UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell and Joseph T. Kelliher.

Dominion Transmission, Inc. | Docket Nos. CP04-370-000 and RP96-383-058

ORDER APPROVING ABANDONMENT OF RATE SCHEDULE,
ACCEPTING NEGOTIATED RATE AGREEMENT,
AND ACCEPTING TARIFF SHEETS, SUBJECT TO CONDITIONS

(Issued July 30, 2004)

1. On June 30, 2004, Dominion Transmission, Inc. (Dominion) filed a request to abandon its individually certificated service under Rate Schedule X-70, and to provide Part 284 open access service in its place. Further, because the converted service agreement reflects negotiated rates rather than Dominion's maximum rates and charges, Dominion also submitted a new Part 284 service agreement and certain *pro forma* tariff sheets listed in the Appendix for the Commission's approval. The Commission grants the requested abandonment authorization effective August 1, 2004. The Commission also accepts the negotiated rate agreement and requires Dominion to file actual tariff sheets, consistent with the *pro forma* tariff sheets, to be effective on the same date. This action is in the public interest because it avails the customer of more flexible service, and enhances the efficient use of the pipeline's capacity.

Background

2. Dominion was authorized to provide service pursuant to Rate Schedule X-70 to New Jersey Energy Associates (NJEA) pursuant to the Commission's 1989 Order in Docket No. CP88-195, *et al*.[1] Dominion states that NJEA utilized service under that

[1] Dominion cites *Northeast U.S. Pipeline Projects, et al.*, 46 FERC ¶ 61,013 (1989)

Rate Schedule as part of its supply arrangements for its gas-fired, combined-cycle cogeneration facility located in Sayreville, New Jersey. Dominion further states that for many years, PSEG Energy Resources & Trade LLC (PSEG) has provided certain gas sales and transportation services to NJEA. According to Dominion, NJEA recently assigned its interests in Rate Schedule X-70 to PSEG as part of a broader restructuring of their gas supply arrangements.[2] Dominion states that, following this assignment, PSEG requested Dominion to convert service under Rate Schedule X-70 to service under Rate Schedule FT pursuant to Dominion's blanket transportation service and Part 284 of the Commission's regulations.

3. Dominion states that, pursuant to section 11A.1.J of the General Terms and Conditions (GT&C) of its tariff, Dominion and PSEG negotiated the referenced service agreement and related letter agreement providing for negotiated rates. Dominion further states that it would be willing to agree to conversion to Part 284 service upon similar terms to any similarly situated customers.

4. Dominion states that section 157.217(a) of the Commission's regulations provides that the certificate holder of an individually-certificated service is automatically authorized to permit an existing customer, at the customer's request, to change from Part 157 individually certificated transportation service to Part 284 transportation service, and to abandon the Part 157 service, if certain conditions are satisfied. However, Dominion also recognizes that because the new Part 284 contracts negotiated by Dominion and PSEG include negotiated rates, the authorization here is not automatic. Dominion asserts that conversion of these contracts is desired by both Dominion and PSEG and is consistent with Commission policy, and accordingly, the Commission should approve the abandonment of the existing service and conversion to Part 284 service.

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[2] Dominion states Article VIII, section 3 of Rate Schedule X-70 addresses the standards for assignment of the contract. As an individually-certificated service, Rate Schedule X-70 is not governed by the generally applicable capacity release provisions of Dominion's tariff and the Commission's regulations. Dominion further states that the restructuring of the gas supply arrangements and the transfer of NJEA's X-70 contract to PSEG was approved by the New Jersey Board of Public Utilities in an order issued on November 5, 2003 in its Docket No. GM03080643.

