

127 FERC ¶ 61,258
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Cove Point LNG, LP

Docket No. CP09-59-000

ORDER GRANTING AUTHORIZATION
UNDER SECTION 3 OF THE NATURAL GAS ACT

(Issued June 18, 2009)

1. On February 3, 2009, Dominion Cove Point LNG, LP (Dominion Cove Point) filed an application, under section 3(a) of the Natural Gas Act (NGA),¹ requesting authority to construct and operate a new 3,500 horsepower (hp) electric motor-driven reciprocating compressor unit and related facilities at Dominion Cove Point's existing Cove Point LNG Terminal, a liquefied natural gas (LNG) import terminal located in Calvert County, Maryland.² In this order, the Commission finds that the requested authorizations are consistent with the public interest and grants Dominion Cove Point's request, under section 3 of the NGA, to construct and operate the proposed facilities, subject to the conditions discussed herein.

¹ 15 U.S.C. § 717b(a) (2006).

² The Commission originally authorized the construction and operation of the terminal and an associated 88-mile pipeline in 1972. Opinion No. 622, 47 FPC ¶ 1642 (1972), *order on reh'g*, Opinion No. 622-A, 48 FPC 723 (1972). Import services began in 1978, but were suspended in 1980. In 1994, the Commission authorized the construction of a liquefaction unit to liquefy domestic natural gas for storage. *Cove Point LNG Limited Partnership*, 68 FERC ¶ 61,377 (1994). In 2001, the Commission authorized Cove Point LNG, LP to construct additional facilities, including a fifth LNG storage tank, and to repair and reactivate the terminal and resume imports. *Cove Point LNG Limited Partnership*, 97 FERC ¶ 61,043 (2001), *order on reh'g*, 97 FERC ¶ 61,276 (2001), *order on reh'g and clarification*, 98 FERC ¶ 61,270 (2002).

I. Background and Proposal

2. Dominion Cove Point is a limited partnership organized and existing under the laws of the State of Delaware with its principle place of business in Richmond, Virginia. Dominion Cove Point acquired the terminal from Cove Point LNG, LP in 2002.

3. In 2006, the Commission approved the Cove Point Expansion Project, which included the installation of two additional LNG storage tanks at the terminal facility and the construction by Dominion Cove Point and Dominion Transmission, Inc. of new downstream pipeline and appurtenant storage facilities.³ The expansion was placed into service in January 2009 and increased the terminal's storage capacity to 14.6 billion cubic feet and its peak sendout capacity to 1.8 million dekatherms per day.

4. In this application, Dominion Cove Point proposes to construct and operate a new 3,500 hp electric motor-driven reciprocating compressor unit, with associated piping and system controls, and approximately nine hundred feet of six-inch pipeline to replace an existing four-inch line, as more fully described in the application (Pipeline Compressor Addition Project). Dominion Cove Point states that the new compressor unit will be installed in parallel to the three existing 1,500 hp reciprocating compressor units and will have a capacity of twelve million cubic feet per day. Dominion Cove Point states that the Pipeline Compressor Addition Project will not increase the terminal's currently authorized levels for LNG storage or gas sendout.

5. Dominion Cove Point states that the purpose of the new facilities is to increase its capacity to compress boil-off gas for sendout through its pipeline facilities during periods of low sendout from the terminal. Dominion Cove Point explains that due to the recent terminal expansion projects, the amount of boil-off gas that may be generated during periods of low sendout may exceed the capacity of the three existing compressors which compress such gas for sendout. Dominion Cove Point states that installation of the new compression facilities will allow it to better manage periods of low sendout and, at the same time, maintain plant operations that enable LNG shippers to more flexibly tender cargoes. Dominion Cove Point also states that the new facilities will provide some level of backup for the existing 30-year-old compression facilities. Dominion Cove Point states that construction of the Pipeline Compressor Addition Project will cost an estimated \$7,686,000.

³ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006), *order on reh'g*, 118 FERC ¶ 61,007 (2007), *vacated by, Washington Gas Co. v. FERC*, 532 F.3d 928 (D.C. Cir. 2008), *order on remand*, 125 FERC ¶ 61,018 (2008), *order on reh'g and clarification*, 126 FERC ¶ 61,036 (2009).

6. Dominion Cove Point states that it offers its pre-2006 Cove Point Expansion Project shippers two types of firm, open-access service at the terminal: firm peaking service under Rate Schedules FPS-1, FPS-2, and FPS-3 and firm LNG terminalling service under Rate Schedules LTD-1 and LTD-2. The Cove Point Expansion Project terminalling services are provided on a non-open access basis to Statoil, the sole Cove Point Expansion Project shipper, at non-tariffed, market-based rates.⁴ However, in its initial application Dominion Cove Point does not propose to provide a new service utilizing the additional compression, seek to establish an initial rate applicable to this project, or request a pre-determination that the costs associated with this project may be rolled into the costs of a specified existing service in a future rate proceeding.

