

UNITED STATES OF AMERICA 102 FERC ¶ 61,227
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Cove Point LNG Limited Partnership	Docket Nos. CP01-76-000
	CP01-76-001
	CP01-77-000
	CP01-77-001
	RP01-217-000
	RP01-217-001
	CP01-156-000
	CP01-156-001

ORDER APPROVING UNCONTESTED AMENDMENT TO SETTLEMENT
AND SETTLEMENT

(Issued February 27, 2003)

1. The following order approves two related, uncontested settlement agreements filed on October 24, 2002, by Cove Point LNG, L.P. (Cove Point), which resolve the remaining issues in the above-docketed proceedings related to the reactivation of the Cove Point liquefied natural gas (LNG) import terminal in Calvert County, Maryland.

Background

2. On January 31, 2001, Cove Point filed a certificate application requesting authority to reactivate and expand its Cove Point, Maryland LNG terminal to facilitate the resumption of LNG imports at the terminal. The application included a Stipulation and Agreement (January 2001 Settlement) between Cove Point, all of its prospective LNG tanker discharge service (LTD-1) customers,¹ its existing firm peaking service

¹The three LTD-1 customers were El Paso Merchant Energy, L.P. (El Paso), BP Energy Company (BP), and Shell NA LNG, Inc. (Shell). Through transactions completed on December 3, 2002, Statoil North America Inc. (Statoil) has acquired El
(continued...)

(FPS) customers, its existing firm transportation (FTS) customers, and its existing interruptible transportation (ITS) customers, with the exception of Washington Gas Light Company (Washington Gas), an existing FPS and FTS customer, which did not sign the January 2001 Settlement. The January 2001 Settlement established settlement rates and resolved other issues related to the terms and conditions of service for LTD, FPS, FTS and ITS customers. Washington Gas objected to certain tariff and service issues contained in the certificate application and January 2001 Settlement.

3. The Commission approved Cove Point's application and the January 2001 Settlement, with certain exceptions and conditions, in three orders.² On rehearing, the Commission severed Washington Gas from the January 2001 Settlement and ordered a hearing to be held in Docket No. RP01-217-001, for the limited purpose of establishing the appropriate FPS-2 rate to be paid by Washington Gas. Washington Gas filed three petitions for judicial review of the Commission's orders, of which two have been dismissed and one is pending in the United States Court of Appeals for the District of Columbia Circuit.³

4. On October 24, 2002, Cove Point submitted an Amendment to the January 2001 Settlement (Amendment), as well as a Stipulation and Agreement (October 2002 Settlement) intended to resolve the issues arising in these proceedings. On December 18, 2002, the Presiding Administrative Law Judge in Docket No. RP01-217-001 certified the uncontested October 2002 Settlement to the Commission.

¹(...continued)

Paso's FTS and LTD-1 capacity rights on the Cove Point facilities. Statoil has thus replaced El Paso as one of the three LTD-1 shippers. On December 5, 2002 Statoil submitted a motion to intervene out-of-time in these proceedings and agrees to accept the record in these cases as developed to date. Pursuant to 18 C.F.R. § 385.214(d) the Commission finds that good cause exists to permit Statoil's late motion to intervene since no disruption will be caused and no party will be prejudiced or face additional burden by granting intervention to Statoil.

²Cove Point LNG Limited Partnership, 97 FERC ¶ 61,043; order granting and denying reh'g in part, granting and denying clarification, 97 FERC ¶ 61,276 (2001); order denying reh'g and granting and denying clarification, 98 FERC ¶ 61,270 (2002).

³Washington Gas Light Co., et al. v. FERC, No. 02-1128 (D.C. Cir. filed April 15, 2002). On January 30, 2003, the court granted Washington Gas's motion to hold the case in abeyance pending Commission action of the October 2002 Settlement.

5. The Commission will consider the Amendment and the October 2002 Settlement together since they have been submitted as, and are considered by the parties to be, an integrated package. The Amendment represents an agreement between Cove Point and the LTD-1 shippers. The October 2002 Settlement is an agreement among Cove Point, the LTD-1 shippers and Washington Gas. Both agreements are described below.

Description of the Amendment to the January 2001 Settlement

6. The Amendment is an agreement between Cove Point and its LTD-1 shippers. It resolves certain limited issues associated with increased project costs, certain additional facilities at the Cove Point LNG terminal, and LTD-1 settlement rates that have arisen between Cove Point and the LTD-1 shippers since the original January 2001 Settlement agreement was filed with Cove Point's application and approved by the Commission with modification. The Amendment does not affect the rights and obligations of any other signatories to the January 2001 Settlement.

