

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket No. RP06-316-000

ORDER ON TARIFF SHEETS

(Issued May 19, 2006)

1. On April 20, 2006, Dominion Transmission, Inc., (Dominion) filed revised tariff sheets¹ reflecting new tariff language it states is to clarify the liability for any loss of gas in storage, and to provide that its customers' are responsible to insure gas that they own. For the reasons discussed below, the Commission will accept Dominion's tariff sheets for filing and will suspend them, to become effective subject to refund the earlier of a date set by subsequent Commission order or October 22, 2006, subject to the outcome of a technical conference and further Commission orders.

Background

2. Dominion proposes to add a new section 10 entitled "LOSS OF GAS" to Rate Schedules GSS (General Storage Service), GSS (General Storage Service, section 7(c)) and ISS (Interruptible Storage Service). Specifically, the proposed tariff language states:

Pipeline shall be responsible for any loss, cost, or expense arising from any loss of Customer's gas in Pipeline's storage that results from Pipeline's negligence or failure to exercise due diligence. Customer shall be responsible for obtaining its own insurance for any gas in storage, and shall hold Pipeline harmless from any loss, cost, or expense arising from any loss of storage gas that results from a force majeure event or that is not the result of Pipeline's negligence or failure to exercise due diligence.

¹ Second Revised Sheet No. 309, First Revised Sheet No. 359, Third Revised Sheet No. 508 to FERC Gas Tariff, Third Revised Volume No. 1.

3. Dominion states that the new language is consistent with the existing terms of its tariff, and serves only to make more explicit Dominion and its customers' liability for loss of gas in storage and to require customers to insure their storage quantities against losses for which they are responsible. Dominion states that existing section 10 of its General Terms and Conditions (GT&C), Force Majeure and Limitation of Obligation to Provide Service, provides that Dominion is not liable for any act, omission, or circumstances arising from force majeure, and defines force majeure so as to encompass any cause of destruction of gas in storage not reasonably within Dominion's control. Section 11.1 of its GT&C requires customers to indemnify Dominion for all losses, damages, or expenses resulting from curtailment, interruption, or discontinuance of service, except to the extent of Dominion's own negligence, willful misconduct, or fraud in causing such damage or liability. Dominion adds that the effect of these provisions is to place the risk of loss of a customer's gas in storage on that customer except where Dominion is at fault.

4. Dominion contends that the Commission has recently approved similar tariff provisions requiring storage customers to obtain insurance for their volumes of gas in storage.²

5. With respect to the liability for loss of gas, Dominion asserts that many recently certificated storage projects have included a provision in their *pro forma* tariffs explicitly defining the risk of loss for stored gas instead of relying on a force majeure clause to define liability.³ Dominion contends that most force majeure clauses like Dominion's imply, rather than affirmatively state, that the pipeline is liable for losses resulting from pipeline's own negligence or failure to exercise due diligence. Dominion contends that the "loss of gas" clause it proposes to incorporate into its tariff affirmatively states its liability for such losses.

Notice, Interventions, and Protests

6. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. §385.214 (2005), all timely filed motions to intervene and any motions to intervene out-of-time filed before the

² Citing, *Columbia Gas Transmission Corp. and Hardy Storage Co., LLC*, 113 FERC ¶ 61,118 at PP 57-59 (2005); *Williams Natural Gas Co.*, 71 FERC ¶ 61,412, *reh'g*. 73 FERC ¶ 61,285 (1995); and *Caledonia Energy Partners, L.L.C.*, 111 FERC ¶ 61,095 (2005).