7. On March 5, 2009, Dominion Cove Point supplemented its application advising the Commission that it has reached an agreement with Statoil and its Rate Schedule LTD-1⁵ customers regarding the treatment of costs associated with the Pipeline Compressor Addition Project. Dominion Cove Point states that it and its customers have agreed that the costs for the project will be attributed to the Cove Point Expansion Project services. Dominion Cove Point, in its April 16, 2009 data response, provides further clarification on the proposed rate treatment, explaining that: (1) the agreement with its LNG import customers for recovery of the costs of the Pipeline Compressor Addition Project was apparently not reduced to writing; (2) Dominion Cove Point will account for the Pipeline Compressor Addition Project costs consistent with Commission approval of the Cove Point Expansion Project;⁶ (3) natural gas used for on-site generation will be accounted for through Dominion Cove Point's fuel retainage mechanism equivalent to service provided under Rate Schedule LTD-1; and (4) no rate schedules are affected by this agreement.

⁴ *Id.*, 115 FERC ¶ 61,337 at P 108-111.

⁵ *See* March 5, 2009 Application Supplement – Project Cost Information. Rate Schedule LTD-1 provides for firm LNG tanker discharge service. Dominion Cove Point's import customers under Rate Schedule LTD-1 are BP Energy Company, Shell NA LNG LLC, and Statoil.

⁶ The Commission's June 16, 2006 order authorizing the Cove Point Expansion Project required that Dominion Cove Point keep separate books and records for the costs associated with its open-access and non-open access services. Such disclosure will allow parties in any future rate proceeding to track the various costs in order to ensure that the open-access customers do not subsidize the Cove Point Expansion Project. 115 FERC ¶ 61,337 at P 109 and Ordering Paragraph (G).

II. Notice and Interventions

8. Notice of Dominion Cove Point's application was published in the *Federal Register* on February 25, 2009 (74 Fed. Reg. 8520). Timely motions to intervene were filed by Atlanta Gas Light Company, Virginia Natural Gas, Inc., Shell NA LNG, Statoil, Washington Gas Light Company, and BP Energy Company. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁷ There were no protests to the application. Comments in support of the application were filed by Statoil and comments filed by a nearby landowner are addressed below.

III. Discussion

9. Since the proposed facilities are part of an LNG terminal used to import natural gas from a foreign country, the construction and operation of the expansion facilities are subject to the requirements of section 3 of the NGA and the Commission's jurisdiction.⁸ According to section 3 of the NGA, the Commission shall issue authorization unless it finds that granting the requested authorization "will not be consistent with the public interest."⁹

A. Rate Treatment

10. Dominion Cove Point states that it, its Cove Point Expansion Project shipper, and its Rate Schedule LTD-1 shippers have agreed that all costs associated with the instant project will be attributed to the Cove Point Expansion Project. None of the rates

⁷ 18 C.F.R. § 385.214(c) (2008).

⁸ The regulatory functions of section 3 of the NGA were transferred to the Secretary of Energy in 1977 pursuant to section 301(b) of the Department of Energy Organization Act. 42 U.S.C. § 7151(b) (2006). In reference to regulating the imports or exports of natural gas, the Secretary subsequently delegated to the Commission the authority to approve or disapprove the construction and operation of particular facilities, the location of the proposed facilities, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry or exit for exports. DOE Delegation Order No. 00-44.00, 67 Fed. Reg. 8,946 (Feb. 19, 2002). However, applications for authority to import natural gas must be submitted to the Department of Energy. The Commission does not authorize importation of the commodity itself.

⁹ 15 U.S.C. § 717b(a) (2006).

associated with that project are regulated by the Commission.¹⁰ However, NGA section 3(e)(4) provides that “[a]n 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.”¹¹ To the extent that none of the costs of the Pipeline Compressor Addition Project are allocated to the rates of the open-access shippers, this requirement will be satisfied. Therefore, to ensure that Dominion Cove Point’s open-access customers do not pay for the Pipeline Compressor Addition Project, and consistent with the orders authorizing the Cove Point Expansion Project, we will require Dominion Cove Point to allocate all cost associated with the Pipeline Compressor Addition Project to its Cove Point Expansion Project service and to maintain books and records with applicable cross references as required by section 154.309 of the Commission regulations¹² and in sufficient detail so that the data can be identified in Statement G, I, and J in any future NGA section 4 or 5 proceedings.¹³ Further, consistent with its FERC tariff,¹⁴ we will require Dominion Cove Point to account for fuel costs attributable to the Pipeline

¹⁰ Section 311(c) of EPAct 2005 added a new NGA section 3(e)(3) which provides that, before January 1, 2015, the Commission shall not condition an order approving an application to site, construct, expand, or operate an LNG terminal on: (1) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant securing the order; (2) any regulation of the rates, charges, terms, or conditions of service of the LNG terminal; or (3) a requirement to file schedules or contracts related to the rates charges, terms, or conditions of service of the LNG terminal. Energy Policy Act of 2005, Pub. L. No. 109-58, § 311(c), 119 Stat. 594, 685 (2005) (codified at 15 U.S.C. § 717b(e) (2006)). This codified the Commission’s policy decision that it is not necessary to impose traditional regulation, such as rates, tariffs, and open-access requirements, on LNG import facilities which was announced in *Hackberry LNG Terminal, L.L.C.*, 101 FERC ¶ 61,294 (2002) (*Hackberry*), *order issuing certificates and granting reh'g*, 104 FERC ¶ 61,269 (2003).

