

124 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Distrigas of Massachusetts LLC

Docket No. CP08-49-000

ORDER APPROVING ABANDONMENT AND
GRANTING AUTHORIZATION UNDER SECTION 3 OF THE NATURAL GAS ACT

(Issued July 17, 2008)

1. On December 19, 2007, Distrigas of Massachusetts LLC (DOMAC) filed an application seeking Commission approval, under section 7(b) of the Natural Gas Act (NGA), to (1) abandon services provided under its currently-effective FERC Gas Tariff, First Revised Volume No. 1, and its certificates of public convenience and necessity authorizing operation of its liquefied natural gas (LNG) import terminal and its services, and (2) cancel its tariff, including all rate schedules contained therein. DOMAC proposes that the Commission act under NGA section 3 to adopt a Statement of Terms and Conditions for Liquid Service (Liquid Service Agreement).¹ DOMAC states its intention to continue to provide sales services for both liquid and regasified LNG.

2. For the reasons discussed below, we will (1) approve DOMAC's proposal to abandon its facilities and services under NGA section 7(b) and cancel its tariff, including its rate schedules; (2) authorize DOMAC's facilities and operations under NGA section 3; and (3) deny DOMAC's proposal to file a Liquid Service Agreement under section 3. Our NGA section 3 oversight will ensure the continued safe and secure operation of DOMAC's terminal.

I. Background

3. DOMAC owns and operates an LNG import terminal and regasification facility on the Mystic River in Everett, Massachusetts, pursuant to authorizations issued by the Commission under NGA section 7² with respect to its facilities and services. DOMAC

¹ The Liquid Service Agreement is attached to DOMAC's *Application for Abandonment* as Exhibit Z-1 (Dec. 19, 2007).

² See *Distrigas Corporation*, 58 FPC 2589 (1977).

purchases its LNG supplies from Distrigas Corporation (Distrigas),³ which imports LNG pursuant to authorizations issued by the Department of Energy (DOE) under NGA section 3.⁴ DOMAC then sells the imported LNG, both in liquid state and in vapor state, to customers throughout the northeastern United States.⁵ DOMAC's terminal went into service in 1971, and since then it has received over 600 shipments of LNG. Between 1971 and 2003, the terminal received approximately half of the United States' imported

³ DOMAC and Distrigas are affiliated as subsidiaries of Suez SA. However, in a May 29, 2008 press release, Suez SA states it has agreed to sell its 57.25 percent equity holding in Distrigas to Eni S.p.A. Upon completion of this sale, DOMAC and Distrigas will no longer be affiliates.

⁴ Initial NGA section 3 authorization to import LNG to the terminal in Everett, Massachusetts, was issued to Distrigas in 1972 by the Federal Power Commission (FPC), the predecessor to the Federal Energy Regulatory Commission. *See Distrigas Corporation*, 47 FPC 752 (1972). In 1977, the DOE Organization Act transferred all of the FPC's authority over natural gas imports and exports to the Secretary of Energy "unless the Secretary assigns such a function to the [Federal Energy Regulatory] Commission." *See* sections 301(b), 402(a), and 402(f) of the DOE Organization Act; 42 U.S.C. §§ 7151(b), 7172(a), and 172(f). The Secretary of DOE subsequently delegated authority under NGA section 3(1) to the Assistant Secretary for Fossil Energy to regulate the import and export of natural gas (DOE Delegation Order No. 0204-127; 54 Fed. Reg. 11436 (March 20, 1989)), and (2) to the Commission to approve or disapprove proposals for the siting, construction, and operation of import and export facilities (DOE Delegation Order No. 0204-112, 49 Fed. Reg. 6684 (February 22, 1984)). Thus, DOE is responsible for authorizing import and export volumes. Current DOE section 3 authorizations provide for Distrigas to import up to 100 Bcf for 40 years – 1995 through 2035 – “from Trinidad and other countries” for sale to its affiliate DOMAC (DOE, Office of Fossil Energy, Order No. 1115 (Nov. 7, 1995)) and to import “up to the equivalent of 100 billion cubic feet of natural gas, from various international sources pursuant to transactions that have terms of no longer than two years,” effective from December 8, 2006, through December 7, 2008 (DOE, Office of Fossil Energy, Order No. 2294 (Nov. 22, 2006)).

⁵ DOMAC's truck-loading facilities enable it to send out more than 100 MMcf (1.2 million gallons) of liquid per day. During the second half of 2007, liquids accounted for approximately 6.6 percent of DOMAC's sales. During this period, DOMAC sent out 5,979,879 MMBtu of LNG in liquid state and 83,739,338 MMBtu in vapor state; boil-off deliveries totaled 1,293,061 MMBtu.

LNG volumes. DOMAC currently supplies approximately 20 percent of New England's annual gas demand.

