

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. RP05-43-000  
and RP05-43-002

ORDER ON TECHNICAL CONFERENCE AND ON REHEARING  
AND CLARIFICATION

(Issued May 31, 2005)

1. This order addresses requests for clarification or rehearing of the Commission's December 23, 2004 Order<sup>1</sup> (December Order) which accepted and suspended the proposed tariff sheets of Dominion Cove Point LNG, LP's (Cove Point) October 28, 2004 Filing, to become effective May 27, 2005, and subject to the outcome of the technical conference established therein. This order also addresses the issues raised in comments received in the technical conference proceeding. In its initial filing in the instant proceeding, Cove Point stated that it was proposing modifications of its tariff because a service agreement under its Firm Peaking Service (FPS) rate schedules was nearing the end of its primary term, and there were divergent views of how a Commission-approved 2001 Settlement would operate at the end of the primary contract term of an FPS service agreement. The technical conference was held February 3, 2005, and parties filed comments and reply comments. This order denies requests for rehearing, and grants in part and denies in part clarification of the December Order as set forth below. This order benefits the public by clarifying how the Commission-approved 2001 Settlement would operate at the end of the primary contract term of an FPS service agreement.

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<sup>1</sup> *Dominion Cove Point LNG, LP*, 109 FERC ¶ 61,363 (2004).

## **Background**

2. As fully set forth in the December Order, Cove Point was originally authorized in 1972 to construct and operate a Liquefied Natural Gas (LNG) terminal and related storage, regasification, and pipeline facilities to import LNG at Cove Point, Maryland. LNG operations at the terminal began in March 1978, were interrupted in April 1980, and ceased in December 1980. In 1994, the Commission authorized Cove Point to reactivate the mothballed onshore LNG facilities, including four LNG storage tanks, and to construct a liquification unit for the purpose of liquifying domestic natural gas and storing it as LNG during the summer for later regasification and use at peak times during the winter.<sup>2</sup> Pursuant to that order Cove Point provided 10-day, 5-day and 3-day guaranteed sendout firm peaking services under Rate Schedules FPS-1, FPS-2, and FPS-3, respectively. Under each of these rate schedules, the customer may inject gas for storage during an injection season from April 16 to December 14. The gas is then vaporized and redelivered during a withdrawal season from December 15 to April 15. Each FPS customer contracts for a maximum contract peaking quantity (MCPQ) which is the maximum amount it can place in storage. During the withdrawal season an FPS-3 customer can take out up to one-third of its MCPQ on any given day (MCPQ), enabling it to send out its MCPQ in three days, referred to as daily “sendout” capacity. The FPS-2 shipper could take out one-fifth of its MCPQ on any given day, and the FPS-1 shipper could take out one tenth of its MCPQ on any given day so they could remove their stored gas within 5 or 10 days respectively. The FPS customers were also granted, and each exercised, a one-time election to receive transportation service under Rate Schedule FTS under which they could obtain firm Part 284 transportation service approximately 87 miles from the LNG terminal to an interconnection with other pipelines in Virginia. Each FPS customer has a separate FTS service agreement for the same daily contract quantities and for the same term as their terminal and peaking service. The reservation charge paid under the FTS service was credited against the shipper’s FPS service agreement.

3. Later Cove Point proposed to reopen and expand the LNG terminal for the importation of LNG and held an open season for new tanker discharging services (the LTD service). The LTD service consists of the receipt of LNG from ocean-going tankers, the temporary storage of LNG, and the vaporization of LNG and delivery of natural gas to points along Cove Point’s existing pipeline. The service is provided throughout the year, so unlike the FPS service there is no withdrawal or injection season. The only limitation is that any stored LNG must be withdrawn within 120 days. At that

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<sup>2</sup> *Cove Point LNG Limited Partnership*, 68 FERC ¶ 61,377 (1994).

time, Cove Point had 4,875,000 Dth of storage capacity and there were four FPS shippers who had contracted for a total of 1,290,000 Dth of storage capacity, and 154,000 Dth/d sendout capacity.<sup>3</sup> Cove Point also was planning to build a fifth tank with 2,500,000 Dth storage capacity, so there would eventually be 7,375,000 Dth total storage capacity.

4. In the open season for the new LTD service, there were three bidders for the LTD service who tied at the maximum rate for the highest bid for tanker discharging service by bidding the proposed maximum rate. Cove Point had assumed that its FPS customers whose contracts were set to expire prior to the reactivation of the terminalling facilities would not renew their contracts. When they did in fact renew their contracts there was insufficient storage capacity to satisfy all the prospective LTD-1 customers' requests. The three LTD bidders agreed to accept an allocation of one-third of the available storage capacity as well as one-third of the 750,000 Dth/d available sendout capacity, *i.e.*, 250,000 Dth/d, for each LTD-1 customer. Cove Point executed binding precedent agreements with the three shippers reflecting this allocation of the firm LNG tanker discharging service at the maximum rate for twenty-year primary terms. Each LTD shipper also exercised the elected FTS option for transportation.

5. Following the open season, Cove Point then proposed to increase the capacity of the proposed fifth storage tank to 2,800,000 Dth. All parties, consisting of Cove Point, the LTD-1 shippers, the FPS shippers, and the one FTS shipper, then entered into a settlement (the 2001 Settlement) of rates and capacity allocation issues, which settlement Cove Point included in its application to the Commission for a certificate to reactivate the terminalling facilities.

6. Article II, section 2(b) of the 2001 Settlement included certain stipulations in recognition of the fact that the LTD-1 shippers would not otherwise receive the full amount of capacity based on the expectation that the existing FPS shippers would relinquish the storage capacity when their existing service agreement's primary term ended. First, the size of Cove Point's proposed fifth LNG storage tank would be increased from 2,500,000 Dth to 2,800,000 Dth. Second, the entire capacity of this tank would be dedicated solely to the LTD-1 Shippers. Third, the parties provided a mechanism for transitioning FPS capacity to the LTD-1 Shippers as follows:

[I]n the event that any Rate Schedule FPS services are terminated, whether by expiration of a service agreement(s) or capacity turn-back, the capacity that becomes available as a result shall be dedicated to Rate Schedule

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<sup>3</sup> The FPS shipper could take 115 percent of its MDDQ (Maximum Daily Delivery Quantity) so in total they had 177,100 Dth/d maximum sendout capacity.

LTD-1 service and allocated among the LTD-1 Shippers in proportion to each such Shipper's firm MDDQ and included in such Shipper's service agreement for the remainder of its term, and the applicable storage ratios for Rate Schedule LTD-1 service will be modified accordingly.

7. On October 12, 2001, the Commission issued an order (the 2001 Certificate Order)<sup>4</sup> which approved the Settlement, thereby permitting the reactivation of the LNG terminalling facilities and operations. The 2001 Certificate Order described the terms of the settlement, and as to section 2(b) the order stated:

When the fifth storage tank is built, FPS customers will still have 1,290,000 Dth of storage capacity and 154,000 Dth/d of sendout capacity for as long as they continue to extend their contracts under right of first refusal procedures of Cove Point's tariff. LTD-1 shippers will still have 750,000 Dth/d of sendout capacity, but their storage capacity will increase (sic) from 3,585,000 Dth to 6,382,500 Dth. In the event any of the Rate Schedule FPS services terminate, either by contract expiration or capacity turnback, the storage capacity that becomes available will be allocated to Rate Schedule LTD-1 shippers.<sup>5</sup>

8. In its transmittal letter to the October 23, 2004 Filing, Cove Point stated that it proposed the modifications of its tariff because certain service agreements under FPS rate schedules were nearing the end of their primary terms and there were divergent views of how the 2001 Settlement operates at the end of the primary contract term of an FPS service agreement. First it proposed to explicitly inform customers and potential customers of Cove Point's willingness to negotiate evergreen provisions in its service agreements by modifying the *pro forma* agreement language to provide that an agreement "... shall continue in full force and effect until \_\_\_\_ [and \_\_\_\_ to \_\_\_\_ thereafter unless terminated by written notice from one party to the other upon \_\_\_\_ notice]."

9. Cove Point also proposed to add a new General Terms & Conditions (GT&C) section 4(k) to clarify that it may mutually agree with a customer under a service agreement with a term of 12 consecutive months or more to extend that term. The length of the extension would be mutually agreed upon by Cove Point and the customer, subject to Cove Point's obligation to act in a not unduly discriminatory manner.

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<sup>4</sup> 97 FERC ¶ 61,043 (2001), *reh'g*, 97 FERC ¶ 61,275 (2001), *reh'g*, 98 FERC ¶ 61,270 (2002).

<sup>5</sup> 97 FERC at 61,195.

10. Cove Point also proposed to clarify in GT&C section 4(e), that the transfer of FPS storage capacity to LTD-1 service could occur in only three situations. These would be (1) if an existing FPS customer and Cove Point do not agree to a service agreement extension and the customer elects not to exercise its Right of First Refusal (ROFR) upon the expiration of the contractual term; (2) if the capacity is not awarded to any party in the ROFR process (i.e., if neither the existing customer nor any other bidder offers maximum rates and Cove Point chooses not to discount); or (3) if capacity is turned back to Cove Point prior to the expiration of the term by mutual agreement of a shipper and Cove Point.

11. In this connection Cove Point proposed that the tariff clearly state that the ROFR process cannot change the nature of the service that is being bid on during that process. Thus, GT&C section 4(g) would include the clarification that all bids must be for the service under the same rate schedule as the posted capacity

12. Finally, Cove Point proposed to eliminate the provisions of Rate Schedules LTD and FPS concerning transportation service. Under the existing tariff transportation service from the LNG terminal along Cove Point's 87-mile pipeline to its interconnection with interstate pipelines is bundled within the LTD and FPS rate schedules, and the maximum rates for those services include an allocation of the costs of that transportation service. However, shippers under those rate schedules were entitled to make a one-time election during the term of the contract to receive a separate Rate Schedule FTS transportation service from Cove Point. The reservation charge to be paid by the shipper electing a separate Rate Schedule FTS service is credited against the shipper's monthly charge to be paid under Rate Schedules LTD-1 and FPS. Cove Point stated that all current shippers under Rate Schedules LTD-1 and FPS made the one-time election, and each shipper has a Rate Schedule FTS contract which runs concurrently with its respective Rate Schedule LTD-1/FPS contract. Thus, it stated, no current shipper would be affected by the modification of Rate Schedules LTD and FPS to remove the transportation services bundled within those rate schedules along with the related tariff provisions permitting the election of FTS service.

13. Shell NA LNG LLC and BP Energy Company (hereafter Shell), LTD-1 shippers, jointly protested the filing. Statoil Natural Gas LLC (Statoil), an LTD shipper, supported certain aspects of that filing and protested other parts. Atlanta Gas Light Company and Virginia Natural Gas, Inc. (AGL/VNG), Public Service Company of North Carolina, Inc.

(PSNC), and Washington Gas Light Company (WGL), all the FPS Shippers at the time of the 2001 Settlement, and parties to the settlement, supported certain aspects of the filing.<sup>6</sup>

### **The December Order**

14. The order stated that the protested issues in this case arise out of the parties' disparate interpretations of the 2001 Settlement and tariff provisions regarding how FPS shippers retain their capacity when the primary term expires, and what happens when an FPS contract terminates. Before addressing the issues, the order stated that "as to the evergreen and contract term extension provisions, we find that the provisions are consistent with the 2001 Settlement."<sup>7</sup>

15. The December Order stated that because the 2001 Settlement provides that the existing FPS shippers' rights are unchanged by the settlement, which includes the ROFR, the FPS shippers clearly can use the tariff's ROFR process to retain their FPS capacity. However, the December Order stated that in approving the 2001 Settlement, the Commission appears to have contemplated that the ROFR process would be the only way for FPS shippers to retain their capacity at the expiration of the primary term since the 2001 Settlement Order stated that the FPS shippers would retain their capacity "so long as they continue to extend their contracts under right of first refusal procedures in Cove Point's tariff." The December Order also noted that when the Commission approved the 2001 Settlement it was unaware that at least some of the FPS shippers' service agreements, which predate the 2001 Settlement, included evergreen clauses, giving them a method to extend their contracts other than the ROFR process.<sup>8</sup>

16. The order found that the normal ROFR procedure could not apply here because the settlement provides that upon termination of an FPS contract, the FPS capacity is allocated among the LTD-1 shippers on a *pro rata* basis. Thus, no third party can win the capacity under the tariff's ROFR bidding process -- neither other FPS customers nor LTD customers because upon termination of the contract, the capacity is to be allocated among the LTD-shippers *pro rata*. A non-LTD-1 shipper would have no right to any of the

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<sup>6</sup> WGL was not a party to the 2001 Settlement. However, in a subsequent settlement in October 2002, WGL joined the 2001 Settlement. *Cove Point LNG Limited Partnership*, 102 FERC ¶ 61,227 (2003). This subsequent settlement did not affect the relevant rights and obligations of the parties under the 2001 Settlement.

<sup>7</sup> 109 FERC at P 39.

<sup>8</sup> See WGL Comments at 3; PSNC Comments at 2.

capacity, and an LTD-1 shipper would gain nothing by bidding because it will receive its *pro rata* share of the capacity upon termination of the FPS contract no matter what the outcome of the ROFR bidding process may be.

17. Under these circumstances the order concluded that there really is no “bidding” process as contemplated under the customary ROFR process, and found that that part of section 4(g)(ii) of the ROFR provisions of Cove Point’s tariff covering the situation when there are no acceptable third-party bids, should apply. Under that provision, “[i]f no offers are received, [shipper] may continue to receive service on a month-to-month basis or for such other term agreed to by [Cove Point] and [the shipper], and at the maximum rate set for in the applicable Rate Schedule.” Thus, under Cove Point’s existing tariff, as approved in the 2001 Certificate Order, it is up to the FPS shipper and Cove Point to negotiate a new contract term for the same service.

18. The order held that Cove Point’s proposed tariff provisions allowing the parties to agree on evergreen or contract term extensions are consistent with the ROFR process in existence at the time of the 2001 Settlement and can be accepted to clarify the process by which FPS shippers may retain their capacity under the ROFR process. However, the order noted that because the proposed provisions cannot change rights accorded under the settlement, the provisions must be modified to make clear that they apply only as part of the ROFR process under section 4(g) when no bids are received. Further, consistent with section 4(g)(ii) of the GT&C, the price must be at the maximum rate.

19. The order then discussed what would be transferred to the LTD service when and if an FPS shipper’s service is terminated. Cove Point had argued that only the LNG storage capacity held by the FPS customer was transferred and not that shipper’s sendout capacity, pointing out that the settlement only referred to storage capacity. Cove Point asserted that the two services are different since LTD-1 service includes more facets of service than FPS service such as sendout every day during the year rather than only a limited number of days and only during the December 15 to April 15 withdrawal season as under the FPS service, and there would be operational problems if the sendout capacity was also reallocated to the LTD service. Protestors argued that the capacity transferred must include the FPS customer’s associated sendout capacity because otherwise there might be stranded volumes.

20. The order noted that the settlement seemed focused on the storage capacity because it referred to the “reallocation of storage capacity,” and that when there was reallocation there would be a revision of the LTD shippers’ storage capacity ratios to sendout capacity.

21. The order noted that section 5.4(f) of the LTD-1 rate schedule requires LTD-1 storage volumes to be removed within 120 days of injection. This feature of the tariff

apparently recognizes the need to remove stored LNG volumes to make room for large LNG cargoes that periodically arrive by tanker and which must be off-loaded for injection into the storage tanks. Given these factors the order concluded that while a persuasive case could be made for finding that only the storage capacity would be reallocated, there still was uncertainty over the intent of the 2001 Settlement, and directed that the issue be explored at the technical conference.

22. Finally, the order addressed Cove Point's proposal to eliminate any bundled transportation service for the FPS and LTD-1 services, along with the option to elect FTS service, which certain parties objected to. The order stated that because there was the question of what is transferred when reallocation occurs, this issue should also be addressed at the technical conference.

## **I. Requests for Clarification and Rehearing**

### **A. Parties' Requests**

23. Cove Point, Shell, WGL and AGL/VNG filed requests for rehearing and/or clarification before the technical conference was held. These parties also filed comments and reply comments after the technical conference and PSNC also filed comments and reply comments. Although the focus of the technical conference was on certain specified questions, to some extent the rehearings/requests and the comments overlap. However, we shall first address the rehearing requests.

24. Cove Point states that it seeks clarification as to certain matters, and only if the requested clarifications are not granted does it seek rehearing.

25. First, Cove Point states that in P 43 the Commission accepted Cove Point's proposed tariff provisions allowing the parties to agree on contract extensions and evergreen clauses. However, the Commission then stated in P 44:

However, because the proposed provisions cannot change rights accorded under the settlement, the provisions must be modified to make clear that they apply only as part of the ROFR process under section 4(g) when no bids are received.

Cove Point states that the Commission had ruled that there can be no valid third party bids for the FPS capacity, which includes LTD shippers, so the purpose of this proviso in P 44 seems unclear. Cove Point requests that the Commission clarify that Cove Point and FPS customers may mutually agree upon contract extensions, including evergreen rights if desired, at any time and without restriction.



26. Second, Cove Point states that in the discussion of what the ROFR process would involve under the settlement, the order, at P 43, quoted the following provision of GT&C section 4(g)(ii):

[i]f no offers are received, [shipper] may continue to receive service on a month-to-month basis or for such other term agreed to by [Cove Point] and [the shipper], and at the maximum rate set forth in the applicable Rate schedule.

Cove Point requests that the Commission clarify that it did not intend to suggest that an FPS shipper willing to pay the maximum rates could insist upon continuous month-to-month service at the end of its contract term, and refuse to agree upon a longer-term contract extension.<sup>9</sup>

27. Finally, Cove Point requests that the Commission explicitly state that the evergreen provisions in Cove Point's existing service agreements remain lawful and legally binding.<sup>10</sup>

28. WGL argues that the December Order incorrectly stated that the parties to the 2001 Settlement contemplated that the ROFR process was the only way that FPS shippers could retain their capacity because some of the existing FPS contracts included evergreen provisions, as did its contract with Cove Point at the time of the 2001 Settlement. WGL requests that the Commission make clear that neither the 2001 Order, nor the December Order, altered the parties' rights under their existing contracts with Cove Point.

29. WGL also argues that the Commission's ruling that third parties may not bid in the ROFR process is in error. It contends that the only interpretation of the 2001 Settlement language which is consistent with Commission policy is that any shipper can bid on the FPS capacity, subject to the incumbent shipper's right to match the highest bid. The bid would relate only to FPS service. Thus, WGL asserts, if the LTD shipper made the successful bid, it would be awarded FPS service, not LTD service.

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<sup>9</sup> Cove Point also requests, and the Commission agrees, that the filed provisions for contract negotiations are acceptable as applied to customers under other rate schedules, without condition or further proceedings.

<sup>10</sup> AGL/VNG filed requests for clarification as to the same matters as Cove Point, except they did not seek clarification on the month-to-month issue.

30. Finally, WGL contends that the Commission erred in limiting the negotiation of evergreen or contract extensions in FPS contracts to the scenario where the ROFR process has been instituted and no bids are received. This limitation, WGL contends, was imposed in P 43 of the December Order which states that such extension can only be negotiated as part of the ROFR process when no bids are received.

31. Shell requests that the Commission should clarify how the FPS capacity reallocation process would work and sets forth the requested clarifications. It asserts that:

Having ruled that third parties may not participate in the ROFR process and having recognized that, because of the *pro rata* reallocation of capacity, the LTD-1 Shippers do not compete among themselves for capacity, the Commission must have concluded that the competition in this case is between the FPS Shipper and the LTD-1 Shipper as a group.<sup>11</sup>

32. Elaborating on its request, Shell states that the Commission should clarify that Cove Point must allow LTD-1 shippers to participate and bid in the ROFR process, and if they have the highest value bid they must be awarded the capacity.

33. Moreover, Shell asserts, the Commission should clarify that any capacity reallocated to the LTD-1 shippers should be dedicated to LTD-1 service rather than FPS service. With respect to contract extension by the existing FPS shippers, Shell requests that the Commission clarify that this may take place only if the capacity is not reallocated to the LTD-1 shippers in the ROFR process.

34. Shell requests that the Commission rule that any evergreen provisions or contract extensions agreed to outside of the ROFR process are not valid or enforceable, and any contract previously extended by this means are subject to the ROFR process.

35. Shell also requests that the Commission clarify that if the LTD-1 shippers receive capacity resulting under the FPS Contract ROFR process, the LTD-1 shippers are entitled to receive the full package of FPS-related capacity, including storage, sendout and transportation.

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<sup>11</sup> Shell' Request at 3-4.

36. If the Commission denies its requests for clarification, Shell requests rehearing of all these issues.<sup>12</sup>

### **B. Discussion**

37. As noted above, Cove Point stated that it was proposing modifications of its tariff because an FPS service agreement was nearing the end of its previous term and there were divergent views of how the 2001 Settlement operates in that situation. The December Order addressed the issue of how the Settlement should be implemented both with respect to existing contracts containing evergreen or extension provisions, as well as Cove Point's proposed section 4(k) to its GT&C permitting parties to extend contracts. However, the requests for rehearing and for clarification, and comments and reply comments filed in this proceeding, reflect differing contentions as to the meaning of the Commission rulings in the December Order and the intent of the 2001 Settlement. Accordingly, although we have previously referred to the December Order, we shall set

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<sup>12</sup> Shell described its requests as follows:

- Cove Point LNG must allow the LTD-1 Shippers to participate in the FPS contract ROFR process.
- Cove Point LNG must allow the LTD-1 Shippers to win the capacity for use in LTD-1 service if the LTD-1 Shipper bid is of a higher value than the incumbent FPS Shipper's bid.
- The LTD-1 Shippers' bid in the FPS contract ROFR process is not a bid for FPS service, but is based on the capacity reallocation provisions in the January 2001 Settlement.
- The LTD-1 Shippers have a standing bid for *pro rata* allocation of the FPS capacity but, if necessary, can individually or jointly submit a bid.
- When capacity is reallocated, the LTD-1 Shipper may extend their contract only if the FPS capacity is not reallocated to the LTD-1 Shippers in the ROFR process.
- Any evergreen provisions or contract extensions agreed to outside the ROFR process are not valid or enforceable.

forth the December Order's pertinent rulings, and then address the requests for rehearing and clarification. We note that to some extent, the comments and reply comments following the technical conference echo the parties' requests for rehearing and clarification, and there may be some cross-references in this section to material submitted in connection with the technical conference.

38. In the December Order we noted that it was Cove Point's position that some FPS customers already have evergreen provisions in their existing service agreement. The order made the preliminary observation, at P 39, that the Cove Point proposed evergreen and contract provisions "are consistent with the 2001 Settlement."

39. The December Order also stated that the 2001 Settlement provided that existing FPS shippers' rights are unchanged by the settlement, so the FPS shippers can use the ROFR process to retain their capacity. However, because of the Settlement's provisions concerning what occurs when an FPS contract terminates, the order stated that "there really is no 'bidding' process as contemplated under the customary ROFR process."<sup>13</sup> Clearly, this applied to both other FPS shippers, as well as to LTD shippers. Under these circumstances, the December Order referred to the no third party bid provisions in Cove Point's tariff, quoted above, P 17, and held that "it is up to the FPS shipper and Cove Point to negotiate a new contract term for the same service."<sup>14</sup> The December Order added that "As part of negotiation of the term permitted by the existing tariff, the parties can agree on a fixed extension of the term and/or may include an evergreen provision different than that provided by section 4(g)(ii) of the GT&C."<sup>15</sup>

40. In light of this discussion the December Order stated, at P 44:

Accordingly, we agree with Cove Point that its proposed tariff provisions allowing the parties to agree on evergreen or contract term extensions are consistent with the ROFR process in existence at the time of the 2001 Settlement and can be accepted to clarify the process by which FPS shippers may retain their capacity under the ROFR process.

41. Further, P 44 of the December Order stated "because the proposed provisions cannot change rights accorded under the settlement, the provisions must be modified to

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<sup>13</sup> 109 FERC at 62,661.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

make clear that they apply only as part of the ROFR process under section 4(g) when no bids are received.”

42. In response to Staff’s request at the technical conference, Cove Point provided copies of its service agreements that it claimed contain evergreen provisions. We have reviewed the existing FPS service agreements which Cove Point submitted, and find that they do, in fact, include evergreen provisions as claimed.<sup>16</sup> Cove Point has requested that the Commission explicitly state that these provisions may be given effect. In its comments after the technical conference, Cove Point stated that, pursuant to that provision in the service agreement of an existing FPS shipper, it agreed with that shipper to extend the primary term, that was due to end on April 15, 2005, for another year, so that, absent a Commission ruling that the evergreen clause is ineffective, that contract has been extended through April 15, 2006.<sup>17</sup>

43. If not stated explicitly, in approving Cove Point’s proposal to add a tariff provision expressly permitting evergreen and contract extensions, the December Order clearly implies that existing evergreen provision can be given effect, and we so state explicitly here. Further, to the extent that the December Order states that the evergreen clause or contract extension can only be accomplished as part of the ROFR process, that was incorrect and not the intent of that order. An existing FPS shipper can negotiate a contract extension, including an evergreen provision, at any time pursuant to new section 4(k). Thus, to summarize, we clarify, as requested by Cove Point and WGL, that all evergreen and extension provisions in existing Cove Point contracts may operate according to their terms and, pursuant to new section 4(k), all shippers on Cove Point’s system may enter into contract extensions at any time, and not limited to the “ROFR no-

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<sup>16</sup> Although Shell objects to giving effect to these provisions, it does not deny that they are typical evergreen provisions.

<sup>17</sup> Cove Point’ Initial Comments at 3. In those comments Cove Point also explained that one existing FPS service agreement’s term expired after the February 2001 reactivation open season, but prior to the issuance of the 2001 Certificate Order. The FPS shipper exercised its ROFR rights, and Cove Point held an open season for the capacity. The FPS shippers then matched the highest value bid of five years at the maximum rate, and the shipper obtained a five-year contract that will expire on April 1, 2006.

bid” situation.<sup>18</sup> Further, we clarify that both the evergreen or extension provisions of the existing contracts and the extension provisions of any newly-amended contracts pursuant to section 4(k) are stand-alone provisions that are not part of, or bound by, the ROFR provisions of the tariff. As discussed below, in clarifying the existing tariff’s ROFR provision, the Commission clarifies further options for Cove Point to modify those provisions to provide for greater than 30-day extensions to enable the shipper to preserve its ROFR in the extended contract.

44. Contrary to Shell’s contention, that the Commission intended that any existing or new contract evergreen or extension provisions are not valid or enforceable, the December Order did not rule that such a provision could not be given effect. Rather, the December Order noted that the settlement itself stated that existing FPS shippers’ rights are unchanged by the settlement. Whatever confusion may have arisen because the 2001 Order referred to the ROFR process as the only method to extend the primary term, the December Order explained that this was due to the erroneous assumption that there were no evergreen provisions in the existing service agreements which was based upon the response of the prior owner, and that response was not correct. As noted above, Cove Point submitted a number of existing contracts with such evergreen and extension provisions that are independent of the ROFR process. Accordingly, for the above reasons, we deny Shell’s request for clarification and its alternate request for rehearing on this issue.

45. In its comments after the technical conference Shell asserted that the Commission should reject the evergreen provisions in Cove Point’s existing FPS and FTS service agreements because they are non-conforming modifications to Cove Point LNG’s *pro forma* service agreement and have not been filed with the Commission for review.

46. We reject Shell’s argument that the provisions should be rejected as nonconforming. These existing FPS agreements were entered into in the early 1990s, and including evergreen provisions was industry practice at that time. In fact, in Order No. 636 the Commission expressly stated that “[T]he parties may choose to defer application of pregranted abandonment by including evergreen or roll-over clauses in

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<sup>18</sup>In light of this clarification, the direction in the December Order in P 44 that Cove Point must modify new GT&C section 4(k) is retracted.

their service contracts.”<sup>19</sup> At that time, the Commission’s contract filing standards, particularly standards regarding nonconforming contract provisions, had not yet been fully developed. Since a number of service agreements include an evergreen provision, it is clear that their execution was done on a non-discriminatory basis, which was all that was required at the time under Order No. 636-A, FERC Stats. & Regs (1991-1995) ¶ 30,950, at 30,628 (1992).

47. Shell’s request for clarification or rehearing, variously asserting that LTD-1 shippers have the right to participate in the ROFR process and hold superior rights to win FPS capacity, is denied. Its basic premise, that in the December Order the Commission concludes that the LTD-1 shipper can compete with the FPS Shipper when that shipper’s terms expires, is not correct. The December Order finds that the existing tariff’s ROFR process is limited to providing the existing FPS Shipper with the right to retain its capacity under the “no bid” scenario of the ROFR provision because the 1991 Settlement automatically precludes any single shipper from winning the capacity as the capacity must be allocated on a *pro rata* basis among the LTD-1 shippers. Moreover, the December Order permits the implementation of any existing contractual evergreen provision, as we explicitly stated above. Shell’s request that the LTD shippers should be permitted to submit a competing ROFR bid as a group does not change the conclusion. The ROFR process applies to the service under the expiring service agreement, and does not change the nature of that service. Cove Point’s ROFR tariff, in existing GT&C section 4(g)(i), states that the ROFR process applies to “the service rights under the existing Buyer’s long-term Service Agreement.”<sup>20</sup> Thus, if the LTD shippers submitted their bid as a group, their bid would have to be for the FPS service. As such, the bid

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<sup>19</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 Fed. Reg. 13,267 (Apr. 16, 1992), FERC Stats. & Regs. ¶ 30,939, at 30,447 (1992), *order on reh’g*, Order No. 636-A, 57 Fed. Reg. 36,128 (Aug. 12, 1992), FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh’g*, Order No. 636-B, 57 Fed. Reg. 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *reh’g denied*, 62 FERC ¶ 61,007 (1993), *aff’d in part and remanded in part sub nom. United Distribution Companies v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

<sup>20</sup> The Commission’s ROFR regulations similarly refer to the existing customer’s right to match the highest bid “for its firm service.” 18 CFR § 284.221(d)(ii) (2004); *see also Williams Natural Gas Co.*, 81 FERC ¶ 61,350, at 62,269 (1997) (“the ROFR process is structured to permit the pipeline to charge up to the maximum rate for the service that is provided under a given tariff....”).

would have to be consistent with Cove Point's tariff provisions governing expiring FPS service,<sup>21</sup> and include rates within the maximum rates for the various components of FPS service and a request for storage capacity with three, five, or ten-day send-out rights. However, Cove Point could not accept such a bid, since as already discussed, the settlement prohibits anyone other than the current FPS shippers from receiving FPS service, and the FPS shippers should not be required to match what would be, in essence, a fictional bid for service the third party is not entitled to receive. Accordingly, we reject Shell's requests for clarification or rehearing, except for the request that the Commission clarify or grant rehearing that: "When the capacity reallocation occurs, the LTD-1 Shippers will receive all available sendout and related transportation capacity together with all available storage capacity." We shall address this issue in the discussion concerning the technical conference and, for the reasons stated there, shall reject its requests.<sup>22</sup>

48. The December Order stated that because of the Settlement's provision that provided for reallocation to the LTD shippers when the FPS service terminated, only the shipper could extend the term of an FPS contract, and referred to Cove Point tariff's ROFR no-bid situation in section 4(g)(ii). That section does provide that in that situation the shipper "may continue to receive on a month-to-month basis or for such other term agreed to by Operator and Buyer [shipper] and at the maximum rate..." In its request for clarification, Cove Point asserts that the situation here differs from the customary ROFR process where no bid is received since there no bid indicates that there is no demand for the capacity subject to the bid. Here, it is the Commission's ruling that brings the no bid situation into effect, and is not a situation signifying the same lack of demand for that capacity. Thus, Cove Point argues, the month-to-month provision on an indeterminate basis should not apply here, and Cove Point requests that the Commission clarify that it did not intend to suggest that an FPS shipper willing to pay the maximum rates could insist upon continuous month-to-month service at the end of its contract term, and refuse to agree upon a longer-term contract extension.

49. To the extent that Cove Point requests clarification of the December Order's interpretation of Cove Point's existing ROFR provision, clarification is denied. However, to the extent it seeks clarification regarding further tariff changes it may make

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<sup>21</sup> *Williams*, 81 FERC at 62,628-29.