7. Among other things, the Amendment notes that Cove Point will incur increased capital and operating costs above those anticipated in Appendix C of the January 2001 Settlement, agrees that Cove Point will expend those funds, and amends the January 2001 Settlement to reflect revised LTD-1 rates.

8. The Amendment provides for the deletion of Paragraph 6 of Article II of the January 2001 Settlement. The Amendment describes the procedures that Cove Point will follow in constructing certain nitrogen injection, power, and related facilities and provides that the LTD-1 shippers will support the filings needed to accomplish the construction and operation of those facilities. The Amendment further requires Cove Point to exercise commercially reasonable efforts to avoid incurring additional costs.

9. The Amendment also provides that Cove Point and the LTD-1 shippers have agreed to conduct a study to determine the modifications that may be necessary to accommodate a process referred to as "Streaming" and provides for a procedure relating to the implementation of streaming.⁴

⁴Streaming is a process by which LNG to be regassified is delivered directly from a ship to the regassifier. The process may be helpful in ensuring the efficient use of the facility.

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10. Attached to the Amendment is a new Appendix C setting forth new LTD-1 rates, and Appendix D with certain pro forma tariff sheets that reflect changes necessary to implement the terms of the Amendment.⁵

Description of the October 2002 Settlement

11. The October 2002 Settlement is the result of negotiations between Cove Point, the LTD-1 shippers, and Washington Gas. It resolves the dispute between Washington Gas and the other parties regarding the issue of LNG interchangeability and heat content and addresses Washington Gas's safety concerns about the addition of LNG with higher heat content into its system. It also addresses certain firm peaking and transportation services that are to be offered by Cove Point to Washington Gas. The October 2002 Settlement does not affect the rights and obligations of any of the other signatories to the January 2001 Settlement.

12. **Article I** of the settlement describes the background of both the January 2001 and October 2002 Settlements.

13. **Article II** describes the terms of the October 2002 Settlement. Paragraph 1 of Article II indicates that Washington Gas will become bound by the provisions of the January 2001 Settlement filed by Cove Point in Docket No. CP01-56-000, and establishes the rates to be charged for service to Washington Gas under Cove Point's Rate Schedule FPS-2.

14. Paragraph 2 defines certain "Settled Issues," and sets forth the procedures for withdrawal of pending petitions for review or other requests for relief and for the termination of the hearing in Docket No. RP01-217-001.

15. Paragraph 3 indicates that the proposed settlement is dependent upon Commission approval of the pro forma tariff changes reflected in Appendix A of the settlement. This paragraph also establishes Cove Point's obligation promptly to file to make the tariff sheets effective, and the parties' obligations to support such filing.

16. Paragraph 4 establishes that parties will sponsor a study of interchangeability indices and adjustment gas composition, which study is to be performed by TIAX, LLC.

⁵On October 30, 2002 Cove Point made a supplemental filing to provide redlined versions of the pro forma tariff sheets attached as Appendices C and D to the Amendment.

Depending on the outcome of the TIAX study, Cove Point may be required to make a tariff filing to revise its applicable LNG interchangeability indices and/or adjustment gas composition. The cost of the TIAX study will be paid for by Cove Point and the LTD-1 shippers and, as described in Appendix B to the settlement, the study will cost no more than \$600,000.

17. Pursuant to paragraph 5, Cove Point is required to provide certain information to Washington Gas in order to administer the interchangeability standards.

18. Paragraph 6 preserves Washington Gas's right to petition the Commission in the event that the quality of any vaporized LNG that is subsequently redelivered to Washington Gas causes unsafe conditions on Washington Gas's system.

19. Paragraph 7 describes certain firm peaking and transportation services (FPS-3 and FTS) that are to be offered by Cove Point to Washington Gas under the pro forma agreements that are found at Appendix C to the proposed settlement.

20. Paragraph 8 details an adjustment of the initial storage ratio (i.e., the ratio of storage capacity to deliverability) for LTD-1 service that corresponds to the offer of additional services to Washington Gas under Paragraph 7.

21. In accordance with paragraph 9, the parties will reimburse certain costs incurred by Washington Gas associated with reactivation of the Cove Point LNG terminal and monitoring the interchangeability of vaporized LNG following reactivation. This cost amounts to \$275,000.