4. DOMAC offers service under four rate schedules. Both its Rate Schedule FVSS (firm vapor sales service) and Rate Schedule FLSS (firm liquid sales service) provide for (1) a negotiated “call payment” covering DOMAC’s fixed costs of operating its terminal as well as the costs associated with arranging for and purchasing LNG supply, and (2) a negotiated per-MMBtu commodity rate. Rate Schedule FCSS (firm combination liquid and vapor sales service) provides for a negotiated rate based on the terms of the FVSS and FLSS Rate Schedules. DOMAC also provides interruptible liquid and vapor sales service under Rate Schedule ISS.

5. The call payments and commodity rates are currently subject to rate caps specified in each rate schedule. Basically, the call payment cap is equal to the sum of the firm transportation rates under specified rate schedules applicable to gas delivered to the Northeast from western Canada. The commodity cap is equal to the sum of a gas index selected by the buyer, the transportation commodity costs reflect the cost of firm transportation from the Gulf of Mexico to Massachusetts, and the call payment “remainder” is the difference between the actual call payment and the call payment cap.

II. DOMAC’s Application for NGA Section 7(b) Abandonment Approval

6. DOMAC currently sells liquid and vapor LNG at a price that combines DOMAC’s cost to purchase LNG with DOMAC’s cost to operate its facility (terminalling operations include docking, offloading, storing, and regasifying LNG).⁶ DOMAC states it is the only company selling LNG at the outlet of an import terminal that is subject to Commission regulation over the price, terms, and conditions of its sales.⁷ DOMAC maintains this places it “at a competitive disadvantage with respect to other sellers of natural gas,”⁸ in its ability to find buyers willing to purchase gas under the terms of its tariff, and hampers its ability to contract for LNG supplies, because LNG suppliers prefer to sell LNG to purchasers that are not restrained by rate caps.

⁶ DOMAC does not offer stand-alone third-party terminalling or transportation services.

⁷ DOMAC is also the only operator of an LNG import terminal whose business model consists primarily of selling liquid and regasified LNG.

⁸ DOMAC’s *Application for Abandonment* at 18.

7. DOMAC seeks to abandon its NGA section 7 certificate authorizations and cancel its rate schedules in favor of regulation by the Commission under section 3. DOMAC believes this will provide it greater flexibility to meet market demands and to obtain LNG supplies.⁹ DOMAC avows that it will continue to serve current liquid and vapor customers under the terms and conditions of their existing sales service agreements for the remaining terms of those agreements.¹⁰ Upon the expiration of its customers' current sales service agreements, DOMAC proposes to provide vapor sales services under individual agreements at market rates subject to negotiated terms and conditions. With respect to liquid sales, DOMAC intends to adopt a Liquid Service Agreement, with terms and conditions that reflect those of its currently-effective tariff's Rate Schedule FLSS provisions. DOMAC states it will negotiate rates with customers under the Liquid Service Agreement rather than rely on the current cost caps. DOMAC adds that while the customer "will always have the right to request service pursuant to the Terms of [the] Liquid Service" Agreement, the customer may alternatively elect to negotiate differing terms of service.¹¹

8. DOMAC argues that continuing to subject its LNG import terminal and services to NGA section 7 jurisdiction is inconsistent with the Commission's current policy¹² and with the Energy Policy Act of 2005 (EPA 2005).¹³ DOMAC argues that the Commission should rely exclusively on section 3 to exert jurisdiction over LNG terminals, including older facilities like its own, which were authorized under section 7. DOMAC stresses that because it is not proposing to make any change to its physical

⁹ DOMAC's affiliate, Neptune LNG LLC (Neptune), has proposed the development of a deepwater LNG import facility off the coast of Massachusetts that will not be subject to the NGA, and thus will not be subject to Commission regulation over the price, terms, and conditions of its services. DOMAC believes its proposed abandonment will allow it to better manage an expanded portfolio of imported LNG, particularly anticipated volumes from the Neptune facility.

¹⁰ DOMAC's current service agreements have varying terms, some expiring as soon as this year, some not until 2016.

¹¹ DOMAC's *Application for Abandonment* at 9.

¹² *Citing Hackberry LNG Terminal, L.L.C. (Hackberry)*, 101 FERC ¶ 61,294 (2002). The *Hackberry* order was a preliminary determination. The name of the project sponsor was subsequently changed; the project was authorized in *Cameron LNG, LLC*, 104 FERC ¶ 61,269 (2003).

¹³ Pub.L. No. 109-058, 119 Stat. 549 (2005).

facilities or operations, approval of its request will not have an impact on landowners, competitors, the environment, or the safety and security of its terminal.