<sup>22</sup> Shell also filed a response to Cove Point and AGL's requests contending that it can respond to a request for clarification which other parties object to. However, the response includes the same material as included in Shell's comments and reply comments, as set forth, *infra*.



to improve its ROFR process, we grant clarification. The December Order interpreted how Cove Point's existing tariff operates. The Commission found that the existing ROFR provision does, in fact, permit such continuous month-to-month extensions. Cove Point may propose additional language to provide for longer term extensions under the ROFR. The usual ROFR process does not necessarily have to include unlimited, month-to-month service extensions if no acceptable third party bid is submitted. The pipeline may provide for a period after notification that the no bid situation exists in which the shipper may elect to continue the service and select the term of service, at the maximum rate, but if the shipper elects less than a 12-month term the shipper no longer has a right of first refusal with respect to that service.<sup>23</sup> Thus, in *Columbia*, the Commission accepted the following provision to replace provisions allowing consecutive short-term extensions with a more reasonable procedure consistent with its ROFR policies:

Shipper may, thereafter, consistent with the terms of this Tariff, continue to receive all or a portion (volume but not geographic portion) of its service (i) on a month-to-month basis or for such other term and rate agreed to by Transporter and Shipper, or (ii) at the applicable Recourse Rate for a term to be specified by Shipper.... Shipper continuing service under either (i) or (ii) retains its right of first refusal on the portion continued, if it is under a Service Agreement with a term of 12 or more consecutive months of service at the applicable Recourse Rate for that service, ... If Shipper does not continue all or a portion (volume but not geographic portion) of its service pursuant to the provisions of (i) or (ii) above, within 20 business days following Transporter's two day notification period as described in this Section 4.1(c)(c) above, or such other period as may be mutually agreed to between Transporter and Shipper on a not unduly discriminatory basis, Shipper's right of first refusal will immediately terminate.<sup>24</sup>

50. Since this order clarifies that Cove Point may file to change its ROFR provision in a similar fashion, we believe that we have effectively granted the requested clarification, and Cove Point's conditional request for rehearing need not be addressed.

51. We also deny WGL's request for rehearing that other shippers must be able to submit bids on the FPS capacity, which bids Cove Point must consider in determining

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<sup>23</sup> See *Columbia Gas Transmission Corp.*, 107 FERC ¶ 61,078 (2004); *Northern Border Pipeline Co.*, 102 FERC ¶ 61,158 (2003).

<sup>24</sup> *Columbia Gas Transmission Corp.*, Docket No. RP04-225-001 (June 14, 2004) (unpublished letter order).

what the winning bid is. This order reaffirms that, as a result of the 2001 Settlement, no shipper, whether they are a new shipper or another FPS shipper or any LTD shipper, may make a bid that would be effective and result in the transfer of FPS capacity to that other shipper. Once the existing FPS shipper's FPS service ends, under the 2001 Settlement that capacity is reallocated to the LTD service on a pro-rata basis to the existing LTD shippers. ""

## **II. The Technical Conference**

### **A. Comments and Reply Comments**

52. At the technical conference the parties were requested to address the following issues:

1. What "capacity" is transferred from FPS customers to LTD-1 customers under the reallocation provisions of the 2001 Settlement?
2. What is the basis for Cove Point's claim that operational concerns limit the reallocation to the LTD-1 customers of only storage capacity?
3. May FPS customers retain one component of their service while relinquishing other components?; and
4. Is Cove Point's elimination of the "Elected FTS Option" contrary to the 2001 Settlement?

53. Initial and reply comments were filed by Cove Point, Statoil, PSNC, and Shell, and WGL filed reply comments. The positions of the parties on the questions posed as set forth in the comments and reply comments are described below. In addition to the service agreements that Staff requested, Cove Point included with its comments: (a) a summary of one year's maintenance activity at Cove Point; and (b) the Power Point presentation Cove Point offered at the technical conference.

54. As to the questions posed, Cove Point contended that under the 2001 Settlement only storage capacity would be reallocated when the FPS service is terminated. Cove Point states that the 2001 Settlement refers only to storage capacity and that the reason there was a provision for a reallocation related only to storage capacity.

55. Cove Point also addressed the Commission's concern that absent sendout capacity, when reallocation of the FPS capacity to the LTD shipper occurs, some volumes might be

stranded. Cove Point stated that while the tariff requires the LTD shippers to withdraw their stored LNG within 120 days of storage, each LTD shipper has 250,000 Dth daily sendout capacity, so the LTD shippers can fully withdraw their storage capacity of 2,127,500 Dth in nine days. Thus, the addition of the FPS storage capacity through the reallocation process would not significantly change the number of days since each LTD shipper would get a *pro-rata* amount of the additional storage.<sup>25</sup>

56. Cove Point also responded to the argument that the Settlement requirement that the LTD-1 customers bear the costs of associated transportation service in the event of a capacity reallocation implies that more than just storage capacity should be reallocated. Cove Point states there is nothing anomalous in the LTD-1 shippers' agreement to keep Cove Point economically whole upon elimination of the FPS-related revenue stream, in exchange for obtaining the valuable incremental LNG storage capacity.

57. Cove Point described how any reallocation would operate. It states that Cove Point would add relinquished storage capacity to LTD-1 contracts on a pro-rata basis by adjusting the storage to MDDQ ratio, and would redetermine the LTD-1 rate to incorporate the former FPS customers' revenue responsibility for both storage and transportation services. That increased rate would be implemented through the compliance filing described in the 2001 Settlement.

58. Cove Point also described how the sendout capacity, which in its view would not be reallocated to the LTD shippers would be treated. Cove Point stated that it would probably post the operationally available amount of sendout capacity on each day for potential nominations.

59. Cove Point asserted that the reallocation could not include sendout capacity because the terminal is not designed for, and not capable of, supporting a full contract peak sendout of 1 million Dt per day on a full time, year-round basis, if all the FPS sendout capacity was transferred to the LTD shippers. Cove Point explained that it has the obligation to supply its peak sendout capacity of 1 million Dt per day only during the Winter Season, the FPS withdrawal period, and, within that season, only on the very few peak days when FPS customers take service. For the remainder of the year, Cove Point has a peak sendout obligation bounded by the LTD-1 customers' aggregate rights to 750,000 Dt per day – allowing it time to schedule the necessary maintenance during that

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<sup>25</sup> If the entire amount of storage capacity now dedicated to the FPS service, which amounts to 1,290,000 Dth, were reallocated to LTD service, since the LTD service has 750,000 Dth sendout capacity, this would require less than two additional days to fully withdraw this amount.

time period. The sendout function is performed by 10 submerged combustion vaporizers (SCVs), each of which has the capability of 100,000 Dth, so all 10 are required if 1,000,000 Dth are to be withdrawn. The SCV requires regular and routine maintenance, and each must be taken out of service at least annually for a period of two to four weeks.<sup>26</sup> If LTD shippers had the entire sendout capacity, which they could use every day of the year, Cove Point would not be able to schedule the maintenance without interrupting service.

