

112 FERC ¶ 61,139  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

July 26, 2005

In Reply Refer To:  
Dominion Transmission, Inc.  
Docket No. RP05-51-001

Dominion Transmission, Inc  
120 Tredegar Street  
Richmond, VA 23219

Attention: Michele F. Grim  
Manager, Regulatory & Pricing

Reference: May 26, 2005 Compliance Filing

Dear Ms. Grim:

1. On May 26, 2005, Dominion Transmission, Inc. (DTI) filed revised tariff sheets<sup>1</sup> to comply with a Commission order issued on April 29, 2005.<sup>2</sup> DTI proposes a May 27, 2005 effective date for the proposed tariff sheets.<sup>3</sup> The April 29, 2005 Order addressed issues raised at a technical conference held in the captioned docket and accepted certain language contained on *Pro Forma* tariff sheets filed by DTI in response to the technical conference. The April 29, 2005 Order directed DTI to modify its proposed tariff provisions concerning capacity allocation, right-of-first refusal (ROFR), and reservation of capacity. The Commission will accept DTI's proposed tariff sheets as in compliance with the April 29, 2005 Order, to be effective May 27, 2005, subject to the modification discussed below.

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<sup>1</sup> See Appendix for listing of tariff sheets.

<sup>2</sup> *Dominion Transmission, Inc.*, 111 FERC ¶ 61,135 (2005) (April 29, 2005 Order).

<sup>3</sup> DTI in its previous filings in this proceeding did not move the tariff sheets into effect.

## **Background**

2. On October 29, 2004, DTI filed tariff sheets to clarify and update all procedures related to the allocation of capacity and miscellaneous tariff changes, requesting an effective date of December 1, 2004. A number of parties protested or filed adverse comments to DTI's filing. On November 30, 2004, the Commission issued an order accepting DTI's proposed tariff sheets subject to refund and the outcome of a technical conference.<sup>4</sup> The November 30, 2004 Order suspended the effectiveness of the tariff sheets until the earlier of May 1, 2005, or a date to be specified in an order issued after the technical conference. On February 1, 2005, a technical conference was held. In comments, DTI clarified certain issues and agreed to modify its proposed tariff sheets to reflect concerns raised at the conference and in the protests to its October 29, 2004 filing. On February 9, 2005, as supplemented on February 10, 2005, DTI filed *pro forma* tariff sheets to reflect the modifications it agreed to at the technical conference. The April 29, 2005 Order accepted the language contained on DTI's *pro forma* tariff sheets subject to certain conditions and directed DTI to refile actual tariff sheets reflecting its proposal, as modified, within 30 days of the issuance of the April 29, 2005 Order.

## **Details of the Instant Filing**

3. DTI states that it has modified the tariff language from the *pro forma* language as directed by the Commission's April 29, 2005 Order. Specifically, DTI proposes to revise section 24.2.F.4 of its General Terms and Conditions (GT&C) to clarify that the existing shipper need only match the present value (NPV) of the equivalent portion of the best bid and not match the NPV of the entire bid. DTI also proposes to revise GTC sections 43.1, 43.2, and 43.3 to provide a time frame, ten business days, within which DTI will provide notice of available capacity. Further, DTI proposes to revise GT&C sections 11A.1.A, 11A.1.C and 11A.1.D to clarify that a customer's request to increase its maximum daily delivery obligations (MDDO) or change its primary delivery or receipt point is a request which requires a "valid request" and would be subject to DTI's evaluation process, but that it is not a request for new transportation service subject to the bidding requirements of GT&C sections 23, 24 and 43. Lastly, DTI proposes minor modifications and corrections to GT&C section 11A and Rate Schedules FT, FTNN, and GSS.

## **Public Notice**

4. Public notice of DTI's filing was issued on June 1, 2005, allowing for protests to be filed as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2005)). The City of Richmond, Virginia (Richmond) filed a protest

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<sup>4</sup> *Dominion Transmission, Inc.*, 109 FERC ¶ 61,244 (2004) (November 30, 2004 Order).

contending that DTI's proposed tariff modifications to GT&C section 43.1 do not comply with the April 29, 2005 Order. No other parties filed protests or adverse comments to this filing. The issues raised by Richmond are discussed below.

### **Discussion**

5. The Commission finds that DTI's filing complies with the requirements of the April 29, 2005 Order, except as discussed below.