III. Notice and Interventions

9. Notice of DOMAC's application for abandonment was published in the *Federal Register* on January 14, 2008.¹⁴ Timely, unopposed motions to intervene were filed by Boston Generating, LLC jointly with Mystic Development, LLC and Fore River Development, LLC; BP Energy Company; Consolidated Edison Company of New York, Inc. (Con Ed); Dominion Cove Point LNG, LP; Exelon Corporation; National Grid Delivery Companies (National Grid);¹⁵ New England Local Distribution Companies (New England LDCs);¹⁶ New Jersey Natural Gas Company; Northeast Gateway Energy Bridge L.L.C.; Repsol Energy North America Corporation; Shell NA, LLC; Statoil Natural Gas LLC; Tennessee Gas Pipeline Company; and Weaver's Cove Energy, LLC.¹⁷ Algonquin Gas Transmission, LLC (Algonquin) and Trunkline LNG Company, LLC (Trunkline) submitted motions to intervene out of time, which we will grant, finding that doing so will not cause undue delay or disruption or place an undue burden on or otherwise prejudice existing parties.¹⁸

10. In their motions to intervene, New Jersey Natural Gas Company submits comments in support of DOMAC's proposal, and Con Ed, National Grid, and New

¹⁴ 73 FR 2234 (2008).

¹⁵ National Grid Delivery Companies include the following subsidiaries of National Grid USA: Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery LI; Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company, collectively d/b/a KeySpan Energy Delivery NE; Niagara Mohawk Power Corporation d/b/a National Grid; and the Narragansett Electric Company d/b/a National Grid.

¹⁶ New England LDCs include: Bay State Gas Company; Connecticut Natural Gas Corporation; New England Gas Company; Northern Utilities, Inc.; City of Norwich Department of Public Utilities; NSTAR Gas Company; Southern Connecticut Gas Company; and Yankee Gas Services Company.

¹⁷ Timely, unopposed motions to intervene are granted by Rule 214.218 of the Commission's Rules of Practice and Procedure. 18 CFR § 385.214 (2008).

¹⁸ See 18 CFR § 385.214(d) (2008).

England LDCs state they will not oppose DOMAC's proposal, provided the Commission continues to impose certain regulatory constraints on DOMAC's sales and services.

11. The City of Boston, Massachusetts, (Boston) submitted a letter stating that it opposes any increase in LNG shipments, and asks that if the requested abandonment is approved, the Commission limit LNG shipments each year to the average annual number of shipments over the past 10 years.

12. DOMAC submitted an answer in response to comments contained in the motions to intervene and to Boston's request for a condition restricting the number of shipments to DOMAC's terminal.

IV. Discussion

13. Because DOMAC has been granted NGA section 7(c) certificate authorization for its LNG terminal facilities' construction and operation and for its sales for resale of liquid and vapor LNG, DOMAC's requested abandonment is subject to NGA section 7(b). Further, because DOMAC seeks to change the jurisdictional authority applicable to operation of its import facilities going forward, its proposal is subject to NGA section 3.¹⁹

A. NGA Section 7 Abandonment Approval

14. We concur with DOMAC's assertion that its requested abandonment will not result in any adverse impact on the environment or landowners, since the transition from NGA section 7 to section 3 oversight will not result in any change in DOMAC's facilities or operations. Given that there are no comments in opposition to DOMAC's proposal from any commercial competitors, we do not anticipate the regulatory revision will adversely affect business arrangements in the New England market. We note that DOMAC has offered its current customers assurances that there will be no degradation in the sales services that it now provides following section 7(b) abandonment. We expect our plenary and elastic authority under section 3, which allows us to exercise oversight equivalent to that under section 7, will enable us to ensure the continued safe operation of the terminal.

15. We also concur with DOMAC's assessment of the regulatory regime currently applicable to LNG import terminals.²⁰ At the time DOMAC was granted NGA section 7

¹⁹ DOE, as explained above, retains section 3 jurisdiction over all imports and exports of natural gas and authorizes the volumes thereof.

²⁰ We, however, do not agree that the rationale underlying our adopting a more light-handed regulatory approach toward new LNG import terminals requires us to

(continued...)

certificate authorization to construct and operate its terminal and to make sales for resale, the Commission considered the offloading of LNG from a ship to be the end of foreign commerce subject to section 3 and the beginning of transportation in interstate commerce subject to section 7.²¹ The Commission has since adopted the position that foreign commerce encompasses all aspects of the process of importation, including the transfer of LNG from a ship to storage tanks onshore and other terminal operations.²² Further, the

modify our regulatory oversight of DOMAC's LNG terminal to conform to our current regulatory regime. The light-handed regulatory approach we first adopted in *Hackberry*, which was subsequently reflected in the EPCRA 2005 revisions to NGA section 3(e)(3)(B), was put in place to encourage the development of new LNG import terminals. This revised approach took into account the need to assure domestic and foreign investors that the owner of a new terminal would be able to control the selection and scheduling of LNG shipments. Further, as we pointed out in *Hackberry*, while an existing LNG terminal serves captive customers, "a new entrant to the LNG business . . . has no existing customers who might be adversely affected by the costs or risks of recovery of those costs." 101 FERC at ¶ 61,294 P 21.

