FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 10, 2006

In Reply Refer To:
Dominion Transmission, Inc.
Docket No. RP06-174-000

Dominion Transmission, Inc.
120 Tredegar Street
Richmond, VA 23219

Attention: Machelle F. Grim
Manager, Regulatory and Pricing

Reference: *See* Appendix for List of Revised Tariff Sheets

Dear Ms. Grim:

1. On January 13, 2006, Dominion Transmission, Inc. (Dominion) filed certain tariff sheets[1] to revise tariff language regarding the penalty provisions for violations of curtailment or interruption orders or operational flow orders (OFOs). Dominion proposes to modify the existing fixed price penalties to the higher of its fixed price penalties or multiples of indexed prices, and requests an effective date of February 13, 2006. The filing was protested. For the reasons discussed below, the Commission will accept the proposed tariff revisions, effective February 13, 2006, as requested.

<u>Background and Details of the Filing</u>

2. Currently, section 11.B.4(D) of Dominion's General Terms and Conditions (GT&C) provides that a shipper in violation of an OFO shall pay a penalty of $10 per Dth. Currently, as set forth in various rate schedules in Dominion's tariff, the penalties for violations of curtailment or interruption orders or OFOs are $25 per Dth.

3. In the instant filing, Dominion states that in order to respond to the recent increase in the price of natural gas, it proposes to revise its existing tariff. Specifically, Dominion proposes to increase the penalty level for violations of OFOs from a fixed $10 per Dth to

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[1] *See* Appendix for list of revised tariff sheets.

the higher of $10 per Dth or two times a daily published index price, and to change the penalty level for violations of curtailment or interruption orders or OFOs in certain rate schedules from a fixed $25 per Dth to the higher of $25 per Dth or three times a daily published index price.

4. Dominion asserts that with current gas commodity prices in the production area ranging from $10 to in excess of $20 per Dth during the recent spikes in spot prices immediately following Hurricanes Katrina and Rita, Dominion is concerned that its existing penalties may not be sufficient to preserve the integrity of its system if the price of natural gas remains steady or increases. Dominion states that if natural gas prices exceed the current penalty levels, the penalty levels would be inadequate to discourage takes in violation of OFO, curtailment and other similar type orders. Dominion further states that shippers or balancing parties who opt to incur the lower penalties rather than purchase gas at higher market prices, may compromise the integrity of Dominion's system.[2]

5. On Sheet No. 1008, Dominion proposes to define the Penalty Index Price as the midpoint price for "Dominion South Point" for the flow date applicable to the day on which the penalty is incurred as published in *Platts Gas Daily*. If the price for Dominion South Point is not available, Dominion proposes the midpoint price for "Columbia Gas, Appalachia" will be used as an alternate index.

6. Dominion states that its instant proposal is consistent with previous Commission decisions.[3] Dominion also states that its proposal is consistent with recently approved penalties based on multiples of a daily index price,[4] and is within the range of penalties of other pipelines that have been accepted by the Commission.[5]

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[2] Dominion submitted data documenting that over a ninety-day period, well over 25,000 Dth were traded each day at "Dominion South" and at "Columbia Gas, Appalachia."

[3] Dominion cites *Gulf South Pipeline*, 98 FERC ¶ 61,278 at 62,175-176 (2002), and *Paiute Pipeline Co.*, 109 FERC ¶ 61,139 at P 14-19 (2004).

[4] Dominion cites, among others, *Texas Gas Transmission, LLC*, 114 FERC ¶ 61,007 (2006).

[5] Dominion cites, among others, Dominion Cove Point LNG, LP's FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 251, which provides for the higher of $25 or three times an index price.

Notice, Interventions, Comments and Protests

7. Public notice of Dominion's filing was issued on January 20, 2006, with interventions and protests due as provided in section 154.210 of the Commission's regulations. *See* 18 C.F.R. § 154.210 (2005). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2005), all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Both Direct Energy Services, LLC (Direct Energy) and Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) protested Dominion's proposal. The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island; and Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company (collectively KeySpan) filed comments. Dominion filed a Response to the protests and comments. The Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers.[6] However, in this case, the Commission will accept Dominion's answer because it provides information that may assist the Commission in its decision-making process. The details of these pleadings are discussed below.

