

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Cove Point LNG, LP

Docket Nos. RP04-197-001
RP04-197-002

ORDER ON COMPLIANCE AND REHEARING
AND ESTABLISHING HEARING

(Issued March 25, 2005)

1. On March 31, 2004, the Commission issued an order in this proceeding accepting tariff sheets submitted by Dominion Cove Point LNG, LP (Dominion Cove Point), subject to modification, and directing Dominion Cove Point to file a revised tariff sheet.¹ On April 15, 2004, Dominion Cove Point filed a revised tariff sheets to comply with the March 31, 2004, Order.² On April 20, 2004, its LTD-1 Shippers³ filed a request for rehearing of the March 31, 2004 Order. As discussed below, the Commission grants the LTD-1 Shippers' rehearing request to the limited extent that it defers ruling on the issues pending the outcome of the hearing and settlement judge procedures established herein, and accepts Dominion Cove Point's compliance filing subject to revision and other conditions. This Order benefits customers by ensuring that Dominion Cove Point's tariff provisions are consistent with Commission policy.

I. Background

2. On March 1, 2004, Dominion Cove Point submitted tariff sheets to adjust the fuel retainage percentage requirements for storage services,⁴ and to make clarifying changes

¹ *Dominion Cove Point LNG, LP*, 106 FERC ¶ 61,339 (2004) (March 31, 2004 Order).

² Substitute Fourth Revised Sheet No. 10 to FERC Gas Tariff, Original Volume No. 1.

³ The LTD-1 Shippers consist of BP Energy Company, Shell NA LNG LLC, and Statoil Natural Gas LLC.

⁴ Fourth Revised Sheet No. 10 to FERC Gas Tariff, Original Volume No. 1.

in its General Terms and Conditions (GT&C) of its FERC Gas Tariff.⁵ Specifically, Dominion Cove Point proposed to revise its retainage percentage for storage services to no longer assess retainage percentages on withdrawals and thus only assess retainage percentages on injections. Under its Firm Peaking Service (FPS) rate schedules, Dominion Cove Point also proposed a change to its methodology by using the injection fuel retainage percentage for carryover balance boil-off.

3. In the March 31, 2004 Order the Commission conditionally accepted and suspended the tariff sheets to become effective April 1, 2004, subject to refund. In that order the Commission accepted a proposed clarifying revision to section 1.41 of the GT&C,⁶ found reasonable Dominion Cove Point's proposal to recover an underage from 2002, directed Dominion Cove Point to revise its 2004 usage estimate to reflect the already scheduled import cargos of the LTD-1 Shippers when calculating retainage percentages, and to delete the tariff language that refers to gas retained on withdrawals, since Dominion Cove Point's filing stated it would no longer collect gas on withdrawals. Furthermore Dominion Cove Point was directed to explain the significant underage of retained gas it reported for August 2003.

II. Rehearing

A. The Rehearing Request

4. On April 30, 2004, the LTD-1 Shippers filed a request for rehearing of the March 31, 2004 Order, arguing that the Commission erred in allowing Dominion Cove Point to collect from the LTD-1 Shippers a 2002 under-recovery of 523,572 Dth. The LTD-1 Shippers argue that the under recovery occurred when only FPS shippers took service, since the LTD-1 service did not start until August 2003, and therefore, the LTD-1 Shippers should not have to pay for the costs incurred by FPS shippers. The LTD-1 Shippers assert that the Commission erred in permitting the recovery of this historic cost from the LTD-1 Shippers and should require Dominion Cove Point to either eliminate the under recovery from its fuel retainage calculation or treat it as a one time, non-recurring loss and require Dominion Cove Point to recover the loss from FPS shippers only.

5. The LTD-1 Shippers contend that, historically, Dominion Cove Point offered different types of service: (1) from 1978 through 1994, it was an active LNG import terminal until it was mothballed in 1994; (2) from 1994 through August 2003, Dominion Cove Point provided stand alone peaking storage services to FPS customers only; and (3) from August 2003 to the present Dominion Cove Point has offered both FPS and LNG terminaling services.

