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. RP03-545-002
RP03-545-003

ORDER ON COMPLIANCE
AND REHEARING

(Issued March 5, 2004)

1. On December 8, 2003, Dominion Cove Point LNG, LP (Cove Point) filed revised tariff sheets in compliance with the Commission's order, issued November 18, 2003.[1] Additionally, on December 17, 2003, Reliant Energy Services, Inc. (Reliant) filed a request for rehearing or clarification of the November 18 Order. In this order, the Commission accepts Cove Point's revised tariff sheets, subject to modification, and grants, in part, Reliant's request for hearing or clarification.

Background

2. On July 1, 2003, Cove Point filed revised tariff sheets proposing that shippers seeking to bid in capacity release auctions must first prequalify with the pipeline's creditworthiness standards. Reliant and Calpine Corporation (Calpine) 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. In the August 1 Order, the Commission found that Cove Point's proposal was not workable and may not be reasonable.[2] The Commission explained that prequalification

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

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

of a replacement shipper's creditworthiness is not necessary to protect the pipeline. Additionally, the Commission found that Cove Point's proposal did not provide a timely procedure by which the replacement shipper could not only obtain, but also maintain, its pre-qualified status on a continuing basis. Moreover, Cove Point's proposal did not specify how much collateral a non-creditworthy replacement shipper would be required to post when it bids on available capacity.

4. Notwithstanding the proposal's deficiencies, the Commission stated that Cove Point could establish a tariff provision requiring prequalification as long as the releasing shipper had the right to waive that requirement. Additionally, consistent with Order No. 637, the Commission stated that the tariff proposal must be revised to provide the releasing shipper with the option of assuming liability for usage charges in the event a replacement shipper defaults. The Commission therefore directed Cove Point to either withdraw its tariff proposal or to modify the provision to work in a practical matter.

5. On September 2, 2003, Cove Point filed a modified tariff proposal in purported compliance with the August 1 Order. The Commission, however, found that Cove Point's modifications did not comply with the directives in the August 1 Order.[3] In order to provide guidance to Cove Point, the November 18 Order set forth specific tariff language that the Commission would find acceptable in a revised tariff filing. The required language provided that the replacement shipper must satisfy the pipeline's creditworthiness provisions, including the posting of collateral, prior to the close of the bidding period in order to have its bid considered.

6. However, the language further provided that upon a releasing shipper's request, the pipeline must waive the prequalification requirement for replacement shippers that wish to bid on the available capacity. If the releasing shipper requests that the pipeline waive the prequalification requirement, the releasing shipper can either: (1) require the replacement shipper to satisfy the creditworthiness provisions, including the posting of collateral, prior to service being provided; or (2) prior to the flow of gas, the releasing shipper may post a bond or other form of credit assurance for the commodity charges with respect to the capacity being released.

7. The Commission also required Cove Point to limit the level of collateral to an amount that is commensurate with the duration of the release. Finally, Cove Point was directed 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.

[3] November 18 Order at P 17.

Request for Rehearing in Docket No. RP03-545-003

8. Reliant requests rehearing of the Commission's decision that non-creditworthy bidders must post collateral prior to the close of the bidding period. Reliant states that capacity release offers are often posted and awarded in the same day, and as such, bidding periods are frequently of very short durations. Reliant contends that this compressed time frame creates a situation where non-creditworthy replacement shippers could be precluded from making a bid.

9. Reliant contends that posting collateral quickly is difficult because moving large sums of money via wire transfer requires at least 24 hours, while obtaining a letter of credit may take three to five days. Reliant claims that the requirement that collateral be posted by the end of the bidding period poses a significant problem for replacement shippers because the shipper will only have a few hours to accommodate the administrative process of posting collateral.