6. In its February 9, 2005 and February 10, 2005 *pro forma* tariff filings, DTI proposed, in section 43.1 of its GT&C to post notice of capacity on its Electronic Bulletin Board (EBB) within a specified time frame, no more than 12 months and no less than 30 days prior to the date that the capacity will become available and set forth the information to be included in the posting. The April 29, 2005 Order stated at P 60 that:

“Section 284.13(d) of the Commission's regulations requires an interstate pipeline to provide all shippers with "equal and timely access" to information concerning the availability of capacity. The requirement to provide timely access to such information encompasses the obligation to post the future availability of capacity once it becomes known to the pipeline that capacity will become available due to the expiration of rollover or [Right of First Refusal] ROFR rights. Therefore, the Commission finds that DTI must post such capacity within a reasonable time after it learns of its availability. The Commission directs DTI to revise its proposal to provide a specific reasonable time when it will provide notice of availability of such capacity after it learns of its availability. As so modified, we find DTI's proposal to be reasonable and accept it.”

7. In the instant filing, DTI submits tariff language in section 43 that states:

“Within ten Business Days of the date when Pipeline has determined that firm capacity will be unsubscribed and subject to allocation pursuant to this Section 43, Pipeline shall post notice on its EBB specifying the following information: (1) points of receipt and delivery, (2) total quantity that is becoming unsubscribed, and (3) the date the capacity will become unsubscribed. Capacity subject to this notice requirement only includes capacity under expiring or terminating service agreements for which, if applicable: (i) notice of termination has been issued; (ii) customer has elected not to exercise evergreen rights or the right of first refusal pursuant to section 24; and (iii) Customer and Pipeline are not negotiating a potential contract extension.”

8. Richmond argues that DTI's proposed language expands the requirements specifying when capacity must be posted to include, not only that the customer has elected not to exercise evergreen rights or its ROFR, but also that the "Customer and Pipeline are not negotiating a potential contract extension." Richmond contends that this concept was not directed by the April 29, 2005 Order and that its inclusion defeats the purpose of providing "equal and timely access" to information concerning the availability of capacity. Richmond argues that this language would permit an existing customer that has already elected not to exercise its evergreen rights or its ROFR, to be given additional time to negotiate for the available capacity while the pipeline's other customers remain ignorant of the availability of the capacity.

9. Richmond proposes that section 43.1 of DTI's GT&C should be modified to be in compliance with the April 29, 2005 Order as follows:

Within five days of the date when it becomes known to Pipeline that firm capacity will be unsubscribed due to a customer's failure to exercise evergreen rights or the right of first refusal pursuant to section 24, Pipeline shall post notice on its EBB specifying the following information:

(1) points of receipt and delivery, (2) total quantity that is becoming unsubscribed, (3) the date the capacity will become unsubscribed, and (4) any limitations or conditions applicable to the availability of the capacity.

10. In the April 29, 2005 Order, the Commission found that an interstate pipeline must provide all shippers with equal and timely access to information concerning the availability of capacity and that this requirement encompasses the obligation to post the future availability of capacity "*once it becomes known to the pipeline that capacity will become available due to the expiration of rollover or ROFR rights*" (emphasis added). The language proposed by DTI clearly adds an additional component to the Commission's requirements in that it would require that the pipeline and the customer were not negotiating for a potential contract extension before posting the capacity in addition to merely obtaining knowledge that ROFR or rollover rights associated with the subject capacity have expired. This feature would grant DTI the discretion to thwart section 284.13(d) of the Commission's regulations merely by claiming that it was in "negotiation" with its customer concerning a "potential" contract extension. Accordingly, DTI is directed to file revised tariff sheets removing the language at section 43.1 (iii) concerning a potential contract extension as a reason for not posting available capacity.

11. Richmond also objects to DTI's proposal to allow ten-Business days of time for posting available capacity.<sup>5</sup> Richmond argues that this is double the five-day period approved by the Commission in *MRT*.<sup>6</sup> Richmond argues that the Commission required DTI to post available capacity within a "specific reasonable time" after learning that the capacity is available. Richmond argues that when this requirement is read in the context of the Commission precedents of *MRT* which included a five-day period for posting to occur, and *Natural* which required that the posting occur "as soon as [pipeline] knows such rights have expired," this specific reasonable time must be interpreted as allowing only the shortest necessary period of time to pass before the posting must occur.<sup>7</sup> Richmond contends that five calendar days would be sufficient for DTI to post on its EBB knowledge of capacity availability.

12. The Commission will not require DTI to modify its proposed ten-Business day period as suggested by Richmond. Richmond has cited *MRT* to support its request that DTI be required to post its capacity within five days of learning of the availability of the capacity because this would be consistent with *MRT* and the Commission's earlier findings in *Natural*. However, in *MRT*, the Commission stated:

"The March 16 order directed *MRT* to make clear when the posting of capacity will be made. *MRT* proposes to post notice of firm capacity within five days of the date when *MRT* has determined that firm capacity is becoming available. . . . *MRT* must post the availability of such capacity within five days of receiving or sending out a termination notice. Amoco's request that the posting should take place immediately upon the receipt or sending out of the termination notice goes beyond what the Commission required in *Northwest* or of any other pipeline. Thus, a revision specifying more detail with respect to capacity becoming available under expiring or terminated agreements is required, but Amoco's request for immediate posting is rejected. (footnotes omitted)."<sup>8</sup>

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<sup>5</sup> Richmond argues that in *Natural Gas Pipeline Co. of America*, 82 FERC ¶ 61,299 (1998) (*Natural*) that the Commission granted a request by Indicated Shippers that *Natural* be required to post any capacity that is no longer subject to unilateral rollover or ROFR rights as soon as it knows such rights have expired.