⁵ Fourth Revised Sheet No. 205 to FERC Gas Tariff, Original Volume No. 1.

⁶ *Id.*

6. The LTD-1 Shippers assert that Dominion Cove Point utilizes above-ground tanks and a liquefaction process for storage. The LTD-1 Shippers contend that the liquefaction process consumed about twenty percent of the stored gas and that the tariff caps the fuel retainage percentage at 20.5 percent for FPS shippers. The LTD-1 Shippers assert that during this period (1994 – August 2003) fuel retainage percentages ranged from 16.6 to 33.7 percent. However due to the 20.5 percent cap, the LTD-1 shippers argue that any fuel use exceeding that amount was held over to be recovered in the following year.

7. The LTD-1 Shippers contend that in 2003 Dominion Cove Point projected a 33.7 percent fuel retainage which would have included the 2002 under recovery, but because of the cap was only allowed a 20.5 percent recovery. Therefore, according to the LTD-1 Shippers, Dominion Cove Point was unable to recover the 2002 under recovery from the FPS shippers during 2003. The LTD-1 Shippers argue that the under recovery Dominion Cove Point is claiming in this filing to recover in 2004, was caused by the cap in Dominion Cove Point's tariff. Consequently, the LTD-1 Shippers, argue that Dominion Cove Point is not claiming a typical prior year adjustment in its 2004 filing, and therefore should not be allowed to collect this 2002 under recovery from the LTD-1 Shippers. Furthermore, they argue that by maintaining the 20.5 percent cap, Dominion Cove Point accepted the risk of under recovery. Therefore, the LTD-1 Shippers argue that shifting the cost of this past under recovery to the LTD-1 Shippers is unjust and unreasonable. The LTD-1 Shippers argue that the Commission's policy requires that fuel costs be allocated to those customers that caused the fuel use.⁷ The LTD-1 Shippers argue that the same four FPS shippers take service now as in 2002. Furthermore, they assert, the LTD-1 Shippers' rate schedule did not exist in 2002; therefore, The LTD-1 Shippers should not be charged for the 2002 under-recovery.

8. The LTD-1 Shippers assert that in August 2003, Dominion Cove Point started offering the LNG import terminal services under the Commission approved the LTD rate schedule. With this new service, the LTD-1 Shippers state that, through an exchange, Dominion Cove Point is effectively able to inject the LTD-1 gas into storage for FPS customers, instead of liquefying FPS gas. The LTD-1 Shippers contend that since Dominion Cove Point is no longer liquefying FPS gas for storage, its fuel retainage percentages have dropped from 20.5 percent to 2.5 percent (excluding the 2002 under-recovery) and this percentage is spread out over more customers, both the FPS and the LTD customers. Therefore, the LTD-1 Shippers argue that Dominion Cove Point accepted the risk of the under recovery of the 534,572 Dth because of the 20.5 percent cap in its tariff and, therefore, Dominion Cove Point should not be able to recover from the LTD-1 Shippers the prior year under recovery that was caused by the 20.5 percent cap. The LTD-1 Shippers argue that if they had not begun taking service, the recovery cap would have prevented Dominion Cove Point from recovering the 2002 under

⁷ LTD-1 Shippers Rehearing Request at 11, *citing, Trailblazer Pipeline Co.*, 95 FERC ¶ 61,258 (2001); and *Islander East Pipeline Company, LLC*, 97 FERC ¶ 63,373 (2001), *order on reh'g*, 100 FERC ¶ 61,276 (2002).

recovery for some time, in the future, assuming the tariff permits it at all. Therefore, the LTD-1 Shippers argue that because the LTD-1 Shippers are the reason the 20.5 percent cap is no longer a meaningful limit, Dominion Cove Point should not be able to collect the prior 2002 under recovery from LTD-1 Shippers.