10. Reliant submits that until an award is actually made, the winning bidder has no contract to collateralize. Therefore, justifying a requirement that collateral be posted in advance of a possible award is difficult, and would be an inefficient use of scarce capital. Therefore, Reliant requests the Commission clarify the November 18 Order so as to require Cove Point to revise its tariff to allow replacement shippers to collateralize the contract only after an award has been made.

11. In the alternative, Reliant notes that the Commission has given newly non-creditworthy shippers five days within which to post collateral, and requests that this treatment be applied in this case.[4] However, if the Commission does not provide shippers with five days to post the collateral, Reliant requests that the term "bidding period" be defined as "the time period starting at the posting of the capacity release offer and extending through the time of bid evaluation and the point of award." Reliant states that if the term is not so defined, the replacement shipper will be faced with an unworkable and impracticable reality and will be rendered unable to make the bid.

12. Finally, Reliant states that the Commission should require Cove Point to revise its tariff to provide for the payment of interest in situations where collateral is posted by a non-creditworthy bidder, but the bid is not won or only partially won.

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[4] Citing Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 49 (2003), and PG&E Gas Transmission, Northwest Corp., 103 FERC ¶ 61,137 at P 49 (2003).

Commission's Response

13. The Commission generally denies Reliant's rehearing request, but will grant its request that the period for posting collateral be extended to the time of the capacity award.

14. Reliant principally contends that the Commission should provide non-creditworthy replacement shippers with the opportunity to post collateral at a time after the award of capacity, requesting at least five additional days in which to post collateral. In balancing the interests of the releasing shipper, replacement shipper, and pipeline, as well as the Commission's goal of creating an expedited and responsive capacity release market, the Commission finds that replacement shippers cannot be permitted to post collateral after the award of capacity is made. Such a determination would be inconsistent with Order No. 637's goal of ensuring that the capacity release system works efficiently and, as discussed in the August 1 Order, could deprive releasing shippers of release revenue.

15. In Order No. 637, the Commission required pipelines to provide shippers with the ability to release capacity quickly in order to ensure that released capacity can compete with the pipeline's own sales of capacity.[5] The Commission also encouraged pipelines to establish provisions, such as pre-approval of creditworthiness, in order to expedite the release of capacity.[6] As a result, the industry, through the Wholesale Gas Quadrant of the North American Energy Standards Board, developed a bidding schedule for capacity release transactions.[7] Under this schedule, short-term capacity release offers (less than one year in duration) are posted by 12:00 P.M. and all bids must be submitted by

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[5] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,091 at 31,297 (Feb. 9, 2000); order on rehearing, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles (July 1996 - December 2000) ¶ 31,099 (May 19, 2000); order on rehearing, Order No. 637-B, 92 FERC ¶ 61,062 (July 26, 2000); aff'd in part and remanded in part, Interstate Natural Gas Ass'n of America v. FERC, 285 F.3d 18, (D.C. Cir. Apr. 5, 2002); order on remand, 101 FERC ¶ 61,127 (2002); order on rehearing and clarification, 106 FERC ¶ 61,088 (2004).

[6] Order No. 637 at 31,298.

[7] 18 CFR § 284.12(a)(5) (incorporating by reference Standard 5.3.2).

1:00 P.M.[8] The pipeline then has one hour to evaluate the bids in order to determine the winning bidder by 2:00 P.M.[9]

16. As the Commission found in the August 1 Order, allowing replacement shippers to post collateral after time for the award, as requested by Reliant, could jeopardize the expedited releases contemplated by Order No. 637, because a failure by the replacement shipper to post collateral could result in a release not being completed, with the consequent loss of release revenues to the releasing shipper.[10] Both the releasing shipper and the pipeline have an interest in making sure that before a release takes place, and gas flows on the pipeline, the replacement shipper satisfies the creditworthiness standards.[11] Thus, in balancing the interests of all parties, the Commission finds that requiring the potential replacement shipper to establish its creditworthiness prior to the allocation of capacity is necessary to make the capacity release system work efficiently, as required by Order No. 637.

