107 FERC ¶ 61,153
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Dominion Cove Point LNG, LP — Docket Nos. RP03-545-004, RP03-545-005

ORDER ON COMPLIANCE
AND CLARIFICATION

(Issued May 10, 2004)

1. On March 15, 2004, Dominion Cove Point LNG, LP (Cove Point) filed revised tariff sheets in compliance with the Commission's order, issued March 5, 2004.[1] Additionally, on April 1, 2004, Cove Point filed a request for clarification or rehearing of the March 5 Order with regard to the issue of returning collateral to non-winning bidders. In this order, the Commission accepts Cove Point's revised tariff sheets, and grants Cove Point's request for clarification. This order benefits customers by clarifying the manner by which collateral is returned to non-winning bidders.

I. Background

2. On July 1, 2003, Cove Point filed revised tariff sheets proposing that shippers seeking to bid in capacity release auctions must first pre-qualify with the pipeline's creditworthiness standards. Several parties objected to Cove Point's proposal, arguing that the proposed tariff revisions requiring prequalification of bidders for capacity release would be unreasonable and unworkable.

3. Through a series of orders, the Commission accepted Cove Point's proposal, subject to modifications.[2] As relevant here, the November 18 Order directed Cove Point to revise its tariff to state that upon the close of the bidding period, the pipeline must immediately release any collateral that has been posted by non-winning, non-creditworthy bidders. Subsequently, on December 8, 2003, Cove Point filed revised tariff

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[1] Dominion Cove Point LNG, LP, 106 FERC ¶ 61,226 (2004) (March 5 Order).

[2] Dominion Cove Point LNG, LP, 104 FERC ¶ 61,184 (August 1 Order), and 105 FERC ¶ 61,225 (2003) (November 18 Order).

sheets in an effort to comply with the November 18 Order. Among the revisions, Cove Point specified that the pipeline will return any posted collateral to a non-winning bidder within five business days after the award is made, unless otherwise requested by the bidder.

4. The Commission found in the March 5 Order that Cove Point's proposal to return collateral to a non-winning bidder within five business days of the award did not comply with the directive to "immediately release" such collateral.[3] As such, the Commission directed Cove Point to revise its tariff to provide that any collateral posted by a non-winning, non-creditworthy shipper will be released prior to the next nomination opportunity. The Commission explained that such a provision would ensure that the replacement shipper will have the collateral available to acquire released capacity through a pre-arranged deal on the same or another pipeline.

5. In addition, the Commission found that it would be reasonable to extend the period for posting collateral to the point of the capacity award.[4] Instead of requiring the replacement shipper to post collateral by the end of the bidding period, the Commission found that the goal of requiring security prior to the allocation of capacity can still be accomplished if the replacement shipper posts collateral prior to the time of the award of the capacity.

II. Compliance Filing in Docket RP03-545-004

6. On March 15, 2004, Cove Point filed revised tariff sheets to comply with the March 5 Order.[5] The revised tariff sheets modify Cove Point's General Terms and Conditions to: (1) extend the time in which replacement shippers have to post collateral up to the time the bid is awarded; (2) provide that collateral posted by a non-winning, non-creditworthy shipper will be released prior to the next nomination cycle; and (3) specify the method in which cash and non-cash collateral is returned. Cove Point requests an effective date of August 1, 2003 for its proposed tariff sheets.

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[3] March 5 Order at P 26.

[4] Id. at P 21.

[5] Third Sub. Second Revised Sheet No. 240, Third Sub. First Revised Sheet No. 241, and Second Sub. Second Revised Sheet No. 245 to FERC Gas Tariff, Original Volume No. 1.

III. <u>Public Notice and Interventions</u>

7. Public notice of Cove Point's compliance filing was issued on March 19, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[6] Pursuant to rule 214 of the Commission's Rules of Practice and Procedure, all timely motions to intervene and all motions to intervene out of time filed before the issuance of this order are granted.[7] Granting late intervention will not disrupt the proceeding or place additional burdens on existing parties. No comments or protests were filed.

IV. <u>Request for Clarification in Docket RP03-545-005</u>

8. Cove Point seeks clarification regarding the Commission's determination in the March 5 Order that Cove Point must release collateral posted by non-winning, non-creditworthy bidders, prior to the next nomination opportunity.[8] Although Cove Point accepts the Commission's determination, it is concerned that the Commission may be requiring Cove Point to release a non-winning bidder's collateral in a manner that will ensure that the collateral is <u>available</u> to that bidder at the next nomination opportunity.

9. Cove Point seeks clarification that it is only required to <u>release</u> the collateral prior to the next nomination opportunity and that it is <u>not</u> responsible for ensuring that the released collateral is actually available to the bidder. Cove Point believes that the language of the March 5 Order could be interpreted to require that Cove Point release the collateral in a manner which will assure that the collateral is returned and made available for the bidder's use prior to the next nomination opportunity.[9] Cove Point states that such a requirement would hold the pipeline responsible for something which it has no control over.

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[6] 18 C.F.R. § 154.210 (2003).

[7] 18 C.F.R. § 385.214 (2003).

[8] Cove Point styled its pleading as a request for clarification, or in the alternative, rehearing. Since the Commission is providing clarification in this Order, Cove Point's alternative request for rehearing is dismissed as moot.

[9] Cove Point's concern arises from the Commission's determination releasing collateral prior to the next nomination opportunity "will ensure that the replacement shipper will have the collateral available to acquire released capacity through a pre-arranged deal on the same or another pipeline." <u>See</u> March 5 Order at P 26.

10. Cove Point explains that while it can release cash collateral via a wire transfer in real-time, such real-time transfers do not necessarily result in the funds being available immediately. For example, Cove Point states that the financial institution with which the bidder has an account may not process the wire transfer and credit the bidder's account by the next nomination opportunity. With respect to non-cash forms of collateral (i.e., irrevocable letters of credit, guarantees, or surety bonds), Cove Point states that the issuer in most circumstances considers the paper collateral to be an outstanding liability until it is physically returned to the issuer. Cove Point states that while it can release these forms of collateral via overnight courier, it cannot control whether the non-winning bidder or the issuer of the collateral will receive the released collateral in a manner or time that would allow such collateral to be available for the bidder to acquire released capacity at the next nomination opportunity.

11. Accordingly, Cove Point requests that the Commission clarify that Cove Point is only required to release, pursuant to the necessary instructions provided by the bidder, any collateral posted by the non-winning bidder prior to the next nomination opportunity.

V. Discussion

A. Request for Clarification

12. The Commission recognizes that both the provision and return of collateral requires cooperation between the pipeline and the shipper, as well as their respective financial institutions, in order to ensure that capacity release transactions can take place efficiently. Cove Point, therefore, is required to use its best efforts to ensure that a shipper posting collateral is permitted to bid on a capacity release offer and to assist a non-winning bidder in effectuating the return of the collateral.

13. For example, if the shipper is using electronic means to wire funds to the pipeline, the pipeline, or its financial institution, should be prepared to accept those funds on a real-time basis. Even if the funds may not be immediately available, the pipeline should still enable the shipper to bid as long as the shipper provides reasonable confirmation that the funds have been sent. Similarly, on the return of collateral, the pipeline's obligation, as Cove Point asserts, is to wire funds within the appropriate time period, and provide requisite confirmation. If the shipper needs those funds, it bears the responsibility of ensuring that its financial institution will be able to accept, and process the return of the collateral, in a timely manner. Accordingly, the Commission will grant Cove Point's request and clarify that Cove Point is only responsible for releasing the non-winning bidder's collateral prior to the next nomination opportunity.

14. The Commission also recognizes that the same principles hold true for the use of letters of credit. Although Cove Point states that the fastest method to return a letter of credit is to use an overnight courier, it recognizes its obligation to inform the shipper and

its financial institution that the letter of credit is being returned. While the Commission understands that this may be the fastest method to physically return a letter of credit, the Commission clarifies that the shipper need not physically provide the letter of credit in order to bid on a capacity release offer.[10] Under section 10(a)(4)(i) of Cove Point's tariff, the shipper only needs to provide the pipeline with sufficient confirmation that it has available a letter of credit to submit a bid; it need not physically provide the letter of credit unless its bid has been accepted. Thus, the pipeline should not need to physically return a letter of credit if the bid is unsuccessful; it need only confirm to the shipper and the financial institution that the letter of credit is no longer necessary.

15. Additionally, the Commission reminds Cove Point that its determination in this proceeding remains subject to the outcome of the Commission's gas creditworthiness rulemaking in Docket No. RM04-4-000.[11]

B. Compliance Filing

16. The Commission finds that Cove Point's revised tariff sheets comply with the directives contained in the March 5 Order. Accordingly, the tariff sheets listed in footnote 5 of this order are hereby accepted, to be effective August 1, 2003.

The Commission orders:

(A) Cove Point's revised tariff sheets are hereby accepted, to be effective August 1, 2003, as discussed within the body of this order.

(B) Cove Point's request for clarification is hereby granted, and clarification is provided, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

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[10] Just as the pipeline cannot return a letter of credit faster than overnight courier, the shipper may not be able physically to provide the letter in less time.

[11] See Creditworthiness Standards for Interstate Natural Gas Pipelines, 69 Fed. Reg. 8,587 (Feb. 25, 2004), FERC Stats. & Regs., Proposed Regulations ¶ 32,573 (2004).