9. Next, the LTD-1 Shippers assert that in the March 31, 2004 Order the Commission misinterpreted Dominion Cove Point's tariff. The LTD-1 Shippers contend that the Commission incorrectly stated that the LTD-1 Shippers would not be liable for tracker costs when they leave the system.⁸ The LTD-1 Shippers state that section 1.42 of the GT&C in Dominion Cove Point's tariff provides that shippers coming and going from the system in the middle of any periods must have the fuel responsibility zeroed out by a pro-rata settling of under or over recovered gas when a customer ends service.⁹ Therefore, the LTD-1 Shippers argue that since the Commission relied upon a misinterpretation of Dominion Cove Point's tariff in finding that Dominion Cove Point could include the 2002 under recovery in the 2004 fuel retainage factor that applied to the LTD-1 Shippers, rehearing should be granted. The LTD-1 Shippers assert that the Commission's statement that the tracker mechanism is to ensure that the pipeline remains whole and neither pays for underages or profits from overages does not apply to Dominion Cove Point. They argue that Dominion Cove Point agreed to the 20.5 percent cap on retainage and the tariff provision that only allows recovery of costs from the previous twelve months. The LTD-1 Shippers argue that, as a result Dominion agreed to a process whereby it may have to pay for underages. Finally, the LTD-1 Shippers argue that section 1.41 has always focused on the recovery of fuel used or lost in the calendar year preceding the year of the filing and never has allowed recovery of fuel carried over from any time outside of that one year-period.

B. Discussion

10. The Commission finds that the LTD-1 Shippers have raised issues of material fact that cannot be resolved based upon the record before us at this time. Accordingly, the Commission grants rehearing to the limited extent that we defer ruling on these issues pending the outcome of the hearing and settlement judge procedures established herein.

11. While we are setting this matter for a trial-type evidential hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁰ If the parties desire, they may by

⁸ LTD-1 Shippers Rehearing Request at 12, *citing*, March 31, 2004 Order at P 19.

⁹ LTD-1 Shippers Rehearing Request at 12, *citing*, § 1.41, General Terms and Conditions, Gas Tariff, Fourth Revised sheet No. 205.

¹⁰ 18 C.F.R. § 385.603 (2004).

mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.¹¹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

II. Compliance

A. Retainage Percentage for Storage Service

1. The Filing and Protests

12. In its March 1, 2004 filing, Dominion Cove Point estimated monthly nominations under Rate Schedule LTD-1 using an average of four months in 2003 (15,718,152 Dth average per month) when start-up problems delayed reactivation of the facility, to arrive at estimated fuel retainage of 2.8 percent for 2004. In their protest, the LTD-1 Shippers argued that Dominion Cove Point's estimate of monthly nominations failed to take into account the fact that the LTD-1 Shippers had advised Dominion Cove Point that they would schedule six cargoes in 2004 resulting in a monthly average of 18,000,000 Dth. The Commission found 18,000,000 Dth per month to be a more reasonable projection for 2004 and directed Dominion Cove Point to revise its estimate to take that figure into account.

13. In the instant filing, Dominion Cove Point has revised its estimate of monthly nominations under the LTD-1 to reflect the monthly average of 18,000,000 Dth. This reduces the fuel retainage figure from 2.8 percent to 2.7 percent. No party protested this aspect of the filing. The Commission accepts Dominion Cove Point's revised fuel retainage figure. The Commission had accepted the 2.8% fuel retention figure subject to refund. Dominion requests that this refund obligation be satisfied through the normal operation of its fuel tracking mechanism, i.e. the 2.8% will be used as an offset against actual fuel costs incurred in determining fuel retainage percentages in the next filing. No party protested this request. The Commission grants Dominion Cove Point's request.

¹¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

14. In determining its fuel retainage for 2004, Dominion Cove Point factored in a large net underage of gas (348,707 Dth) from August 2003, the month the facility was reactivated. The LTD-1 Shippers argued that since in each subsequent month Dominion Cove Point experienced an overage of gas, the Commission should require Dominion Cove Point to explain the large underage in August 2003. In the March 31, 2004 Order the Commission found that while Dominion Cove Point's tariff permits it to recover fuel used in operations, when an anomalous result appears, the parties responsible for bearing the cost should receive an explanation, and the Commission directed Dominion to file an explanation for the underage.