³ Citing, *e.g.*, *Egan Hub Partners, L.P.*, 103 FERC ¶ 61,014 (2003) (GT&C section 12.2 (Title and Risk of Loss)).

issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Protests were filed by: Baltimore Gas and Electric Co. (BG&E) and Constellation New Energy-Gas Division, LLC, (CNE-Gas), Consolidated Edison Co. of New York, Inc. and Philadelphia Gas Works (Con Ed/PGW), Doswell Limited Partnership and Northeast Energy Associates (jointly referred to as Doswell), The Dominion LDC's (The East Ohio Gas Co. d/b/a Dominion East Ohio, the Peoples Natural Gas Co. d/b/a Dominion Peoples, and Hope Gas, Inc. d/b/a Dominion Hope), KeySpan (The Brooklyn Union Gas Co., d/b/a KeySpan Energy Delivery NY; KeySpan Gas East Corp., d/b/a KeySpan Energy Delivery LI; Boston Gas Co., Colonial Gas Co., Energy North Natural Gas, Inc., and Essex Gas Co.), New Jersey Natural Gas Co. (NJNG), NiSource Distribution (Bay State Gas Co., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Columbia Gas of Virginia, Inc.), PSEG Energy Resources & Trade, LLC (PSEG), Transcontinental Gas Pipe Line Corp. (Transco) and Washington Gas Light Co. (Washington Gas). Atlanta Gas Light Co. (AGLC), Virginia Natural Gas, Inc. (VNG) and Pivotal Utility Holdings Inc. d/b/a Elizabethtown Gas Co., (Elizabethtown) filed a motion to intervene and for an extension of time to file comments. PECO Energy Co. (PECO) and UGI Utilities, Inc. (UGI) filed protests out of time.⁴ Piedmont Natural Gas Co. and the City of Richmond, Virginia filed to intervene out of time. On May 12, 2006, Dominion filed a motion for leave to answer protests.⁵ The protests and Dominion's answer are discussed below.

Protests

7. Protesting parties contend that Dominion's characterization of its proposal as a mere "clarification" is disingenuous as it is actually a new requirement which represents a significant change in the allocation of risk between the pipeline and its customers. BG&E and CNE-Gas, Con Ed/PGW, KeySpan, NJNG, PECO, PSEW, UGI, and Washington Gas allege that Dominion has not explained or demonstrated that its proposal is necessary or just and reasonable and, thus, should be rejected. If the Commission does

⁴ The late-filed protests are accepted as the protests may aid in the disposition of issues raised by the filing.

⁵ Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.213(a)(2) (2005), an answer may not be made to a protest unless otherwise ordered by the decisional authority. However, the Commission will waive Rule 213(a)(2) and accept Dominion's Answer as it may aid in the disposition of the issues raised by the filing.

not reject Dominion's proposed tariff modification, AGLC, VNG, Elizabethtown, BG&E, CNE-Gas, KeySpan, PECO and UGI request that the tariff sheets be suspended and that the Commission establish a technical conference.

8. The protesting parties state that Dominion's existing tariff provisions do not support Dominion's interpretation that its new "loss of gas" section merely clarifies the liability for losses under its existing FERC Gas Tariff. Section 8.2, Possession of Gas, of Dominion's GT&C provides that Dominion is deemed responsible for gas from the time it is received into Dominion's system until the time it is delivered to the customer at the delivery point. NJNG states that the interpretation of this provision is that Dominion bears the risk of loss with respect to customers' gas, whether for transportation or storage, once that gas is delivered into the pipeline's system and until the pipeline delivers it back to the customer. NJNG states that this interpretation is consistent with Commission policy.⁶ NJNG adds that Dominion, in its transmittal letter, defines force majeure to encompass "any cause of destruction of gas in storage not reasonably within Dominion's control." NJNG contends that nowhere in section 10 of Dominion's GT&C is there a reference to "destruction of gas," much less to "destruction of gas in storage." Thus, NJNG contends that it is unreasonable and inconsistent with the language of Dominion's tariff to construe that Dominion is permanently absolved of its responsibility for gas in its possession in circumstances where a loss was the result of an event of force majeure. Con Ed/PGW also contends that Dominion's proposal is contrary to other provisions of Dominion's tariff and is a significant misallocation of liability.