Discussion

8. The Commission finds that Dominion's proposed revisions to its curtailment, interruption and OFOs tariff provisions are reasonable and in accordance with Commission policy as discussed below. With respect to using price indices, on November 19, 2004, the Commission issued its Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs, and Closing Certain Tariff Dockets,[7] which determined that weekly indices should meet at least one of four criteria, one of which was that the average daily volume traded at the index location was at least 25,000 Dth of gas per day. The Commission finds that Dominion has adequately supported its proposed use of the indices "Dominion South" and "Columbia Gas, Appalachia," as published in Platts Gas Daily as reasonable and consistent with Commission's policy. Accordingly, for the reasons discussed below, the Commission will reject the protests of Direct Energy and Niagara Mohawk, and will accept Dominion's revised tariff sheets listed in the Appendix, subject to the condition set forth below.

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[6] 18 C.F.R. § 385.213(a)(2) (2005).

[7] 109 FERC ¶ 61,184 (2004).

Support for Increased Penalties

9. In its protest, Direct Energy states that it recognizes the Commission has been routinely approving similar proposals by other interstate pipelines without investigation.[8] However, Direct Energy submits that the Commission has failed in those cases to take into account its past precedent in addressing proposals by interstate pipelines to significantly increase their penalties. Direct Energy cites, for example, the 1996 Order in *Southern Natural Gas Company*,[9] which dealt with the pipeline's proposal to reduce its imbalance penalty tolerance to 1%, without first providing data on the effectiveness of the existing penalty mechanism. Direct Energy states that the Commission ruled that the pipeline's proposal was "not supported by sufficient evidence that this revision is an equitable solution to its alleged imbalance problem."[10] Direct Energy states that the Commission cited its prior order in *Stingray Pipeline Company*,[11] where it ruled that revisions to penalty provisions "must be supported by each pipeline's actual, unique experience."

10. Direct Energy asserts that in *Southern*, the Commission required the staff to conduct a technical conference and, when the information provided by the pipeline in support of its proposal was insufficient, directed the pipeline to provide additional information. The proposals were suspended for five months in order to permit the Commission time to develop a record.

11. Direct Energy argues that the Commission should not permit Dominion to make its increased penalties effective after a one day suspension solely on the basis of Dominion's unsubstantiated fears related to the market price of gas. Direct Energy notes that the market price of gas has been in excess of $10 since August, and yet Dominion pointed to no mischief on its pipeline or to problems last winter when prices were not quite as high. Direct Energy contends that Dominion has failed to fully explain why $15 and $25 penalties and multiple tools to control gas flows on its system will not be sufficient to encourage proper behavior this winter.

12. Direct Energy asserts that the Commission also must carefully review the provisions of Dominion's tariff to ensure that its OFOs and similar penalty provisions are narrowly stated and not subject to pipeline abuse. Direct Energy states that language

[8] Direct Energy cites, e.g., *Texas Eastern Transmission*, L.P., 113 FERC ¶ 61,145 (2005).

[9] 76 FERC ¶ 61,303 (1996).

[10] *Id*. at 62,506.

[11] 75 FERC ¶ 61,061 (1996).

that may have been acceptable at a $15 or $25 per Dth penalty may be overbroad in the context of a $40 penalty. Direct Energy contends that the Commission must ensure that shippers have sufficient flexibility to be able to avoid penalties and minimize the need for pipelines to impose such penalties.[12]

13. Direct Energy states that, moreover, and perhaps most important, Dominion's new penalty program is not temporary. Direct Energy argues that if gas prices retreat to more historical levels, Dominion's penalties may remain above its traditional levels and its penalties could have unintended and serious consequences for a shipper that is unable to comply with an OFO or similar pipeline order for legitimate reasons. Direct Energy contends that the Commission's review should not be based on a snapshot of gas prices and should properly consider the impact of its ruling in the future, when Dominion will be under no obligation to modify its tariff.

14. In its Response to Direct Energy's protest, Dominion states that Direct Energy ignores market realities and extensive, uniform Commission precedent. Dominion asserts that, contrary to Direct Energy's suggestions, pipelines are not required to wait until operational problems are experienced before designing appropriate penalties, and that such penalties should be set to prevent problems before they occur. Dominion also argues that the clear trend among pipelines to implement similar penalty provisions makes implementation of Dominion's proposal all the more important. Dominion contends that, if its penalties are lower than those of interconnected pipelines perverse incentives would be created to incur penalties on Dominion rather than on other pipelines.

15. The Commission finds that Dominion' proposed change in the level of its penalties is reasonable and consistent with current Commission policy. In Section 1.1 of the GT&C of Dominion's tariff OFOs are defined as "an order issued to alleviate conditions that, *inter alia*, threaten or could threaten the safe operations or integrity of Pipeline's system, or to maintain operations required to provide efficient and reliable firm service."[13] The Commission has consistently approved high penalties to deter conduct that might threaten a pipeline's operations,[14] and as Direct Energy notes, the Commission has recently approved numerous similar proposals, notwithstanding certain actions taken a decade ago applying different policies. Given the current increased gas prices and the potential for prices to continue rising, Dominion has demonstrated and sufficiently

[12] Direct Energy cites Order No. 637, [Regs. Preambles] ¶ 31,091 at 31,319 (2000).

[13] Second Revised Sheet No. 1088, Dominion's FERC Gas Tariff, Third Revised Volume No. 1

[14] *Paiute Pipeline Co.*, 111 FERC ¶ 61,107, at P 8 (2005).

supported the fact that its current fixed penalty may no longer act as an effective deterrent to actions that might threaten its pipeline operations.

16. With regard to Direct Energy's speculation that gas prices may "retreat to more historical levels," while Dominion's penalties "remain[ed] above its traditional levels," the Commission finds that Dominion's proposal properly addresses concerns based on current and expectant prices for gas. If at some future date, gas prices were to drop to relatively low levels, then the penalty levels would drop commensurate with the drop in gas prices. If gas prices drop so significantly that they fall below the fixed penalty levels of its tariff, then those fixed penalty levels will resume. If other changed conditions were to indicate that Dominion's penalties may no longer be appropriate, Direct Energy or any interested party may file a complaint with the Commission and request that the Commission use its authority under section 5 of the Natural Gas Act (NGA) to require Dominion to revise the penalty levels in its tariff.

Gas Price Based Penalties for Hourly OFO Violations

17. Niagara Mohawk states that although it recognizes that the Commission has recently approved similar penalty structures for other interstate natural gas pipelines, Dominion's filing fails to justify the application of the increased penalties, based on the cost of gas Dominion purports to need to purchase, for hourly OFO violations, where no gas would need to be purchased by the pipeline. Therefore, Niagara Mohawk contends that the Commission should reject Dominion's proposed penalty increases to the extent Dominion proposes to apply the increased penalties to violations of hourly OFOs and delay the effectiveness of Dominion's proposed penalty increase as it applies to other types of curtailment or OFO violations.

18. Niagara Mohawk asserts that Dominion's proposed increased penalties should not be used for hourly OFO violations because it argues that tying the penalty for hourly OFOs to an indexed gas price would have no influence on shipper behavior. Niagara Mohawk states that hourly OFOs are called by the pipeline in order to regulate a different rate of hourly flow of gas through the pipeline than would normally occur.[15] Specifically, Niagara Mohawk notes that Dominion's Rate Schedule FTNN, section 9.5.B, permits Dominion to issue an hourly OFO when Dominion determines that hourly quantities delivered to a customer at any delivery point are in excess of the quantities that it can deliver without jeopardizing Dominion's ability to provide firm services to any customer.

[15] Niagara Mohawk cites Dominion Transmission, Inc., FERC Gas Tariff, Third Revised Volume No. 1, General Terms and Conditions, section 11B.4, Original Sheet No. 1085, *et seq*.; and Rate Schedule FTNN, section 9.5, Second Revised Sheet Nos. 211, *et seq*.

19. Niagara Mohawk asserts that under hourly OFO circumstances, the shipper does not undertake or overrun its scheduled gas quantity for the day in total, even if its hourly flow rate exceeds the hourly OFO. It asserts that, while a penalty for violating an hourly OFO should apply, there is no justifiable basis to tie that penalty to that day's market price of natural gas. Niagara Mohawk argues that the market price of gas will not influence the shipper to comply with the hourly OFO because the shipper subjected to an hourly OFO is merely being asked to change the hourly rate of flow for the gas he has already purchased and brought to Dominion's system. Niagara Mohawk asserts that the shipper subject to an hourly OFO is not facing a choice of paying Dominion a penalty or having to buy gas in the market. Therefore, Niagara Mohawk concludes that should the Commission decline to reject Dominion's entire penalty proposal outright, the Commission should reject, at a minimum, Dominion's proposal to increase the penalty charges for hourly OFOs by tying such charges to index-based prices.

20. In response to Niagara Mohawk's protest that Dominion's proposed penalties are not appropriate for hourly OFO violations, Dominion argues that, to the contrary, a higher, more market-sensitive penalty will provide an enhanced incentive to comply with an hourly flow OFO.