15. Dominion Cove Point explains that the 348,707 Dth net underage experienced in August 2003 was comprised of several elements. It notes that the expected fuel use for sendout during August 2003 based on normal operations during the subsequent September through December 2003 average usage of 2.63% would equal 60,487 Dth. However, it states, during the reactivation period in August 2003 an incremental fuel amount for sendout was incurred because plant vaporizers were not burning fuel as efficiently as possible, and there was an estimated, unmeasured amount due to measurement facilities that were not fully operational. It states that the incremental fuel amount for August was 44,239 Dth. It states that another 72,897 Dth was used to vaporize a partial LNG cargo which Dominion Cove Point purchased to use in reactivating the facility, 12,000 Dth was used to replace the plant heel in one of the storage tanks, and 110,580 Dth was lost due to mechanical malfunction and boil off associated with a three-day delay in unloading the first commercial LNG cargo at the Dominion Cove Point facility. Dominion Cove Point stated that an additional 128,000 Dth is a reasonable (but unmeasured) estimate of the fuel used for various functions performed to ensure safe startup such as equipment testing, purging and filling equipment, etc.

16. BP/Shell opposes Dominion Cove Point's recovery of the net underage for the month. In the alternative, it argues that the Commission should defer consideration of the recovery until Dominion Cove Point's next general rate case. BP/Shell argues that Dominion Cove Point has not provided any record evidence that it incurred the claimed fuel losses for the purposes claimed. BP/Shell argues that Dominion Cove Point has merely provided an unsubstantiated list of reasons for the incurrence of that loss, and has not provided any proof of their incurrence. BP/Shell claims that if Dominion Cove Point actually incurred these losses, they were imprudently incurred and should be disallowed. BP/Shell then argues its allegations of imprudence for each element of the underrecovered amount. BP/Shell states that if the Commission does not disallow recovery of these volumes in this case, it should defer recovery until Dominion Cove Point's next rate case.

17. Statoil also argues that Dominion Cove Point has failed to provide an adequate detailed explanation and facility records to justify recovery of the underage for the month of August. Statoil states that the underrecovery should not be charged to shippers, or in the alternative, the costs should be considered as part of Dominion Cove Point's next general rate case.

18. Dominion Cove Point answered BP/Shell and Statoil's assertions and argues that the Commission should reject assertions that it has failed to adequately explain the underrecovery or that the underrecovery was imprudently incurred. Dominion Cove Point argues that the underrecovered volumes were used or lost as a necessary cost of reactivating the plant and that it should be permitted to recover those volumes through its filing in this docket.

2. Discussion

19. The Commission believes the parties to this proceeding have raised valid concerns with the manner in which the claimed underage for August 2003 may have been incurred, and that these questions have not been adequately answered by Dominion Cove Point's explanation. The parties have raised the issue of whether these underages were incurred at all, and if they were in fact incurred, whether they were imprudently incurred. The Commission finds that Dominion Cove Point has not adequately supported its explanation for this large under-recovery with documentation and records. In addition, in Docket No. RP03-552-000, Dominion Cove Point filed to, among other things, retain profits related to the sale of the partial cargo which Dominion Cove Point used in preparing the plant for reactivation. In an order issued May 28, 2004 in Docket No. RP03-552-001,¹² the Commission deferred consideration of Dominion Cove Point's proposal and any ancillary issues until Dominion Cove Point's next general rate case. In the current proceeding, Dominion Cove Point seeks to recover 72,897 Dth incurred to vaporize the reactivation cargo which Dominion Cove Point subsequently sold. BP/Shell argues that the recovery of this amount should be deferred until Dominion Cove Point's next rate case along with the remaining amount claimed in this proceeding. As stated above, the Commission does not believe Dominion Cove Point has adequately justified its claimed underrecovery beyond what might normally be expected during the month of August. Therefore, the Commission will defer consideration of 288,220 Dth of the claimed underrecovery until Dominion Cove Point's next general rate case. This figure is arrived at by subtracting the expected fuel amount of 60,487 Dth used for sendout during August from the claimed underrecovery of 348,707 Dth. The Commission directs Dominion Cove Point to recalculate its fuel retention percentage for 2004 to exclude the 288,220 Dth that is being deferred, and to adjust its accounting entries accordingly for purposes of its next fuel percentage proceeding, effective April 1, 2005.¹³