9. KeySpan contends that under Dominion's current force majeure clause, Dominion would bear the burden of proving that the force majeure event was beyond its control and was not the result of its own fault or negligence.⁷ Dominion's "loss of gas" proposal, would change Dominion's obligation from one in which it would be required to demonstrate that any particular loss of gas arose from an event of force majeure that could not be overcome by the exercise of reasonable diligence, to one in which Dominion would be required only to defend itself from a charge that it was negligent or failed to exercise due diligence. Further, KeySpan states that Dominion should not be permitted to revise its own force majeure clause to require customers to protect Dominion from

⁶ Citing, e.g., *Overthrust Pipeline Co.*, 58 FERC ¶ 61,104 at 61,364 (1992) (citing *Colorado Interstate Gas Co.*, 42 FERC ¶ 61,380 (1988)), where the Commission determined that CIG and the shipper are deemed to be responsible for the gas while it is in their respective control and possession; *Wyoming Interstate Co., Ltd.*, 57 FERC ¶ 61,328 at 62,049 (1991).

⁷ Citing, *Gulf Oil Corp. v. FPC*, 706 F. 2d 444, 452 (3rd Cir. 1983), *cert. denied*, 646 U.S. 1038 (1984).

circumstances related to losses of gas that are neither the customers' fault, nor within the customers' control. KeySpan contends that the Commission has consistently and explicitly rejected the use of a strict liability standard when considering liability for the loss of gas.⁸ Finally, KeySpan states that Dominion should not be permitted to shift its responsibility to exercise due diligence to its customers.

10. NJNG and PSEG allege that Dominion's proposal will have immediate and significant cost consequences for Dominion and its customers in that customers would have the responsibility to insure against such losses, and Dominion would be relieved of this insurance cost responsibility. NJNG further contends that the proposal would not only shift the risk of storage gas losses, it would require its storage customers to hold Dominion harmless against third party liabilities the pipeline might suffer in other instances of gas loss.

11. PSEG, NJNG and Washington Gas contend that the issue of assigning risks for gas losses in storage should be considered in a general rate proceeding where it can be examined along with all other cost issues. UGI states that the topic of Dominion's losses from storage service has been contentious and disputed in prior rate proceedings, and that the current storage loss provisions in Dominion's tariff resulted from carefully crafted compromises in settlement. Thus, the protestors allege that Dominion's proposal would unfairly reallocate cost responsibility during Dominion's settlement moratorium, and that the Commission should not entertain such a change in cost responsibility outside a general NGA section 4 rate case.

12. The Dominion LDCs and PECO state that Dominion fails to explain how the proposed language affects the allocation of risk of storage losses as agreed to in the settlement approved in Docket No. RP00-632-000⁹ or as set forth in section 27 of Dominion's GT&C relating to Extraordinary Gas Losses. The Dominion LDCs request that the Commission direct Dominion to explain the interaction of this new tariff provision and the limits on additional recoveries of storage losses pursuant to currently effective settlements and tariff provisions. NJNG states that the issue of responsibility for losses of customer storage gas was not raised during the 2005 rate settlement

⁸ *Citing, ANR Pipeline Co.*, 98 FERC ¶ 61,218 at 61,862 (2002), *Arkla Energy Resources Co.*, 64 FERC ¶ 61,166 at 62,490 (1993).

⁹ *Dominion Transmission, Inc.*, 96 FERC ¶ 61,288 (2001).

proceeding in Docket Nos. RP05-267-000 *et al.*, which was designed as a limited amendment to the Docket No. RP00-632-000 Settlement, and establishes a five year moratorium on the effective date for general rate changes.¹⁰