²¹ In *Distrigas Corporation*, 58 FPC 2589 at 2593 (1977), the Commission found that "[a]t some point between the time an LNG ship touches U.S. coastal waters and the time when LNG is released from the flange of such ship in a stationary position, [NGA section 3] foreign commerce ends;" thereafter, "interstate commerce begins," and "the Commission's [NGA section 7] jurisdiction attaches." DOMAC's terminal, and DOMAC's and Distrigas' sales for resale, presented the Commission with a case of first impression, and the Commission's view of its jurisdiction evolved over time. See *Distrigas Corporation*, 6 FERC ¶ 63,009 (1979) – Appendix A of the order provides a partial summary of our regulation of the terminal and its services. Note "that interstate commerce and foreign commerce are 'distinct ideas' in the Constitution; that interstate commerce does not include foreign commerce unless Congress by definition includes them in a single expression; that the legislative history of the NGA indicated Congress excluded foreign commerce from the definition of interstate commerce; that section 3 is applicable to foreign commerce; that the NGA has other sections with numerous regulatory provisions relating to rates, practices, accounting, finances, and facilities applicable to interstate commerce; and that the separation of interstate and foreign commerce in the NGA must be noted and observed." *Dynegy LNG Production Terminal, L.P. (Dynegy)*, 97 FERC ¶ 61,231, at 62,049 (2001), summarizing *Border Pipe Line Company v. FPC*, 171 F.2d 149 (D.C. Cir. 1947).

²² See *Sound Energy Solutions*, 107 FERC ¶ 61,263, at 62,161-62 (2004), explaining that our "decision to rely on section 3, not section 7, for LNG terminals better distinguishes foreign from interstate commerce and enables the Commission to employ

(continued...)

Commission now views import terminals as analogous to gas production facilities.²³ Thus, transportation of natural gas in interstate commerce subject to NGA section 7 only begins when liquid loaded onto a truck leaves an LNG import terminal or when regasified LNG is delivered to a pipeline at the tailgate of a terminal.

16. In addition, while NGA section 1(b) provides that sales in interstate commerce of natural gas for resale are subject to the provisions of the NGA, “first sales” as defined in section 2(21) of the Natural Gas Policy Act of 1978 (NGPA)²⁴ are exempted by section

the greater regulatory flexibility available under section 3 to respond and adapt to changes in the nature of the LNG industry,” *citing Hackberry*, 101 FERC ¶ 61,294. *See also Southern LNG, Inc.*, 101 FERC ¶ 61,187, at 61,738 (2002) and *Dynergy*, 97 FERC at 62,053-54.

²³ *See Hackberry*, 101 FERC ¶ 61,294 at P 27, in which we explain our rationale for imposing regulatory requirements on an LNG import terminal on “essentially the same basis as other first sellers of production-area gas supplies.” *See also, Dynergy*, 97 FERC at 62,053, observing that the legislative history of the Energy Policy Act of 1992 (EPA 1992) (Pub. L. No. 102-486, 106 Stat. 2776 (1992); 1992 U.S.C.C.A.N. 1953, 2000), indicates Congressional intent to ensure “that the Commission would not discriminate, or give preference to, natural gas or LNG on the basis of its place of production” and “that Canadian gas imports and LNG imports” would be “treated more like domestic natural gas production.”

²⁴ 15 U.S.C. 3301- 3432. As defined in NGPA section 2(21)(A), a first sale includes any sale to an interstate or intrastate pipeline, local distribution company (LDC), or any person for use by such person, as well as any sale which precedes such a sale. The only qualification to this definition is in NGPA section 2(21)(B), which excludes from the first sale definition, thereby leaving subject to NGA jurisdiction, the “sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof.” An interstate pipeline, as defined in NGPA section 2(15), is “any person engaged in natural gas transportation subject to the jurisdiction of the Commission” under the NGA. An intrastate pipeline, as defined in NGPA section 2(16), is “any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission” under the NGA. An LDC, as defined in NGPA section 2(17), is “any person, other than any interstate pipeline or any intrastate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.”

601 of the NGPA from the Commission's NGA jurisdiction over sales for resale.²⁵ Due to NGPA section 2(21)'s broad definition of "first sale," relatively few sales of gas for resale remain subject to the Commission's NGA jurisdiction. Further, EPCRA 1992 "amended section 3 of the NGA in order to allow imported gas to share the same deregulated status *as a commodity* that the Wellhead Decontrol Act had earlier applied to first sales of domestic gas."²⁶ Specifically, EPCRA 1992 added NGA section 3(b)(1), which states, in relevant part, that the importation of LNG "shall be treated as a 'first sale' within the meaning of [NGPA section 2(21)]."