20. In its March 1, 2004 filing, Dominion Cove Point proposed to Revise Note (1) to its Currently Effective Rates-Fuel Retainage Percentages to state that Dominion Cove Point will retain gas based on "gas received for transportation, received for injection into storage, or received for withdrawal out of storage". The Commission directed Dominion

¹² *Dominion Cove Point LNG, LP*, 107 FERC ¶61,221 (2004).

¹³ We note that Dominion Cove Point currently has pending its 2005 fuel retainage adjustment filing in Docket No. RP05-213-000.

Cove Point to eliminate the language related to withdrawals from its proposed tariff revision because the stated purpose of the filing was to revise the fuel retainage percentage so that it applies to injections but not to withdrawals.

21. Dominion Cove Point has revised its proposed tariff revision to eliminate the language related to withdrawals from storage.¹⁴ No party protested this revision. The Commission accepts Dominion Cove Point's revised tariff provision and Substitute Fourth Revised Sheet No. 10 is accepted effective April 1, 2004, subject to the conditions of this order

B. Retainage for Boil-Off

1. The Filing and Protests

22. FPS shippers are required to turn their LNG inventory every 24 months by withdrawing every 24 months a minimum quantity of LNG in storage equal to the lower of the FPS shipper's minimum liquefied gas balance during the 24 months or to Maximum Contract Peaking Quantity (MCPQ). Under section 5(h) of Rate Schedule FPS, a retainage charge is assessed on the shipper's remaining, LNG inventory balance at the end of the winter withdrawal season, effective April 16th. When LNG is in storage some of the LNG "boils off" as gas. Such boil-off gas must either be reliquefied or transported away. Under section 5.4(d) of Dominion Cove Point's Rate Schedule LTD-1, boil-off gas is allocated to the LTD-1 Shippers on a daily basis, and they must nominate and transport it away from Dominion Cove Point's facility. As a result, there is no need for Dominion Cove Point to reliquefy the gas. In its protest to the March 1, 2004 filing, Atlanta Gas Light (AGL) argued that the boil-off gas is legally the FPS shippers' gas. Therefore it asserted that since the boil-off gas is allocated daily to the LTD-1 Shippers who then have it transported away, there is no liquefaction and presumably, no need for a retainage factor. AGL asserted further that Dominion Cove Point should not assess a fuel retention charge for boil off against FPS shippers.

23. Dominion Cove Point stated in its answer to the protest that rather than creating additional gas for the LTD-1 shippers, the boil-off is deducted from their existing inventory and does not reduce the FPS shippers' inventory. Therefore, according to Dominion Cove Point, the LTD-1 shippers do not gain additional profit at the expense of the FPS shippers, and FPS shippers retain their inventory levels. In the March 31, 2004 Order, the Commission was not persuaded that there should be any retainage charge under section 5(h) of Rate Schedule FPS for this boil-off, and directed Dominion Cove to explain why it should be permitted to continue to assess this charge.

¹⁴ Substitute Fourth Revised Sheet No. 10 to FERC Gas Tariff, Original Volume No. 1.