21. We find that penalties tied to multiples of market prices of gas are appropriate for discouraging violations of hourly OFOs. Accordingly, the Commission does not agree with Niagara Mohawk's arguments on this issue. Contrary to Niagara Mohawk's claim, a shipper subject to an hourly OFO may, indeed, be facing a choice of paying Dominion a penalty or having to buy gas in the market and will choose the option that results in the lowest cost to the shipper. If the hourly OFO penalty is lower than the current price of gas, or at least not substantially higher, then a shipper that has an immediate need for increased gas supplies, may find it worthwhile simply to violate the hourly OFO, take the additional gas, and pay the penalty. The point of an OFO penalty is to discourage such violations of the OFO. Since the Commission issued Order No. 637,[16] we have consistently held that the fact an OFO has been issued means the pipeline is under stress, and therefore the pipeline can justify a high penalty for violating the OFO.[17] Therefore,

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[16] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,091 (February 9, 2000); order on rehearing, Order No. 637-A , FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,099 (May 19, 2000).

[17] See Gulf South Pipeline, 98 FERC ¶ 61,278 (2002), Policy Statement on Natural Gas and Electric Price Indices, 104 FERC ¶61,121 (2003), Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs and Closing Certain Tariff Dockets, 109 FERC ¶61,184 (2004), Paiute Pipeline Co., 109 FERC ¶ 61,139 (2004) and Texas Gas Transmission, LLC, 114 FERC ¶ 61,007 (2006).

using a multiple of the price of gas makes sense for OFO penalties, including Dominion's hourly OFO penalty. We also note that although Niagara Mohawk concedes that a penalty for hourly OFO violations is appropriate, it does not propose any alternative to Dominion's proposal other than to retain the current fixed level penalty. The Commission finds that Dominion's proposal to increase penalties by tying them to a daily gas index price will provide a better disincentive for violating hourly OFOs than a static level of penalties as is currently provided in Dominion's tariff.

Impact of Increased Penalties on LDCs

22. Niagara Mohawk also states that Dominion failed to provide sufficient notice to local distribution companies (LDCs) of the proposed penalty increase to permit LDCs to modify their state-regulated tariffs to prevent operating risk shifting to LDCs. Niagara Mohawk states that the Commission also should consider that Dominion's proposed increased penalties could trigger a consequential, "trickle-down" effect of that anticipated adverse shipper behavior to LDCs downstream of Dominion. Specifically, Niagara Mohawk asserts that Dominion's proposed indexed penalties could shift operating risk to LDCs, such as Niagara Mohawk.

23. Niagara Mohawk contends that by Dominion invoking the "greater of" a fixed price or a multiple of a price tied to a liquid natural gas index for violations of OFO, curtailment and similar-type orders on its interstate pipeline, Dominion would create a situation where shippers behind an LDC could shift any potential "gaming" activity from Dominion to the LDC where the LDCs penalties continue to be only a fixed price. Niagara Mohawk asserts that if the Commission approves Dominion's proposal, and LDCs need to change their tariffs to implement penalty charges that would prevent the shift of operating risk to LDCs, LDCs would be hard pressed to implement such changes during this 2005-2006 winter period.[18]

24. Finally, Niagara Mohawk states that Dominion has yet to experience any harm from the increased gas prices over the last few months. Moreover, Niagara Mohawk notes that the 2005-2006 winter heating season is more than half complete, and the market is already experiencing decreases in natural gas prices. Therefore, Niagara Mohawk concludes that there appears to be no urgent need for Dominion to implement the proposed increased penalties tied to natural gas prices. Niagara Mohawk submits that, if the Commission approves Dominion's proposed penalty increase, a delayed

[18] If Dominion's penalties are approved here and Niagara Mohawk subsequently seeks similar modifications to its retail tariff, Niagara Mohawk notes that Dominion's personnel offered to assist it in its efforts with the New York Public Service Commission.

implementation of this proposed penalty increase to October 1, 2007, would allow LDCs to apply to their state regulatory bodies to make appropriate changes to LDC penalties to prevent the shift of operating risk from Dominion to the LDCs. For this reason, Niagara Mohawk urges the Commission to delay the effectiveness to at least October 1, 2007, of Dominion's proposed penalty increase as it applies to curtailment or OFO (other than hourly OFO) violations.

25. In its Response, Dominion characterizes Niagara Mohawk's argument as a "red herring," and asserts that the Commission should reject it. Dominion asserts that Niagara Mohawk's concerns that it cannot timely implement a tariff change to prevent a shifting of operating risk to the LDCs is no reason to prevent Dominion from implementing a just and reasonable change in its penalty levels. Further, Dominion points out that Niagara Mohawk has already protected itself by reference to index prices rather than relying on fixed price levels. Dominion explains that under Niagara Mohawk's gas delivery programs, either Dominion charges the offending marketer behind Niagara Mohawk for any penalties it caused, or there are no penalties (due to deliveries always equaling confirmed nominations from Dominion). Dominion further points out that Niagara Mohawk uses multiples of the Platts Gas Daily index for its cashouts for large commercial/industrial customers.