17. As noted above, all sales of natural gas are now NGA-exempt first sales as defined in NGPA section 2(21), except for sales of gas "by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof." However, in addition to the fact that, as discussed above, we find DOMAC's facilities' operations to be in foreign, not interstate commerce, we view the LNG volumes leaving DOMAC's terminal as equivalent to the production of gas at the wellhead, consistent with EPCRA 1992's amendment of NGA section 3 in order to allow imported gas to share the same deregulated status as a commodity that the Wellhead Decontrol Act afforded first sales of domestic gas.

18. Thus, DOMAC does not transport gas as contemplated in the NGPA, and is not an interstate pipeline, intrastate pipeline, or LDC as defined in the NGPA. Further, while DOMAC and its LNG supplier, Distrigas, are affiliates, as defined in section 2(27) of the NGPA, with Calypso U.S. Pipeline, LLC (Calypso), an interstate pipeline,²⁷ we find NGPA's section 2(21)(B)'s potential disqualification of the companies' sales from being first sales to be inoperative here. Again, this is because, as discussed above, EPCRA 1992 amended NGA section 3 to treat sales of imported LNG as first sales to the same extent as sales of domestic gas, as defined in NGPA section 2(21). Thus, we view Distrigas' sales to DOMAC, and DOMAC's subsequent sales, as sales by an interstate pipeline's affiliates of their own production, which qualify as first sales as contemplated by NGPA

²⁵ Further, the wellhead price controls provided for in the NGPA were gradually removed by the Natural Gas Wellhead Decontrol Act of 1989, Pub. L. No. 101-60, 103 Stat. 157 (1989).

²⁶ *Dynergy*, 97 FERC at 62,053.

²⁷ DOMAC and Distrigas are both subsidiaries of Suez SA, and Suez SA owns Calypso. This affiliate relationship is subject to change. *See* n. 3.

section 2(21).²⁸ Consequently, we conclude that we have no authority to regulate DOMAC's sales. In view of this, we will approve DOMAC's request to abandon its section 7(b) certificate authorizations for its LNG facilities and services.

B. NGA Section 3 Authorization

19. In conjunction with our abandonment approval, we find DOMAC's operation of its terminal facilities to be consistent with the public interest. Therefore, we will act under NGA section 3 to authorize DOMAC's terminal's facilities and operation. While we might transpose each of the regulatory requirements we impose under NGA section 7 to section 3,²⁹ in this case we find no need to do so in view of our current light-handed approach to the regulation of the services provided by LNG import terminals and our limited jurisdiction over DOMAC's sales. We acknowledge DOMAC's commitment to continue to fulfill its existing customer commitments until the expiration of its currently-effective service agreements³⁰ and to offer liquid service under the terms of its Liquid Sales Agreement. We expect DOMAC's service commitments to provide current customers with sufficient time to negotiate terms and conditions of future service agreements or arrange for alternative sources of supply. We note, however, that compelling compliance with the terms and conditions of future sales service agreements will be beyond the reach of the Commission's section 3 jurisdiction. Consequently, we will deny DOMAC's proposal that we treat its Liquid Service Agreement "as a binding obligation enforceable by the Commission" under section 3.³¹

²⁸ If at some point DOMAC or DISTRIGAS is no longer affiliated with an interstate pipeline, intrastate pipeline, or LDC, it will no longer be necessary to examine, as we have here, whether NGPA section 2(21)(B)'s qualification to the "first sale" definition applies. In that event, we would look only to the broad definition of first sale in NGPA section 2(21)(A) and determine that DOMAC's and DISTRIGAS' sales qualify as first sales because they either are sales to interstate or intrastate pipelines, LDCs, or persons for their own use or are sales preceding such sales.

²⁹ See *Distrigas Corporation v. FPC*, 495 F.2d 1057, 1064 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 834 (1974), in which the court observed that under NGA section 3 "the Commission's authority is plenary and elastic," such that "it is fully within the Commission's power, so long as that power is responsibly exercised, to impose on imports of natural gas the equivalent of Section 7 certification requirements both as to facilities and . . . to sales within and without the state of importation."

³⁰ As noted, DOMAC's current service agreements expire between 2008 and 2016.

³¹ DOMAC's *Application for Abandonment* at 8.

20. As a condition of both our section 7(b) abandonment approval and section 3 authorization, we will specify – as we do for new LNG import terminals and expansions of existing terminals – that the following requirements apply to DOMAC’s terminal, throughout the life of the facility.

21. The facility shall be subject to regular Commission staff technical reviews and site inspections on at least an annual basis or more frequently as circumstances indicate. Prior to each Commission staff technical review and site inspection, DOMAC shall respond to a specific data request including information relating to possible design and operating conditions that may have been imposed by other agencies or organizations. Up-to-date detailed piping and instrumentation diagrams reflecting facility modifications and provision of other pertinent information not included in the semi-annual reports described below, including facility events that have taken place since the previously submitted annual report, shall be submitted.