17. Reliant contends it may be impossible for a non-creditworthy shipper to arrange a large sum of collateral in such a time-compressed situation. While the Commission recognizes that the time available to raise collateral is short (even under this revised time schedule), this timeline is necessary to maintain a well-functioning capacity release market. Notwithstanding, corporations can devise methods to satisfy collateral requirements.[12] There also may be alternatives available to non-creditworthy shippers

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[8] All times are measured in Central Clock Time (which includes an adjustment for day light savings).

[9] Under a pre-arranged deal, the pre-arranged shipper is given one hour to match the highest bid, with the award posting at 3:00 P.M..

[10] See August 1 Order at P 8, November 18 Order at P 14. As the Commission found, a pipeline is not required to flow gas to a replacement shipper until the shipper satisfies the creditworthiness requirement. August 1 Order at P 7 (citing Order No. 637, FERC Stats. & Regs., Regulations Preambles [July 1996-December 2000] ¶ 31,091, at 31,299).

[11] It is reasonable for the pipeline and the releasing shipper to require that security be posted by a bidder prior to that bid being considered. See PJM Interconnection, L.L.C., 104 FERC ¶ 61,309 (2003) (permitting PJM to require sufficient collateral to cover all bids placed in PJM's energy market.)

[12] For example, the Federal Reserve Board's Fedwire Funds Transfer System allows commercial financial institutions to transfer funds, in real-time, for its customers.

(continued)

that can mitigate the need to raise cash quickly. For example, a non-creditworthy shipper can arrange for a standing letter of credit that could be immediately used to collateralize its bid, up to a specified amount. Other options may also be available to quickly provide collateral, and the Commission encourages both shippers and pipelines to work on developing methods by which replacement shippers can obtain sufficient security in the most cost-effective, and timely manner possible.

18. Reliant cites several recent cases where the Commission has provided non-creditworthy shippers with five days within which to post collateral, and contends it should have the same right in acquiring capacity through capacity release.[13] But the situation in these cases is different from that involved in this case.

19. As the Commission stated in the August 1 Order, the same creditworthiness requirements apply to capacity release transactions as to the pipeline's sale of its own capacity. With respect to the initial sale of pipeline capacity, the Commission does not require a pipeline to enter into a contract or flow gas before the shipper has satisfied the creditworthiness requirements of the tariff. The same policy applies to capacity release transactions, so that the replacement shipper is required, as discussed above, to establish its creditworthiness before the capacity is awarded and service is provided.[14]

20. In contrast, the cases cited by Reliant apply to situations where an existing shipper loses its creditworthiness status after having capacity awarded. In such cases, the Commission found that it would be reasonable for the pipeline to provide the existing shipper with five business days within which to arrange and post its collateral.[15] This

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The Board states that Fedwire is an important vehicle for making time critical payments related to the settlement of commercial obligations. See www.federalreserve.gov, click on "Payment Systems." If need be, parties could arrange for confirmation from financial institutions that such collateral has been sent.

[13] See supra note 4.

[14] Order No. 637 at 31,299.

[15] While a potential shipper (either a shipper seeking to acquire pipeline service or released capacity) can determine in advance that it does not meet the creditworthiness requirements of the pipeline and make arrangements for obtaining collateral, a shipper that is informed that it suddenly no longer meets a pipeline's collateral requirements needs time to make such arrangements. The Commission's policy recognizes this distinction and provides a shipper with at least five business days after a change in status to obtain the necessary collateral.

same rule will apply to a replacement shipper that faces a loss of creditworthiness status. But such an approach does not warrant allocating capacity to a non-creditworthy shipper prior to its satisfaction of the creditworthiness requirements. Indeed, in Order No. 637, the Commission recognized that establishing creditworthiness was a prerequisite for a replacement shipper to acquire capacity through the release process.[16]

21. However, in response to Reliant's alternative request to extend the period for posting collateral to the point of the capacity award, the Commission recognizes the need to modify the August 1 Order to permit the replacement shipper with a longer period. The August 1 Order would have required the replacement shipper to post collateral by the end of the bidding period at 1:00 P.M. But the Commission now finds 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 for the initial award of capacity at 2:00 P.M. If the replacement shipper fails to post collateral by that time, the pipeline would still be able to disregard its bid and award the capacity to the next highest bidder.