<sup>6</sup> *Mississippi River Transmission*, 89 FERC ¶ 61,067 at 61,041 (1999) (*MRT*).

<sup>7</sup> *Natural*, 82 FERC ¶ 61,299 at 62,186 (1998).

<sup>8</sup> *MRT*, 89 FERC ¶ 61,067 at 61,220 (1999), citing, Northwest Pipeline Corporation, 85 FERC ¶ 61,335 at 62,310 (1998) (*Northwest*).

13. Therefore, it is clear that in *MRT*, the pipeline proposed to post capacity within five days of firm capacity becoming available, the Commission did not direct the pipeline to post the capacity within a five day period; rather, the Commission only found the pipeline's proposal for a five-day period to be reasonable. Second, in *MRT*, the Commission specifically rejected an argument that posting should take place immediately upon the receipt or sending out of the termination notice by the pipeline as it had earlier found in the *Northwest* proceeding.<sup>9</sup>

14. The Commission stated in its April 29, 2005 Order that notice should be given within a reasonable period. Here, the pipeline has proposed a ten-Business day period for providing notice of available capacity. This appears to be a reasonable period of time for the pipeline to provide notice of available capacity. Richmond has not provided any reason for the Commission to find that such a time period is unjust and unreasonable and the Commission finds no basis for such a determination. Accordingly, the Commission accepts DTI's proposal for a ten-Business day period to provide notice of available capacity.

15. Richmond further contends that DTI has imposed a subjective determination into the proposed tariff language. Richmond argues that DTI's inclusion of the phrase "when Pipeline has determined" that the capacity is unsubscribed before posting notice of the availability of the capacity, suggests that DTI may exercise some discretion in determining whether the capacity is available. Richmond argues that the test for availability reflected in the April 29, 2005 Order is an objective, factual one, where the prior customer's evergreen right or ROFR has expired; hence, there is no subjective determination for DTI to make as to whether this firm capacity will be unsubscribed.

16. In the Commission's view, DTI's use of the phrase "when Pipeline has determined that firm capacity will be unsubscribed and subject to allocation pursuant to this section 43" before posting notice of the availability of the capacity does not change the objective standards of the tariff to a subjective test which grants it undue discretion. We read no discretionary authority into this language. We interpret this language to simply mean that the objective conditions set forth in the tariff for posting such capacity must be met and, once met, DTI must post the capacity in accordance with section 43. Therefore, the Commission accepts the proposed language.

17. Richmond also contends that the information that DTI proposes to provide in its EBB notices should be expanded to include any limitations or conditions applicable to the availability of the capacity that are known to DTI at the time of the posting. While the Commission will not require DTI to revise its tariff, it does expect DTI to include in its EBB notices any limitations or conditions applicable to the availability of capacity that it is aware of at that time. Such information must comply with the Commission's

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<sup>9</sup> *Id.*

regulations at section 284.13(d) that all shippers be provided with “equal and timely” access to information concerning the availability of capacity.

18. Accordingly, the tariff sheets listed in the Appendix are accepted to be effective May 27, 2005, subject to DTI filing revised tariff language as discussed above within 15 days of the date of this order.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

**Appendix**

**Docket No. RP05-51-001**

Dominion Transmission, Inc.  
Third Revised Volume No. 1 to FERC Gas Tariff

Tariff Sheets Accepted Effective May 27, 2005, Subject to Condition

Sub First Revised Sheet No. 150  
Sub First Revised Sheet No. 204  
Sub First Revised Sheet No. 300  
Sub Fifth Revised Sheet No. 1001  
Sub Second Revised Sheet No. 1045  
Sub First Revised Sheet No. 1046  
Sub First Revised Sheet No. 1047  
Sub Second Revised Sheet No. 1048  
Sub First Revised Sheet No. 1049  
Sub First Revised Sheet No. 1050  
Sub First Revised Sheet No. 1051  
Sub First Revised Sheet No. 1158  
Sub Second Revised Sheet No. 1159  
Sub Second Revised Sheet No. 1160  
Sub First Revised Sheet No. 1161  
Sub First Revised Sheet No. 1505  
Sub Original Sheet No. 1506  
Sub Original Sheet No. 1507  
Sub Original Sheet No. 1508  
Sub Original Sheet No. 1509  
Sub Sheet Nos. 1510 - 1999  
Sub Third Revised Sheet No. 2005  
Sub First Revised Sheet No. 2055