5. In the instant filing, Dominion is submitting a *Pro Forma* Notice of Cancellation of Rate Schedule X-70, pursuant to section 154.602 of the Commission's regulations.[3] Dominion requests that the Commission approve the cancellation of Rate Schedule X-70 and the initiation of Part 284 service in its place by August 1, 2004. Dominion states that the notice of cancellation will replace Rate Schedule X-70 in Volume 2 of Dominion's FERC Gas Tariff. Also in the instant filing, Dominion is submitting *pro forma* tariff sheets that will refer to the cancellation of the Rate Schedule in the table of contents of both Volumes 1 and 2 of its Tariff. Dominion states it will refile actual tariff sheets with the Commission's approval of the cancellation of Rate Schedule X-70.

6. In summary, the negotiated rate agreement (Contact No. 200307) provides that:

- Effective as of the date on which the Commission approves the conversion of Rate Schedule X-70 to Part 284 service, and for a period of three years afterwards, PSEG will pay a negotiated reservation rate of $4.36 per Dth when transporting from the primary receipt point (Niagara Import Point) to either the primary delivery point (Leidy Interconnection) or a specific secondary delivery point at Chambersburg, Pennsylvania, which is specified in section 39.1E;

- Service shall be provided under Dominion's FT Rate Schedule;

- The Maximum Daily Transportation Quantity shall be 22,109 Dth per day, and the Maximum Annual Transportation Quantity shall be 8,036,935 Dth;

- PSEG shall not pay any fuel charges associated with that transportation, just as it does not currently under Rate Schedule X-70;

[3] Dominion states in footnote 5 that it has not included in the instant filing the exhibits required for an application to abandon service required by section 157.18 of the Commission's regulations because they appear irrelevant to the requested conversion of service. Dominion requests a waiver of that section of the regulations to the extent that the Commission deems it necessary.

- In the event and to the extent that PSEG, or any replacement shipper(s) following a release of capacity utilize secondary receipt or delivery points under the converted service agreement, the shipper shall pay the maximum applicable rates and surcharges, including fuel, under Dominion's then effective Rate Schedule FT.

- The subject negotiated rate agreement does not deviate in any material aspect from the form of service agreement in Dominion's tariff.

7. Finally, in footnote 7 of its transmittal letter to the instant filing, Dominion states that, because it does not currently charge fuel under Rate Schedule X-70, the continued absence of fuel charges for this service to the primary point and one secondary point would not harm any other customer. Moreover, Dominion acknowledges it is at-risk for fuel, pursuant to the terms of its settlement in Docket No. RP00-632, *et al*., approved by the Commission on September 13, 2001 (2001 Settlement).[4] Dominion states that this further insulates other customers from any possible impact.

Interventions and Comments

8. Public notice of the filing was issued on July 14, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2003)). Pursuant to Rule 214, 18 C.F.R. § 385.214, 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 this proceeding or place additional burdens on existing parties. Motions to intervene and comments were filed by ConEd[5], KeySpan[6] and Mr. Michael J. Wilhelm

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[4] *Dominion Transmission, Inc.*, 96 FERC ¶ 61,288 (2001).

[5] ConEd consists of Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Philadelphia Gas Works.

[6] KeySpan consists of the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan Energy NY); KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KeySpan Energy LI); and Boston Gas Company, Colonial Gas Company, EnergyNorth Natural Gas, Inc., and Essex Gas Company.

(Mr. Wilhelm), a residential customer of Hope which is a local distribution company that receives firm transportation and storage service from Dominion. Dominion filed an answer.[7]

9. ConEd notes that Dominion's rationale for not charging PSEG for fue1 includes the fact that it currently is at-risk for fuel pursuant to the terms of the 2001 Settlement. ConEd asserts that this at-risk condition is not sufficient to protect Dominion's other customers through the term of its agreement with PSEG. In fact, ConEd maintains that the 2001 Settlement gives Dominion the right to change its fuel retention mechanism at any date after July 1, 2003.

10. ConEd argues that *Columbia Gas Transmission Corporation*, 106 FERC ¶ 61,228, at P 46 (2004) reflects the Commission's "discount policy of generally requiring that discounts be attributed last to surcharges which the pipeline recovers through a periodic true-up mechanism that guarantees the pipeline's recovery of 100 percent of the costs in question." Accordingly, ConEd asserts that, should Dominion exercise its right to reinstitute a fuel tracker guaranteeing its recovery of 100 percent of fuel costs, it should be at-risk for its fuel discount to PSEG, since that discount has been given before discounting all the way through its base rates.