22. This resolution also is consistent with the recently issued Notice of Proposed Rulemaking (NOPR) in Docket No. RM04-4-000, in which the Commission proposed a regulation which would require non-creditworthy replacement shippers to establish their creditworthiness prior to the award of capacity.[17] As the Commission stated in this NOPR, requiring that collateral be posted prior to the award of capacity appears to be the only workable method of ensuring that capacity release transaction can be consummated quickly, as required by Order No. 637, because it protects the releasing shipper against the loss of release revenues in the event the replacement shipper fails to post collateral.[18] Accordingly, we direct Cove Point to revise section 10(a)(4)(i) of the General Terms and Conditions of its Tariff to allow non-creditworthy replacement shippers to satisfy its creditworthiness provisions, including the posting of collateral, prior to the award of capacity in order to have its bid considered.[19]

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[16] See supra note 14 at 31,297.

[17] Creditworthiness Standards for Interstate Natural Gas Pipelines, 106 FERC ¶ 61,123 (2004).

[18] Id. at P 55.

[19] This determination is subject to the outcome of the final rule in Docket No. RM04-4.

23. Finally, the Commission will dismiss Reliant's request that Cove Point pay interest on the collateral posted by non-winning bidders. Since such collateral is typically held for only a short period of time, and since, as discussed below, Cove Point will be quickly returning such collateral to the shipper before the next nomination opportunity, the Commission finds that there is nothing to be gained by requiring the payment of interest on the collateral for a short period of time. However, if the potential replacement shipper puts up collateral significantly in advance of the bidding process or on any ongoing basis, it would be entitled to interest for the time period the pipeline holds the collateral.[20]

Compliance Filing in Docket No. RP03-545-002

24. On December 8, 2003, Cove Point revised its proposed tariff sheets to comply with the November 18 Order.[21] Cove Point filed revised tariff language that: (1) describes the prequalification requirements for bidders of released capacity and how a releasing shipper may waive these requirements on a non-discriminatory basis; (2) limits the amount of collateral to be posted to a period no longer than the duration of the release; and (3) specifies that the pipeline will return any posted collateral to a non-winning non-creditworthy bidder within five business days after the award is made, unless otherwise requested by the bidder. Cove Point requests that its revised tariff sheets become effective on August 1, 2003.

Public Notice and Interventions

25. Public notice of Cove Point's compliance filing was issued on December 10, 2003. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[22] 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.[23] Granting late intervention will not disrupt

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[20] See e.g., Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 38-39, order on compliance and rehearing, 103 FERC ¶ 61,276 at P 46-47 (2003).

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

[22] 18 C.F.R. § 154.210 (2003).

[23] 18 C.F.R. § 385.214 (2003).

the proceeding or place additional burdens on existing parties. No comments or protests were filed.

Discussion

26. The Commission finds that Cove Point's revised tariff sheets generally comply with the directives in the November 18 Order. However, the Commission finds that Cove Point's proposal to return any posted collateral to a non-winning, non-creditworthy bidder within five business days of the award does not comply with the Commission's directive to "immediately release" such collateral. While the November 18 Order did not provide specific guidance with respect to the term "immediately", we do not find that a period of five business days falls within the definition of that term. Accordingly, we direct 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 Intraday 2 nomination cycle at 5:00 P.M.). This provision 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.

The Commission orders:

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

(B) Cove Point is hereby directed to file revised tariff sheets within 10 days of the date of this order.

(C) Reliant's request for rehearing and clarification is hereby granted, in part, and denied, in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary.