32. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁹

33. Cove Point shall notify the Commission's environmental staff by telephone or facsimile of any noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Cove Point. Cove Point shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

⁹ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

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34. At a hearing held on June 15, 2006, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Cove Point is authorized under section 3 of the Natural Gas Act to construct and operate two air separation units, a liquid nitrogen storage tank, an electric generation unit, and appurtenant facilities at its existing LNG terminal, as more fully described in this order and in the application.

(B) The authorization is conditioned on Cove Point's compliance with the environmental conditions set forth in the appendix to this order.

(C) Cove Point shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Cove Point. Cove Point shall file written confirmation of such notification with the Secretary within 24 hours.

(D) Cove Point's facilities shall be constructed and made available for service within two years of the date of the order in this proceeding.

(E) Norton Manufacturing's untimely motion to intervene is granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Environmental Conditions for Cove Point's ASU Project

1. Cove Point shall follow the construction procedures and mitigation measures described in its application and as identified in the EA, unless modified by this order. Cove Point must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take all steps necessary to ensure the protection of life, health, property and the environment during construction and operation of the project. This authority shall include:
 - a. stop-work authority and authority to cease operation; and
 - b. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of this order.
3. Cove Point shall not begin construction of the project until it files with the Secretary a copy of the determination of consistency with the Coastal Zone Management Plan issued by the Maryland Department of the Environment.
4. Cove Point shall install one gas detector on the air compressor air intake for each air separation unit.
5. Cove Point shall file a noise survey with the Secretary **no later than 60 days** after placing the facilities authorized here into service. If the noise attributable to the operation of the modified Cove Point LNG facility at full load exceeds an Ldn of 55 dBA at any nearby noise sensitive area, Cove Point shall install additional noise controls to meet that level **within one year** of the in-service date. Cove Point shall confirm

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compliance with the Ldn of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

6. Significant non-scheduled events, including safety related incidents (*i.e.*, LNG or natural gas releases, fires, explosions, mechanical failures, unusual over pressurization, and major injuries) and security related incidents (*i.e.*, attempts to enter site and suspicious activities) should be reported to the Commission's staff. In the event an abnormality is of significant magnitude to threaten public or employee safety, cause significant property damage, or interrupt service, notification should be made **immediately**, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency procedure. In all instances, notification should be made to the Commission's staff **within 24 hours**. This notification practice should be incorporated into the LNG facility's emergency plan. Examples of reportable LNG-related incidents include:

- a. fire;
- b. explosion;
- c. estimated property damage of \$50,000 or more;
- d. death or personal injury necessitating in-patient hospitalization;
- e. free flow of LNG for five minutes or more that results in pooling;
- f. unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability, structural integrity, or reliability of an LNG facility that contains, controls, or processes gas or LNG;
- g. any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG;
- h. any malfunction or operating error that causes the pressure of a pipeline or LNG facility that contains or processes gas or LNG to rise above its maximum allowable operating pressure (or working pressure for LNG facilities) plus the build-up allowed for operation of pressure limiting or control devices;
- i. a leak in an LNG facility that contains or processes gas or LNG that constitutes an emergency;

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- j. inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank;
- k. any safety-related condition that could lead to an imminent hazard and cause (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20 percent reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility that contains or processes gas or LNG;
- l. safety related incidents to LNG vessels occurring at or in route to and from the LNG facility; or
- m. an event that is significant in the judgment of the operator and/or management even though it did not meet the above criteria or the guidelines set forth in an LNG facility's incident management plan.

In the event of an incident, the Director of OEP has delegated authority to take whatever steps are necessary to ensure operational reliability and to protect human life, health, property or the environment, including authority to direct the LNG facility to cease operations. Following the initial company notification, the Commission's staff would determine the need for a separate follow-up report or follow-up in the upcoming semi-annual operational report. All company follow-up reports should include investigation results and recommendations to minimize a reoccurrence of the incident.