60. In response to Commission Staff's request for information regarding the history of maintenance activity, Cove Point explained that it was submitting maintenance postings but these postings are made only when the maintenance could affect ship unloading or sendout. It does not post scheduled maintenance activities that can be handled without affecting unloading or reducing sendout below 750,000 Dth. Cove Point states that this material does not really bear on the issue of the operational consequences if all the FPS sendout capacity was transferred to the LTD Shippers.

61. As to whether FPS customers may retain only a part of their service, Cove Point states that the components of peaking service itself – storage, sendout on limited days, and liquefaction if needed – are not divisible under the current service offerings. However, storage and transportation service rights can be separated, and Cove Point refers to the explanation in its filing that there is no reason why every FPS customer must maintain FTS capacity equivalent to its peaking volumes: a customer could use other contracted firm transportation capacity, obtain firm capacity through release, or even utilize interruptible transportation, to transport volumes withdrawn from the terminal.

62. As to the issue of whether the elimination of the offer of transportation bundled within the FPS service along with the option to take Elected FTS service would violate the settlement, Cove Point's position is that the rulings in the December Order make its proposal irrelevant. All existing customers have already made the one-time election so inclusion of the bundled transportation in Rate Schedule FPS has no relevance to existing service. Cove Point states that its concern in including the proposal in the October Filing focused on a new FPS customer obtaining capacity through the ROFR process, but the December Order appears to bar that from happening.<sup>27</sup>

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<sup>26</sup> Cove Point Initial Comments at 12.

<sup>27</sup> Cove Point notes here that were the Commission to alter its view and provide for a ROFR process in which new customers could obtain FPS and associated transportation capacity, the Elected FTS option would have renewed importance, as contemplated in its October Filing.

63. Cove Point also explained that one existing FPS service agreement's term expired after the February 2001 reactivation open season. The FPS shipper exercised its ROFR rights, and Cove Point held an open season for the capacity. The FPS shipper then matched the highest value bid of five years at the maximum rate, and the shipper obtained a five-year contract.<sup>28</sup>

64. PSNC asserts that its service agreement, entered into in 1994 for a 10 year term has an evergreen clause and that agreement should be given effect. PSNC asserts that Shell's reasons for not giving effect to the evergreen clauses are without merit. PSNC argues that the contention that the contracts should have been filed with the Commission is not correct, nor is there any basis to conclude that the 2001 Settlement abrogated the rights provided to the shipper by evergreen provisions.

65. Statoil urges the Commission to approve Cove Point's request to revise its tariff to allow contractual ROFRs, evergreen and contract extension rights on a generic basis. Statoil's position is that if the service that is reallocated to the LTD shippers is the "full LTD-1 service" the Commission should reject Cove Point's request to eliminate the Elected FTS option because capacity could be stranded.<sup>29</sup> Moreover, Statoil refers to the language in the 2001 Settlement that LTD-1 Shippers will be required to pay for certain transportation capacity that becomes available when FPS capacity reverts to LTD-1 service. Statoil contends that if LTD-1 shippers are responsible for transportation costs, they should have access to the necessary transportation capacity.

66. Shell's comments basically reiterate the contentions in its rehearing request. Shell argues that sendout capacity is part of the FPS service, and when the FPS service terminates and is reallocated to LTD-1 service, the entire panoply of FPS services will be reallocated. Shell asserts that Cove Point LNG has claimed that it cannot be certain that it could meet all of its obligations if the FPS storage and sendout capacity were converted to LTD-1 service, but Cove Point has not performed any technical analysis of this issue.

67. Shell asserts that the Cove Point facility was designed to receive and send out a baseload of 1 Bcf of natural gas per day. It contends that if all FPS contracts were at some point converted to LTD-1 service, Cove Point would be required to provide LTD-1 service in an amount that is well within the 1 Bcf per day baseload capacity (and 1.2 Bcf per day peaking capacity) that the Cove Point terminal was designed to accommodate.

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<sup>28</sup> Cove Point' Comments at 17-18.

<sup>29</sup> Statoil Comments at 10-11.

68. Shell asserts that Cove Point provided no persuasive evidence at the technical conference of operational problems that would prevent it from converting FPS Service, including the sendout and transportation aspect of that service, to LTD-1 service when the FPS service agreement terminates. It contends that the explanation Cove Point offered at the technical conference as to the operational problems basically relied on the fact that Cove Point had not put back into service all the facilities that had been mothballed after the original LNG services ceased operating. Shell states that in the reactivation proceedings in 1994, Cove Point had identified twelve separate vaporizers that it intended to place back in service – the ten SCV now in operation and two 100 MMcf waste heat vaporizers. Together these vaporizers were expected to provide sufficient vaporization capacity to meet Cove Point's obligations. However, Cove Point did not put the two 100 waste heat vaporizers into operation. Shell contends that if those two units were activated the supposed operational problems would not exist.

69. Shell asserts that at the technical conference, Cove Point did not provide persuasive evidence or analysis supporting its proposal to eliminate the Elected FTS Option. Accordingly, Shell argues that Cove Point's proposal to eliminate that option should be rejected.

70. In its reply comments Cove Point restates its position that only storage capacity would be reallocated when FPS service to a shipper is terminated, and refers to the context of the settlement which was limited to discussion of storage capacity.

71. As to the operational argument, Cove Point restates that FPS customers use their sendout capacity only from 3 to 10 days, and only during the winter period of four months from December 15 to April 15. Cove Point points out that the FPS customers have no sendout rights during approximately eight months of the year – from April 16 through December 14.

72. Cove Point disputes the contention that Cove Point made representations that the two waste-heat vaporizers would also be available upon the reactivation, increasing the available sendout. Cove Point's response is that the two waste-heat vaporizers were not part of the scope of the reactivation. Cove Point states that materials included in the certificate application unmistakably show that only the ten SCVs were to be reactivated. In addition, Cove Point cites to the construction report that it filed during the course of the reactivation, which refers only to the 10 SCVs, and there is no mention of waste heat vaporizers as operating units.

73. As to Shell's contention that the cost of the waste heat vaporizer facilities are already embedded in the LTD-1 rates, Cove Point states that it has not incurred the costs of reactivating these waste heat vaporizers, and those costs are not included in its rates.

74. WGL's reply asserts that Shell's comments as to what facilities were supposed to have been part of the reactivation raises an issue for the first time, and should be disregarded.