¹¹ 15 U.S.C. 717b(e)(4) (2006).

¹² 18 C.F.R. § 154.309 (2008)

¹³ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337, at P 109-110 (2006).

¹⁴ See Cove Point LNG’s tariff at sections 1.42 and 30.(a)(2) of the General Terms and Conditions.

Compressor Addition Project through its fuel retainage mechanism, treating such cost as equivalent to service under Rate Schedule LTD-1.¹⁵

11. Dominion Cove Point's proposal is minor in nature, and will not alter the scope of the terminal's operation. The requested authorization will not change the capacity or the deliverability of the terminal and Dominion Cove Point proposes no new or additional service as a result of the proposed facilities. Installation of the proposed facilities will enable Dominion Cove Point to better manage periods of low sendout, while maintaining plant operations and provide greater operational flexibility and redundancy for the terminal's existing, aging facilities. The Pipeline Compressor Addition Project will not result in subsidization by existing customers, unduly discriminate against any customers, and will enable Dominion Cove Point to enhance and improve the flexibility of terminal operations to the benefit of all customers.

B. Environmental Assessment

12. On March 9, 2009, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Pipeline Compressor Addition Project and Request for Comments on Environmental Issues* (NOI). We received responses to the NOI from one commenter, a private landowner, Robert McCaffery.

13. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an environmental assessment (EA) for Dominion Cove Point's proposal that was placed into the public record on May 13, 2009. The EA addresses soils; land use and visual resources; cultural resources; air quality and noise; reliability, safety and security; cumulative impacts; and alternatives. The EA addresses the substantive comments received from Mr. McCaffery.

14. In his comments, Mr. McCaffery expressed concerns about noise disturbances he and his family have noticed at his residence due to activities taking place at the existing terminal. Mr. McCaffery also requested to be informed about the EA for the proposed project as it relates to noise, how the Commission determines acceptable levels of noise, and any proposed mitigation to reduce noise from the terminal.

¹⁵ Dominion Cove Point tracks fuel usage at the terminal. To the extent that LTD-1 shippers deliver additional cargoes and send out those volumes of LNG using the capacity of the Pipeline Compressor Addition Project proposed, any such incremental quantities imported will be charged the storage fuel rate upon receipt for injection by the LTD-1 shipper.

15. The EA discusses the noise impacts of the project and concludes that no perceptible increase in noise levels would occur at nearby residences during the proposed project's operation. The project's construction activities may cause temporary increases in existing noise levels at nearby residences, primarily during daytime hours. In regard to Mr. McCaffery's concerns with previous noise levels, Commission staff conducted an inspection of the facility on March 24 and 25, 2009, and did not identify any noise as described by Mr. McCaffery. The Commission staff suspects that temporary testing activities related to the new generators or water/ethylene glycol heaters may have caused the noise.

16. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Dominion Cove Point's application, as filed on February 3, 2009 and supplemented, and in compliance with the environmental conditions attached to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

17. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this authorization. The Commission encourages 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.¹⁶

18. The record in this case shows that Dominion Cove Point's proposed facilities will enable it to safely and reliably send out additional boil-off gas. For the reasons set forth herein, and subject to the conditions set forth below in the Appendix, we find that Dominion Cove Point's proposed compression facilities are not inconsistent with the public interest under section 3 of the NGA. Thus, we grant the requested authorization to Dominion Cove Point.

19. 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,

¹⁶ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) Dominion Cove Point is granted authorization under section 3 of the NGA to construct and operate the proposed facilities, as more fully described in Dominion Cove Point's application and as conditioned herein.

(B) Dominion Cove Point shall install and make available for service the facilities authorized herein within one year from the date of this order.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX

Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Dominion Cove Point shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA unless modified by this Order. Dominion Cove Point must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (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 proposed 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. Dominion Cove Point shall file noise surveys with the Secretary **no later than 60 days** after placing the authorized unit at the Cove Point LNG terminal in service. If the noise attributable to the operation of the modified Cove Point LNG terminal at full load exceeds an L_{dn} of 55 dBA at any nearby noise-sensitive areas, Dominion Cove Point shall install additional noise controls to meet that level **within 1 year** of the in-service date. Dominion Cove Point shall confirm compliance with the L_{dn} 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.