

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 31, 2007

In Reply Refer To:
Dominion Transmission, Inc.
Docket No. RP07-434-000

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

Attention: Mabelle F. Grim
Director, Regulatory & Pricing

Reference: Original Sheet No. 1138A

Dear Ms. Grim:

1. On May 1, 2007, Dominion Transmission, Inc. (DTI) filed the tariff sheet¹ listed in footnote 1 to incorporate a provision into its tariff permitting DTI to agree with a customer to modify the term of its service, without requiring the service agreement to be filed with the Commission. The Commission accepts and suspends the tariff sheet listed in footnote 1, to be effective June 1, 2007, the date requested, subject to refund and to the explanation or revision directed herein.

2. Public notice of DTI's filing was issued on May 4, 2007. Interventions and protests were due as provided for in § 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2006). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2006)), all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. No protests or adverse comments were filed. Statoil Natural Gas LLC (Statoil) filed comments in support of DTI's filing.

3. DTI proposes to add section 21.5 to the General Terms and Conditions (GT&C) of its FERC Gas Tariff allowing it to agree, on a not unduly discriminatory basis, with a customer to: (a) the termination of an existing service agreement prior to its expiration

¹ Original Sheet No. 1138A to DTI's FERC Gas Tariff, Third Revised Volume No. 1.

date contingent upon negotiated conditions, including the payment of any agreed upon termination fees; (b) a term for a service agreement beginning upon specified events related to the availability of necessary infrastructure; or (c) an option for the customer to terminate a service agreement prior to the end of the term upon specified events related to the unavailability or termination of related contractual rights with DTI or with another upstream or downstream service provider. The proposed tariff language explicitly provides that any agreement by DTI under this authority shall not constitute a material deviation from the applicable Form of Service Agreement.

4. DTI states that it does not believe that there is any barrier to a pipeline agreeing to terminate a service with pre-granted abandonment authority. DTI argues that other pipelines have added such authority in their tariffs.²

5. DTI states that neither DTI nor a customer would be required to agree to early contract termination, and any mutual agreement to do so could be contingent upon various conditions negotiated by the parties, including termination fees.

6. The second part of DTI's proposal allows DTI to agree with a customer, on a not unduly discriminatory basis, to commence service upon specified events related to the availability of necessary infrastructure. DTI states that, in cases involving new facility construction, the commencement of service depends on the completion of facilities and the availability of necessary infrastructure. DTI asserts that, in some cases, the service commencement date might be tied to future infrastructure availability at the time of the service agreement is executed and that the Commission sometimes requires a pipeline to execute service agreements prior to construction as a certificate condition. DTI argues that, in those cases, the actual date for service commencement cannot be specified at the time of execution of a service agreement. DTI asserts that such a defined service commencement date is not a material deviation from a form of service agreement with a blank for a starting date but it is proposing to modify its tariff to avoid any potential uncertainty.

7. The third part of DTI's proposal permits DTI and a customer to agree in advance that, if necessary upstream or downstream service becomes unavailable, the customer may terminate the agreement. DTI states that, absent this tariff filing, a contract with such a termination provision would constitute a material deviation under Commission precedent. DTI argues that allowing pipelines to agree upon such terms might make potential customers more willing to enter into the type of long-term agreements necessary to support the construction of needed infrastructure.

² Citing *Northern Natural Gas Co.*, 118 FERC ¶ 61,124 (2007); *National Fuel Gas Supply Corporation*, 115 FERC ¶ 61,127 and 116 FERC ¶ 61,307 (2006).

8. DTI asserts that allowing DTI and its customers to include such mutually-agreed upon provisions related to the term of service in their agreements will not present any substantial risk of undue discrimination or harm any other customer. DTI states that it will treat terms agreed upon pursuant to proposed section 21.5 of its GT&C as special details pertaining to a service agreement that must be included in postings on DTI's website pursuant to section 284.13(b)(viii) of the Commission's regulations.³ DTI states that such postings will allow customers and the Commission to monitor DTI's use of its new tariff authority.

9. DTI asserts that the ability of DTI and its customers to include termination rights in a service agreement as well as terms specifying the service commencement date, without the regulatory uncertainty inherent in a nonconforming agreement that must be filed with the Commission for individual approval, will facilitate contracting for new services and support the Commission's goal of promoting the construction of needed natural gas infrastructure.

10. Statoil states that DTI's proposed tariff language provides additional flexibility because it gives customers the ability to negotiate early termination provisions without facing the uncertainty inherent in a non-conforming service agreement. Statoil asserts that DTI's proposal is consistent with Commission precedent and may facilitate contracting for new services and promote construction of new infrastructure. Statoil believes the posting requirement adequately addresses concerns regarding transactional transparency.

11. The Commission has permitted pipelines to incorporate early termination clauses with termination (or exit) fees into their tariffs where they have identified the situations under which they will impose the fees and how the fees are determined.⁴ However, under NGA section 4, a pipeline has the burden to show that any proposed rate or charge is just and reasonable. Here DTI has not shown that its proposal to charge a negotiated termination fee, without setting forth the situations under which it will impose the fees and how the fees are determined, is just and reasonable. Therefore DTI must file, within

³ 18 C.F.R. § 284.13(b)(viii) (2006).

⁴ See *National Fuel Gas Supply Corporation*, 115 FERC ¶ 61,127 and 116 FERC ¶ 61,307 (2006), accepting Original Sheet Nos. 482 and 483 of National Fuel Gas Supply Corporation's FERC Gas Tariff, Fourth Revised Volume No. 1; see also *Northern Natural Gas Co.*, 118 FERC ¶ 61,124 (2007), accepting Third Revised Sheet No. 142A of Northern Natural Gas Co.'s, FERC Gas Tariff, Fifth Revised Volume No. 1 and *Northwest Pipeline Corporation*, 114 FERC ¶ 61,144 (2006).

20 days of the issuance of this order, to either explain why its proposal to negotiate termination fee levels is just and reasonable or revise its proposal to specify the situations under which it will impose the fees and how the fees are determined.

By direction of the Commission.

Kimberly D. Bose,
Secretary.