26. We find that Dominion has supported application of its proposed penalty increases to LDCs. Contrary to Niagara Mohawk's argument that Dominion has failed to provide sufficient notice to LDCs, Dominion states that it presented its proposals to its customers in a meeting before making the instant filing[19] and a timely public notice was issued consistent with the Commission's regulations. Furthermore, Niagara Mohawk acknowledges that the Commission has already approved similar proposals for other jurisdictional pipelines, so Dominion's proposal should hardly come as a surprise to Niagara Mohawk or to any other shipper on Dominion's system. Finally, the Commission finds that it would be unreasonable, and not within the Commission's five-month suspension power under section 4 of the NGA, to grant Niagara Mohawk's request to defer the effectiveness of the proposed penalties for a year and a half in order to permit it to seek changes in its own penalty tariff provisions at the state level.

Clarification of Tariff Language

27. KeySpan states that it does not oppose Dominion's application to change its existing penalty provisions, but is concerned that Dominion's proposal fails to provide tariff language which clearly details the basis for assessing penalties incurred on non-business days such as weekends and holidays. Specifically, KeySpan notes that

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[19] *See* Dominion's Transmittal Letter at p. 4 of 5.

Dominion proposes to calculate its index-based penalties by using the applicable index points published price for the "flow date applicable to the day on which the penalty is incurred."[20] KeySpan points out that this proposed tariff language does not clearly detail which *Platts Gas Daily* "flow date" will be used to establish penalties applicable to a weekend or holiday. KeySpan states that in its cover letter, Dominion only states that "it agreed to clarify that it will use the *Platts Gas Daily* flow dates for prices applicable for non-business days."[21] KeySpan asserts that based on this statement and discussions with Dominion, KeySpan understands that the next business day would be the "applicable flow date." Assuming that this is correct, KeySpan requests that the Commission require Dominion to revise the tariff language proposed for Section 1.1(w) of its GT&C (proposed Sheet No. 1008) to state specifically that the applicable *Platts Gas Daily* flow date used to calculate penalties incurred on non-business days such as weekends and holidays will be the first business day following a weekend or holiday flow date.

28. In response to KeySpan's comment that Dominion should revise its proposed tariff language to state that the *Platts Gas Daily* flow date for the next succeeding business day will be used to calculate penalties applicable to non-business days, such as week-ends and holidays, Dominion notes that its proposed tariff language states:

> "Penalty Index Price" shall mean the midpoint price for Dominion South Point as published in *Platts Gas Daily* for the flow date applicable to the day on which the penalty is incurred.

29. Dominion goes on to explain that *Platts Gas Daily* publishes index prices for "flow dates" that fall on week-ends and holidays. Dominion illustrates this point by citing specific editions of *Platts Gas Daily*, in which index prices were published for flow dates of December 30, 2005 (a Saturday) and January 2, 2006 (a holiday). It states that the "flow date" as referenced in *Platts Gas Daily* need not be the day on which a particular issue of *Platts Gas Daily* is published.

30. The Commission finds that Dominion's response has adequately explained that the "flow date" for a published index price is not the same as the date of the index publication, and accordingly, in this case, there is no need for Dominion to revise its proposed tariff language.

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[20] KeySpan cites Dominion's proposed Second Revised Sheet No. 1008.

[21] KeySpan cites Dominion's Cover Letter at p. 4.

Conclusion

31. Accordingly, Dominion's revised tariff sheets listed in the Appendix are accepted, effective February 13, 2006.

By direction of the Commission.

Magalie R. Salas,
Secretary.

cc: All Parties
Public File

Margaret H. Peters, Esq., Senior Counsel
Dominion Resources Services, Inc.
120 Tredegar Street
Richmond, Virginia 23219

Appendix

Dominion Transmission, Inc.
FERC Gas Tariff, Third Revised Volume No. 1
Accepted Effective February 13, 2006:

Second Revised Sheet No. 103
Third Revised Sheet No. 212A
Second Revised Sheet No. 653
Second Revised Sheet No. 1008
Second Revised Sheet No. 1009
Second Revised Sheet No. 1010
Second Revised Sheet No. 1043
Third Revised Sheet No. 1088