22. Paragraph 10 provides that Washington Gas will not oppose Cove Point's proposal to add nitrogen injection and associated power generation facilities, within certain defined limits.

23. Paragraph 11 establishes and describes Cove Point's obligation to file an application, on or before March 31, 2003, for construction of the facilities necessary to create additional firm transportation capacity from West to East on the Cove Point pipeline system.

24. Paragraph 12 provides for and defines an "Interim Period" that will commence upon the initiation of Rate Schedule LTD-1 service. This provision describes certain firm transportation services that are to be offered by Cove Point to Washington Gas, beginning at the start of the Interim Period. Paragraph 12 also sets forth in detail the nominations and scheduling procedures that are to be adopted during the Interim Period,

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in order to accommodate the service obligations of Cove Point to various parties during that time.

25. **Article III** sets forth the dates upon which various obligations of the parties will take effect. It also sets forth certain conditions under which the settlement may or may not become binding upon one or more of the parties.

26. **Article IV** specifies the matters that have been resolved by the settlement, states that provisions of the settlement are not severable, and indicates that the parties' obligations apply to their successors and assignees.

27. Attached to the October 2002 Settlement are Appendix A containing certain pro forma tariff sheets that reflect changes necessary to implement the terms of the settlement; Appendix B containing the scope of the TIAX study; and Appendices C and D set forth certain pro forma service agreements between Cove Point and Washington Gas.⁶

Comments

28. Comments in support of the Amendment and the October 2002 Settlement were filed by Cove Point, Washington Gas, BP and Shell. No comments in opposition were received.⁷ The parties assert that these two agreements are in the public interest because they offer an integrated, comprehensive resolution of issues in the referenced proceedings resulting from negotiated compromise among competing interests on the Cove Point system. They note that the resolution of these proceedings will allow the timely reactivation of the LNG facilities to allow for the planned delivery of imported

⁶On October 30, 2002 Cove Point made supplemental filing to provide redlined versions of the pro forma tariff sheets attached as Appendix A to the October 24 Settlement.

⁷On December 6, 2002, Mirant Americas Energy Marketing, LP (Mirant) filed to withdraw its objections to the October 2002 Settlement after Cove Point submitted language to revise Section 5.5 of its proposed Rate Schedule LTD-2, to clarify that, for the purpose of accepting non-conforming LNG cargoes, Cove Point will consider not only the availability of nitrogen blending, but also available LNG blending upon delivery of such LNG. In order to implement this revision, Cove Point requests the Commission to accept Second Revised Sheet No. 19G to its FERC Gas Tariff Pro Forma Second Revised Volume No. 1, which was submitted as an attachment to its December 6, 2002 reply comments in support of settlement.

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LNG and provide certainty regarding future operations at Cove Point's LNG facility.

Discussion

29. The Commission has reviewed Cove Point's unopposed Amendment and October 2002 Settlement and approves them without modification. These agreements resolve the above-captioned proceedings and will bring an end to litigation before the Commission and the courts.

30. The Amendment imposes obligations on the LNG import shippers as well as providing them with certain benefits. The Amendment will establish Cove Point's LTD-1 rates and govern the steps that the parties will take in the future in connection with the installation of necessary additional facilities and the operations at the Cove Point LNG facility.

31. The October 2002 Settlement resolves contentious issues concerning the resumption of LNG imports at the Cove Point terminal and the provision of safe and reliable service for natural gas consumers without further litigation. The October 2002 Settlement is the result of protracted negotiations among Cove Point, its LTD-1 shippers and Washington Gas. The proposed revised tariff sheets to be made effective as a part of the October 2002 Settlement address the concerns of Washington Gas by ensuring that vaporized LNG redelivered to delivery points on the Cove Point pipeline will meet specific criteria that Washington Gas will be able to monitor, and Washington Gas will retain the ability to petition should unsafe conditions develop.

32. For these reasons, the Commission approves the Amendment and the October 2002 Settlement as fair and reasonable and in the public interest. However, because the record in these proceedings has been filed with the United States Court of Appeals for the District of Columbia, the effectiveness of this order is subject to leave of the court.

The Commission orders:

(A) Cove Point's Amendment and October 2002 Settlement, filed on October 24, 2002, are accepted and approved, subject to leave of the United States Court of Appeals for the District of Columbia.

(B) Cove Point is directed to file actual tariff sheets consistent with the terms of the Amendment and the October 2002 Settlement.

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(C) Statoil's late filed motion to intervene is granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.