13. KeySpan further states that many of Dominion's current tariff provisions are the product of settlements that were agreed to after extended negotiations as part of Order Nos. 636 and 637 compliance processes. While these provisions may have been agreed to as part of an overall compromise, they may no longer be just and reasonable in light of the shifting of gas loss risk that Dominion's proposed tariff language appears to require. For example, KeySpan states that existing section 11, Curtailment and Interruption, of Dominion's GT&C requires customers to indemnify Dominion for any losses that Dominion may suffer as a result of Dominion's curtailment.¹¹ KeySpan contends that this provision violates the Commission policy that prohibits the imposition of liability without fault. Further, it asserts, Dominion's existing GT&C in section 27, Extraordinary Gas Losses, contains a provision that permits Dominion to seek retroactive recovery of extraordinary gas losses.¹² Con Ed/PGW contends that section 27 does not purport to place customers on notice that Dominion may seek rate recovery for costs other than the cost of gas itself, arising from extraordinary losses. KeySpan contends that if its customers are to be required to bear the risk of their own losses, then Dominion should be subject to the same risk. Thus, KeySpan concludes that if Dominion's tariff proposal is accepted, the Commission should establish separate procedures under section 5 of the NGA to permit parties to examine whether other complementary provisions of Dominion's tariff may be unjust and unreasonable in light of Dominion's proposed "loss of gas" provision.

14. NJNG provides that since Dominion operates its entire system on an integrated basis, it cannot determine whether gas in any particular storage facility is Dominion's or its customers', transportation, balancing, or storage gas. NJNG adds that the Commission, in its order on Dominion's Order No. 627 Settlement, described Dominion's system as a "highly complex web or grid, where gas flows are highly variable and depend on the nominations made by multiple shippers each day and season at myriad receipt and delivery points distributed throughout the pipeline grid."¹³ Given the integrated nature of Dominion's contract storage service, the protesting parties

¹⁰ *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005).

¹¹ *Citing*, Sheet No. 1041 to FERC Gas Tariff, Third Revised Volume No. 1.

¹² *Citing*, Sheet No. 1169 to FERC Gas Tariff, Third Revised Volume No. 1.

¹³ *Citing*, *Dominion Transmission, Inc.*, 95 FERC ¶ 61,316 at 32,078 (2001).

contend that it would be difficult for a shipper to purchase insurance for storage gas unless the shipper is able to guarantee in which reservoir its storage gas resides.

15. Doswell states that its service agreement with Dominion does not allocate its gas to any particular field in Dominion's storage system, but states that Doswell's gas will be received "for storage in Dominion's underground storage properties." Doswell adds that its service agreement only specifies delivery and receipt points. Because Dominion has numerous storage reservoirs and operates them in the aggregate, Doswell asserts that shippers are not told in which reservoir their gas supplies reside, making it hard for storage customers to purchase insurance without specific details. Doswell contends that the burden to insure gas in storage should fall on Dominion who can in turn allocate the cost through its rates. PSEG states that the "loss of gas" provision would require shippers to not only take out insurance coverage on the gas held by Dominion in storage, but also to take on the financial responsibility for all other costs or expenses suffered by Dominion relating to storage gas loss that are not the result of Dominion's negligence.

16. NJNG also states that under the new proposal Dominion's customers will now have an incentive to litigate over events that cause lost storage gas and the quantification and allocation of customer versus pipeline gas.

17. Con Ed/PGW provides that it has been in contact with Dominion regarding its proposed tariff modification, and states that it will only summarize its concerns in its protest. Con Ed/PGW states that the second sentence of Dominion's proposed tariff language is overbroad in its reference to "any gas in storage" and "storage gas." Con Ed/PGW contends that customers should not be responsible for insuring base or cushion gas owned by Dominion, nor should customers be required to indemnify Dominion for events arising from a loss of base gas. NiSource requests that Dominion be required to clarify that proposed section 10 does not apply to losses of base gas or other gas owned by Dominion, nor should it apply to storage migration losses, and that losses of gas in storage should be allocated ratably between base gas and working gas. NiSource also requests that the second sentence of proposed section 10 be clarified to state that customers are not required to purchase insurance from third-party carriers. Transco requests that Dominion be directed to clarify how the proposed tariff provision will modify the existing responsibility and liabilities of the pipeline and its customers under Dominion's tariff, and how the proposed tariff provision will operate consistent with those existing tariff provisions.