75. In its reply comments, Shell argues that contrary to Cove Point's position the 2001 Settlement obligates Cove Point to convert FPS storage, sendout, and transportation capacity to LTD-1 service. It restates its contention that Cove Point will have the capacity to provide the full suite of LTD-1 services upon the rededication of FPS capacity because the reactivation of the facility contemplated 1 Bcf/d of base load firm vaporization and sendout capacity and 1.2 Bcf/d of peaking capacity. It contends that Cove Point's statement that the reactivation of its two waste heat vaporizers was not within the scope of its LNG terminal reactivation project is unsupported.

76. Shell asserts that Cove Point's maintenance reports attached at Appendix B to its initial post-technical conference comments<sup>30</sup> demonstrate that the LTD-1 shippers' firm service already is subject to interruption and is curtailed from time to time during the year. Thus, even accepting Cove Point's argument that if the LTD-1 service levels were higher and might be subject to curtailment for maintenance the situation would not be very different from the circumstances under which the LTD-1 shippers currently operate.

77. Shell also questions Cove Point's discussion of how it would treat the transportation capacity that would not be reallocated to the LTD-1 service when storage capacity was reallocated. Since Cove Point stated that it would make the returned transportation capacity available to the market, since the LTD-1 Shippers pay for this transportation capacity under the 2001 Settlement, Shell contends this would enable Cove Point to sell transportation capacity twice.

## **B. Discussion**

78. The issue addressed at the technical conference was what would be transferred to the LTD shippers when FPS service was terminated. The December 23 Order found that Cove Point had made a "persuasive case ... for finding that only the storage capacity would be subject to the 2001 Settlement's reallocation procedure," at P 46. This was based on the settlement's language which appeared to refer only to the storage capacity. In addition, Cove Point had argued that there were operational reasons why the reallocation could not include sendout rights because the FPS and LTD service were different. However because there might be some question of stranded capacity if only

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<sup>30</sup> Shell notes that these reports were not probative of the issues they were supposed to address.

storage was transferred, the order directed the matter be explored at the technical conference.

79. We are satisfied with Cove Point's explanation why there would be operational problems if the reallocation included the FPS shipper sendout capacity. Cove Point explained that to ensure the vaporization equipment's reliability there must be periods for regular maintenance of the equipment. Cove Point stated that starting April 16, it sequentially idles two of the ten vaporizers at a time to perform the necessary maintenance which takes some four to six weeks for each pair of units. The FPS peaking service sendout occurs only during a limited period in the winter prior to April 16, whereas the LTD service is a continuing one throughout the year. With only 8 of the 10 vaporizing units operating for the sendout after April 15, Cove Point showed that it cannot provide the additional firm sendout capacity every day during the period starting April 16 through December 15 if the reallocated FPS capacity also included the sendout capacity converted to apply to a twelve-month period. Further, although at some earlier point the LNG facility included two waste heat vaporizers, Cove Point demonstrated that the reactivation of the facilities did not include these units, and we would not require Cove Point to reactivate them in this proceeding.<sup>31</sup>

80. Moreover, the fear of stranded capacity if reallocation occurs without additional sendout capacity appears to be unfounded. Cove Point explained that while the tariff requires withdrawal of stored capacity within 120 days, each LTD shipper with 250,000 Dth daily sendout capacity can fully withdraw their storage capacity of 2,127,000 Dth in nine days. Then the addition of the FPS storage capacity through the reallocation process would at most only add two days to the number of days required for the LTD shipper to withdraw the stored LNG. Thus, the 120 day withdrawal requirement could not be a problem even if no additional sendout capacity was transferred.

81. Shell argues that the transportation capacity must be included with any storage capacity that is reallocated to the LTD service because otherwise Cove Point would have a double recovery since it could sell that transportation capacity even though the rate

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<sup>31</sup> On April 15, 2005, Cove Point filed its "Cove Point Expansion Project" consisting of three applications, Docket Nos. CP05-130-000, CP05-131-000, and CP05-132-000. The project seeks authorization to increase storage capacity at the LNG facility by approximately 6.8 Bcf, increase sendout capability by 800,000 Dth/d, and expand the capacity of the 87-mile pipeline from the facility. Cove Point states that after the expansion, the terminal will have storage capacity of 14.6 Bcf, and peak send out capability of 1.8 MMDth/d. These proceedings may provide an opportunity to further explore the operating concerns discussed above.



already reflects the recovery of the costs associated with that capacity. Cove Point presented a number of alternatives as to how it might treat that transportation capacity. Since under the settlement in the event of reallocation to the LTD service, Cove Point is required to make a compliance filing with rates that reflect the reallocation of revenue responsibility, any concerns about double recovery can be addressed at that time.

82. As to Cove Point's proposal to eliminate the elected FTS option, Shell's objection to Cove Point's proposal was based on an argument similar to its argument that any reallocation of FPS storage capacity to the LTD shippers must be accompanied with transportation capacity. Shell asserted that "Allowing the LTD-1 shippers to receive additional LTD-1 capacity without the assurance of matching FTS capacity, raises the potential for stranded LTD-1 capacity."<sup>32</sup> However, since we have rejected this same argument in ruling that the allocation to the LTD shippers is limited to the FPS storage capacity, we see no reason to reject Cove Point's proposal. In any event, all shippers have exercised the one-time option and we see no prejudice to any party from its elimination.

### **III. Required Filing**

83. In the October Filing Cove Point proposed in new GT&C section 4(1)<sup>33</sup> to describe three situations where the transfer of capacity from the FPS service to LTD-1 service could occur. These three situations were: (1) if an existing FPS customer and Cove Point do not agree to a service agreement extension and the customer elects not to exercise its ROFR upon the expiration of the contractual term, (2) if the capacity is not awarded to any party in the ROFR process (*i.e.*, if neither the existing customer nor any other bidder offers maximum rates and Cove Point chooses not to discount) or (3) if capacity is turned back to Cove Point prior to the expiration of the term by mutual agreement of a shipper and Cove Point. The second situation is inconsistent with the discussion both in this order and the December Order because it incorrectly suggests that third parties can bid for and obtain the expiring FPS service. Therefore, Cove Point must file a revised tariff sheet to eliminate the second situation from new GT&C section 4(1).

The Commission orders:

(A) The requests for rehearing are denied.

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<sup>32</sup> Shell Comments at 16.

<sup>33</sup> First Revised Sheet No. 215. The December Order in P 16 incorrectly referred to the section as 4(e), not 4(1).

(B) The requests for clarification are granted or denied as set forth in the body of this order.

(C) Cove Point must file revised tariff sheets within 15 days of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.