24. Dominion Cove Point explains that FPS shippers are required by the governing rate schedule to turn their inventories periodically and that failure to do so results in boil-off which must then be managed. Dominion Cove Point's LTD-1 Shippers must then nominate and have transported these boil-off volumes which are then deducted from the LTD-1 Shipper's storage inventory. It states that the retainage charge which is assessed to an FPS shipper which has not turned its inventory as required by the tariff is the same level of charge that would have been assessed had the FPS shipper turned its entire inventory. It states that the amount of this retainage is then accounted for through Dominion Cove Point's fuel tracker, and, all other things being equal, the fuel retainage figure for the next year will be the same as if the FPS shipper had turned its entire inventory. If Dominion Cove Point does not assess this retainage charge, Dominion Cove Point asserts that next year's fuel retention percentage will be slightly higher, both for the FPS shipper which did not properly manage its inventory, and for the LTD-1 Shippers which had to nominate the boil-off volumes resulting from the inventory mismanagement.

25. BP/Shell and Statoil support Dominion Cove Point's proposal to continue charging a retainage amount for FPS inventory that is not properly turned. They argue that to do otherwise would impose an additional burden on the LTD-1 Shippers. Virginia Natural Gas (VNG) and AGL filed comments stating its understanding of Dominion Cove Point's proposal to be that the LTD-1 Shippers, who are now responsible for boil-off, will not be assessed the section 5(h) retainage charge. The LTD-1 Shippers stated in their answer to AGL/VNG's comments that, while the LTD-1 Shippers are responsible for removing the boil-off gas, the section 5(h) retainage is a provision under the FPS rate schedules and therefore applicable only to FPS shippers.

2. Discussion

26. The Commission accepts Dominion Cove Point's explanation of the necessity to continue to charge the section 5(h) retainage charge to FPS customers. Rate Schedule FPS requires that FPS shippers withdraw their inventory by the end of the withdrawal season and if they do not, the tariff specifies that Dominion Cove Point shall retain a quantity of LNG that is equal to the remaining balance multiplied by the applicable percentage. In the past this retainage was used as fuel to reliquify and reinject boil-off gas resulting from the remaining inventory. However, under the current operations, the LTD-1 Shippers are required to nominate boil-off gas on a daily basis and therefore there is no longer a need to reliquify and reinject it. This places an additional burden on the LTD-1 Shippers to assume the responsibility for managing the result (additional boil-off) of the FPS customers' failure to withdraw their inventory as required by the tariff.

27. The amount of LNG which Dominion Cove Point now retains under Section 5(h) serves as a penalty for the FPS customers' failure to manage its inventory as required by the tariff. The Commission permits pipelines to charge penalties to ensure operational

integrity, and requires the pipeline to credit those penalties back to its customers.¹⁵ In this case Dominion Cove Point charges a penalty when an FPS customer fails to turn its inventory as required by the tariff, and then credits the penalty to customers in the form of a credit to the next year's fuel retention percentage, thus lowering the percentage of gas retained during the ensuing year. The Commission accepts Dominion Cove Point explanation and will permit the pipeline to continue to retain the Section 5(h) retainage percentage. However, as indicated above, the first sentence of Section 5(h) only provides for a biennial (24 months) turnover requirement and only with respect to volumes in excess of the minimum volume in storage during that period (or the MCPQ). The third sentence of Section 5(h) appears to assess the charge annually and with respect to 100 percent of storage volumes as of April 16 each year. Dominion Cove Point is directed to revise the third sentence of Section 5(h) to make clear that the charge is applicable only for a violation of the first sentences requirements.

The Commission orders:

(A) The LTD-1 Shippers request for rehearing is hereby granted to the limited extent, as discussed in the body of this order.

(B) Dominion Cove Point is directed to revise Section 5(h) of its FPS rate schedule as directed in the text above and shall file the revised tariff sheet to reflect this change within 30 days of this order.

(C) Substitute Fourth Revised Sheet No. 10 is accepted to be effective April 1, 2004, subject to refund and the outcome of the hearing proceedings established herein and Dominion Cove Point's filing to revise its Substitute Fourth Revised Sheet No. 10 as discussed in the body of the order and to submit the revised sheet within 30 days of the date of this order.

(D) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP04-197-001 concerning the issue of the 532,572 Dth prior period adjustment in Dominion Cove Point's filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they

¹⁵ 18 C.F.R. § 284.7 (2004).

must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(F) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge of the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304 (2004), shall convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference is for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.