18. NJNG states that Dominion's proposal only addresses responsibility for losses of storage gas owned by GSS and ISS customers, but is silent on how Dominion views risk of loss for gas it transports, or the service it provides under its park and loan Rate Schedule MCS. NJNG submits that there is no rational basis to distinguish transport or

“parked” gas from storage gas on Dominion’s system. Accordingly, NJNG contends that it would be unduly discriminatory to allocate risk of loss to one group of customers while maintaining the pipeline’s responsibility for gas losses for the other.

19. KeySpan, NJNG, UGI, and other parties have raised numerous questions regarding Dominion’s proposal. Some parties have offered suggestions on how to revise Dominion’s tariff to further clarify its proposal while other parties set forth specific questions that Dominion would need to answer. Specifically, some of the questions parties raise include: 1) Does Dominion carry its own insurance on gas in storage? Is the cost of such insurance currently reflected in Dominion’s rates?; 2) How would Dominion account for a storage loss? Would the first gas lost in any instance be Dominion’s base gas or customer’s gas or some combination of both? How would the location of losses be determined, and then apportioned among customers?; 3) How would Dominion’s recovery of storage fuel offset gas losses? Are there other sources of potential offsets? 4) What is Dominion’s gas loss experience at various fields? Are certain fields prone to extraordinary storage gas migration? Will customers have a choice to avoid having their gas stored in certain fields that might be characterized as “high risk” by insurers? What rights would customers and their insurers have to require Dominion to improve the loss performance of its fields? Finally, parties assert that Dominion should clarify and define the types of risk it is assigning to shippers, *i.e.*, risks arising from a gas explosion, gas migration gas contamination, etc.

Dominion’s Answer

20. On May 12, 2006, Dominion filed a motion for leave to answer protests. In its answer, Dominion continues to state that the proposed tariff revisions serve only to clarify the risk and liability for loss storage gas in a way consistent with its existing tariff and Dominion’s past practice, do not impose new obligations on the customers and are not inconsistent with any existing settlement obligations Dominion has with its customers. Dominion also states that it is willing to add the “loss of gas” provision to Rate Schedule MCS. Finally, Dominion offers clarifications to its proposed tariff language.

Discussion

21. The parties have raised numerous questions about Dominion’s proposal, as described above. Although Dominion, in its May 12 answer to protests, submitted revised tariff language to further clarify its proposal, the Commission finds that the issues raised by the protesting parties and the revised tariff language filed by Dominion warrant further examination and discussion. A technical conference will provide an appropriate

forum to address the issues raised by the filing and Dominion's answer. The Commission will, therefore, accept Dominion's tariff sheets for filing and suspend them, to become effective subject to refund the earlier of a date set by subsequent Commission order or October 22, 2006, subject to the outcome of a technical conference and further Commission orders.

Suspension

22. Based upon a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall suspend the tariff sheets for the period set forth below, subject to the outcome of the technical conference established in this proceeding.

23. The Commission's policy regarding tariff suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that a shorter suspension period may be warranted in the circumstances where suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). No such circumstances are present here. Accordingly, the Commission will accept Dominion's tariff sheets for filing and will suspend their effectiveness until the earlier of a date set by subsequent Commission order or October 22, 2006, subject to refund and subject to the outcome of the technical conference established herein and further orders of the Commission.

The Commission orders:

(A) The tariff sheets set forth in footnote 1, *supra*, are accepted for filing and suspended, to become effective subject to refund the earlier of a date set by subsequent Commission order or October 22, 2006, subject to the outcome of the technical conference established herein and further orders of the Commission.

(B) A technical conference is established in the instant proceedings to address the issues raised by Dominion's filing. The Commission Staff is directed to report the results of the Technical conference to the Commission within 150 days of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.