22. Semi-annual operational reports shall be filed with the Secretary of the Commission to identify changes in facility design and operating conditions, abnormal operating experiences, activities (including ship arrivals, quantity and composition of imported LNG, vaporization quantities, boil-off/flash gas, etc.), and plant modifications, including future plans and progress thereof. Abnormalities shall include, but not be limited to: unloading/shipping problems, potential hazardous conditions from off-site vessels, storage tank stratification or rollover, geysering, storage tank pressure excursions, cold spots on the storage tanks, storage tank vibrations and/or vibrations in associated cryogenic piping, storage tank settlement, significant equipment or instrumentation malfunctions or failures, non-scheduled maintenance or repair (and reasons therefor), relative movement of storage tank inner vessels, liquid or vapor releases, fires involving natural gas and/or from other sources, negative pressure (vacuum) within a storage tank and higher than predicted boil-off rates. Adverse weather conditions and their effect on the facility also shall be reported. Reports shall be submitted within 45 days after each period ending June 30 and December 31. In addition to the above items, a section entitled "Significant plant modifications proposed for the next 12 months (dates)" also shall be included in the semi-annual operational reports. Such information would provide the Commission staff with early notice of anticipated future construction/maintenance projects at the LNG facility.

23. DOMAC’s semi-annual operational reports must include pages 520 and 520a of FERC Form No. 2, which report the gas volume information.³²

³² DOMAC is required to make periodic Form 2 filings as a condition of its NGA section 7 certificate authorization. Recognizing the Commission’s need for the Form 2 data to calculate and impose an Annual Charge Adjustment (ACA), DOMAC proposes to

(continued...)

24. 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) shall be reported to Commission staff. In the event an abnormality is of significant magnitude to threaten public or employee safety, cause significant property damage, or interrupt service, notification shall be made immediately, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency procedure. In all instances, notification shall be made to Commission staff within 24 hours of the event. This notification practice shall 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 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;
- j. inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank;

continue to provide this data on a semi-annual basis after abandonment of its certificate authorization. We will adopt DOMAC's proposal by incorporating the obligation to periodically submit such data as a condition of our abandonment approval and section 3 authorization. The Commission will rely on the volumes reflected in the semi-annual reports as the basis for determining DOMAC's ACA.

- k. any condition that could lead to a hazard and cause a 20 percent reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility;
- l. safety-related incidents to LNG vessels occurring at or en 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.

25. In the event of an incident, the Director of the Office of Energy Projects 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, Commission staff will determine the need for an on-site inspection by Commission staff, and the timing of an initial incident report (normally within 10 days) and follow-up reports.³³

26. Finally, any and all outstanding conditions relating to operations of DOMAC's LNG import facilities previously ordered by the Commission shall remain in full force and effect.³⁴

C. Comments and Commission Response

27. Existing customers comment that they cannot support DOMAC's request unless the Commission provides certain assurances that it will continue to exercise authority over DOMAC's rates and services. Our decision to approve section 7(b) abandonment and authorize DOMAC's operation of its facilities under section 3 provides certain assurances regarding DOMAC's continuity of service. The comments are addressed below.

³³ In addition to these Commission-imposed requirements – and independent of the Commission's authority – DOMAC is obliged to comply with the applicable requirements imposed by other federal agencies, such as the United States Coast Guard's requirements regarding ship traffic.

³⁴ To the extent previously-stated conditions are affected by the conditions stated herein, this most recent description applies.

1. City of Boston

28. The City of Boston is opposed to any increase in LNG shipments, stating this would be contrary to its goal to “reduce and ultimately cease all LNG shipments through Boston Harbor.”³⁵ If the requested abandonment is approved, Boston asks the Commission to limit future annual LNG shipments to the average number of annual shipments over the past 10 years.

29. DOMAC argues that Boston’s concern has no bearing on whether the Commission should approve its requested abandonment and authorization. DOMAC insists its requested regulatory revision involves only commercial issues involving its customers, and does not alter LNG supply contracts or shipping operations. DOMAC further observes that the Commission has considered “virtually identical” comments made by Boston in response to Tennessee Gas Pipeline Company’s proposed Essex-Middlesex Project in Docket No. CP06-18-000.³⁶ DOMAC therefore concludes that there is no cause to permit Boston’s comments to color the outcome of this proceeding.

30. Our action in this proceeding does not involve any change to DOMAC’s facilities or any change in DOMAC’s contractual arrangements with its LNG suppliers. Although DOMAC acknowledges that it may seek to obtain LNG from additional suppliers and may receive regasified LNG from the proposed Neptune terminal, we do not expect that DOMAC’s diversifying its sources of supplies will add to LNG ship traffic through Boston’s harbor.³⁷ Indeed, if DOMAC were to receive LNG from Neptune, it would do so via a pipeline carrying regasified LNG, potentially decreasing ship traffic, since ships that would have otherwise traversed Boston’s harbor to reach DOMAC’s berth in Everett will be able to stop short to dock and unload at Neptune’s facility offshore.

³⁵ Comments of James W. Hunt, III, Chief of Boston’s Environmental and Energy Services at 2 (Jan. 25, 2008).

³⁶ *Tennessee Gas Pipeline Company*, 116 FERC ¶ 61,075 (2006), in which the applicant sought to construct a new section of pipeline that would allow DOMAC to increase its capacity to deliver regasified LNG from the tailgate of its terminal. We found that although takeaway capacity would be boosted, the capacity of the terminal would remain the same; consequently, the applicant’s new pipeline would have no impact on shipments of LNG to the terminal.

³⁷ As noted, DOE, not the Commission, authorizes LNG import volumes. Therefore, regardless of whether we accept or reject DOMAC’s proposal in this proceeding, and regardless of the future source of DOMAC’s LNG supply, the amount of LNG that may be delivered to DOMAC’s terminal will remain unchanged.

31. While ship traffic would be expected to increase if LNG volumes to DOMAC were increased, our action in this proceeding has no impact on the volumes that DOMAC is authorized to import.³⁸ Consequently, we find no reason to consider, and thus reject, Boston's requested restrictions on future shipments as a condition our abandonment and authorization. We note that any future modifications to the numbers and types of vessels bringing LNG to DOMAC must comply with all applicable requirements, in particular, the Coast Guard's regulation of ship traffic.

2. New England LDCs

32. In response to New England LDCs' request to modify the binding arbitration provisions of its Liquid Service Agreement, DOMAC avers it will alter its Liquid Services Agreement to match its existing tariff. Thus, in negotiating the terms of future service agreements, parties may elect to specify which types of disputes will be subject to binding arbitration. We expect this modification will satisfy New England LDCs.

33. New England LDCs advocate expanding the Liquid Service Agreement to include a combined liquid and vapor sales service. DOMAC replies that there is no need to do so to preserve services now offered under its tariff. DOMAC explains that the liquid portion of any future combined liquid and vapor sales service will be governed by the Liquid Service Agreement.

34. Since DOMAC's proffered Liquid Service Agreement incorporates the terms and conditions of DOMAC's current FLSS tariff, DOMAC's future customers should be able to obtain liquid services under acceptable terms and conditions. While DOMAC's liquid customers have no viable alternative supplier, we believe DOMAC's vapor customers can obtain similar service from other competitors active in the same market. Thus, we deny New England LDCs request that we require DOMAC to expand its Liquid Service Agreement or develop an additional model agreement to cover vapor services.

3. Con Ed

35. Con Ed comments that were DOMAC to cease liquid sales service, Con Ed would no longer be able to obtain liquid supplies necessary to meet certain of its contractual commitments. Accordingly, Con Ed requests the Commission confirm that DOMAC's representations in its application ensure that if DOMAC later seeks to stop providing liquid services, it will notify its customers at least 180 days in advance to give customers

³⁸ As noted, it is DOE, not the Commission, that is responsible for the authorization of natural gas import and export volumes under NGA section 3.

time to assert to the Commission that terminating liquid services would not be consistent with the public interest.

36. DOMAC responds that Con Ed “has accurately described in its comments the commitments made by DOMAC in its Application and, therefore, its understanding is correct.”³⁹ Thus, we expect DOMAC will notify customers at least 180 days before terminating any portion of its liquid services.

4. National Grid

37. National Grid seeks to ensure that following the requested abandonment, DOMAC’s customers “will continue to be able to safely serve their customers when they vaporize liquid LNG that has been stored in their LNG tanks for normal or extended time periods.”⁴⁰ National Grid explains that liquid LNG received from DOMAC is typically trucked to storage tanks where it undergoes weathering, i.e., boil-off that causes the Btu and Wobbe Number values of the liquid LNG in the tanks to increase over time. National Grid observes that DOMAC has heretofore been importing LNG from Trinidad and Tobago, LNG which has Btu and Wobbe Number values that are well below the NGC+ guidelines.⁴¹ DOMAC has indicated it may seek LNG supplies from other sources, and National Grid is concerned that LNG from other sources may have a higher heat content,⁴² which could cause gas stored in National Grid’s tanks to exceed “acceptable Btu and Wobbe Number limits” after weathering, “and thereby jeopardize National Grid’s ability to safely serve its residential customers.”⁴³ Thus, National Grid requests that the Commission condition DOMAC’s requested abandonment by requiring

³⁹ DOMAC’s *Answer to Comments* at 3 (Feb. 11, 2008).

⁴⁰ National Grid’s *Comments and Request for Conditions* at 5.

⁴¹ The NGC+ Interchangeability Work Group’s February 28, 2005 *White Paper on Natural Gas Interchangeability and Non-Combustion End Use* recommend a range of plus or minus 4 percent Wobbe Number Variation from Local Historical Average Gas or, alternatively, Established Adjustment or Target Gas for the service territory, subject to a Maximum Wobbe Number Limit of 1400 and a Maximum Heating Value Limit of 1,110 Btu/scf.

⁴² Although DOMAC has generally received LNG from Trinidad, which typically does not have a high heat content, there is nothing in Distrigas’ DOE import authorizations to restrict it from obtaining LNG from other sources.

⁴³ National Grid’s *Comments and Request for Conditions* at 6.

DOMAC to incorporate specific Btu and Wobbe Number limits for liquid service as part of the Liquid Service Agreement.⁴⁴

38. DOMAC objects to National Grid's requested condition, characterizing it as requiring DOMAC to provide "a guarantee of protection from changes due to weathering of LNG that is no longer in DOMAC's possession."⁴⁵ DOMAC stresses that its Liquid Service Agreement does not alter the gas quality specifications set forth in its tariff.⁴⁶ National Grid acknowledges that DOMAC is not seeking to modify its existing gas quality specifications, but argues that in assessing a request to abandon certificated services, the Commission should construe the public convenience and necessity standard to include the potential reduction or degradation of service that could be brought about by LNG imports from different supply sources.

39. DOMAC can fulfill its obligations by delivering liquid that meets its own LNG quality specifications, and delivering regasified volumes that meet its own LNG quality specifications and the gas standards of the receiving pipeline.⁴⁷ We reject National Grid's request that we modify these existing standards, because we believe it would be unreasonable to require DOMAC to meet still stricter quality standards to compensate for weathering that may take place after DOMAC relinquishes title and custody of liquid that meets all applicable standards at the time of delivery. The responsibility for the consequences of weathering rests with the party in possession of the liquid.

⁴⁴ Specifically, National Grid recommends DOMAC be restricted to an upper Btu limit of 1095-1100 and an upper Wobbe Number value of 1390-1395, and that these values also be applied to Algonquin's system.

⁴⁵ DOMAC's *Answer to Comments* at 3 (Feb. 11, 2008).

⁴⁶ DOMAC has proposed to adopt the gas quality specifications ultimately approved for Algonquin in the pending proceeding in Docket No. RP07-504-000, standards which are, in certain respects, even more restrictive than those included in DOMAC's tariff. Following the cancellation of DOMAC's tariff, identical LNG quality specifications will carry over as Part B of the General Terms and Conditions of the Liquid Services Agreement and Article III of each individual service agreement.

⁴⁷ With respect to regasified LNG, note that Massachusetts requires gas delivered to LDCs meet the quality standards of the interstate pipeline transporting it.

V. Summary

40. We approve DOMAC's abandonment request; thus, DOMAC will no longer be subject to our authority under NGA section 7. DOMAC's tariff will be cancelled upon its fulfillment of the provisions of section 154.602 of our regulations,⁴⁸ which provides that when an effective tariff on file with the Commission is proposed to be canceled and no new tariff is to be filed in its place, the company must notify the Commission of the proposed cancellation using the appropriate form in Part 250 of the regulations and provide such other information as required by section 154.602 at least 30 days prior to the proposed effective date of such cancellation. Hereafter, we will assert our authority over DOMAC's facilities and services under NGA section 3. As a condition of its section 7(b) abandonment and section 3 authorization, following abandonment, DOMAC is required to comply with the reporting and operating conditions specified herein and to continue to be subject to an ACA.⁴⁹ Customers, or others, that are dissatisfied with DOMAC's future performance may submit a complaint to the Commission, which we will review under section 3 to determine whether DOMAC is acting in a manner inconsistent with the public interest, and if so, we will take corrective action to the extent it lies within our jurisdictional purview.⁵⁰

The Commission orders:

(A) Permission for and approval of DOMAC's abandonment of its NGA section 7 certificate authorizations are granted, as more fully described in this order and in the application.

(B) DOMAC's LNG import facilities and operations are authorized under NGA section 3, as more fully described in this order and in the application.

(C) The permission and approval in Ordering Paragraph (A) and the authorization in Ordering Paragraph (B) are conditioned on DOMAC's compliance with the conditions set forth in this order.

⁴⁸ 18 CFR § 154.602 (2008).

⁴⁹ *See supra*, n. 32.

⁵⁰ While the Commission may address future disputes regarding the operation, safety, and security of DOMAC's LNG terminal facilities under NGA section 3, the Commission does not have authority under section 3 to resolve disputes regarding the interpretation of the terms and conditions of DOMAC's sales service contracts. Contract disputes must be resolved by arbitration or in a court of law.

(D) Late filed motions to intervene by Algonquin and Trunkline are granted.

(E) Objections to DOMAC's requested abandonment are denied, for the reasons discussed in this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.