11. KeySpan states that it does not oppose the negotiated rate agreement in the instant filing. However, KeySpan notes that Dominion's negotiated rate with PSEG reflects a negotiated fuel retention factor. KeySpan states that Dominion will collect no fuel as compared to the existing Rate Schedule FT fuel retention rate of 3.05 percent. While KeySpan states that it has no objection to this negotiated fuel factor, KeySpan also states that it wishes to be certain that in negotiating fuel factor, Dominion is not in any way creating circumstances in which system customers will be required to subsidize customers receiving negotiated rates.

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[7] While the Commission's Rules of Practice and Procedure generally prohibit answers to comments, the Commission will accept the answer to allow a fuller understanding of the issues. *See* 18 C.F.R. § 385.213(a)(2) (2004).

12. KeySpan states that in order to ensure the ability of the shippers and other parties to monitor that Dominion is not requiring system shippers to subsidize negotiated fuel rates, the Commission should require Dominion, in its future Fuel Reports, to identify both (1) fuel amounts collected or credited under negotiated rate agreements where the fuel retention quantities differ from Dominion's maximum recourse rate retainage levels, and (2) the amounts that should be collected or credited consistent with the Commission's previous directive requiring Dominion to credit maximum recourse rate retainage levels to its retainage accounts for any negotiated transactions. KeySpan states that it does not object to this data being presented in aggregate form so long as the back-up data is available in any future proceeding in which fuel retention factors are at issue.

13. In addition, KeySpan requests the Commission to require Dominion to confirm whether its June 30, 2004 Fuel Report in Docket No. RP00-632 reflects credits for any negotiated fuel transactions at maximum recourse rate retainage levels in the information provided concerning Gas Received, or anywhere else in Dominion's Fuel Report. If such credits were not included in the report, KeySpan states that Dominion should be required to revise its Fuel Report to provide information concerning (1) the amount of fuel collected or credited under agreements containing negotiated fuel factors, and (2) the maximum recourse rate retainage levels associated with those agreements.

14. Mr. Wilhelm notes that Dominion does not intend to charge for fuel in the subject negotiated rate. Mr. Wilhelm also notes that section 21.4 (E) of the GT&C of Dominion's FERC Gas Tariff states that "[i]f Pipeline and Customer negotiate rates regarding fuel retention levels, Pipeline will credit maximum applicable recourse fuel retainage levels." Mr. Wilhelm concludes that for all transportation under this negotiated agreement, the Commission should require Dominion to adhere to the terms of its tariff and credit 0.20 percent to the fuel amortization account.

15. Mr. Wilhelm states that Dominion has inaccurately indicated that no customer can be harmed by Dominion's failure to retain fuel quantities. Mr. Wilhelm argues that this statement contradicts section 6.3 of the 2001 Settlement. Mr. Wilhelm states that this section indicates that Dominion will collect 5.3 MMDth of fuel from its transportation customers through an Amortization Adder of 0.20 percent, and that if Dominion fails to credit such quantities for transportation under this agreement, other shippers on Dominion, including Hope, will be unjustly forced to repay such quantities through this Amortization Adder.

16. Mr. Wilhelm asserts that the Commission should clarify that Dominion must credit the Amortization Adder for all transportation under this negotiated rate agreement consistent with section 6.3 of the 2001 Settlement and section 21.4.E of the Dominion's GT&C.

Dominion's Answer

17. Dominion notes that ConEd suggests that Dominion has the right to change its fuel retention mechanism at any date after July 1, 2003. Dominion states that, as required by section 11.2 of Article XI of the 2001 Settlement, it only has the right to change its existing at-risk fuel mechanism after July 1, 2003 as part of a section 4 general rate proceeding.

18. Dominion asserts it has not negotiated fuel retention percentages in the instant filing as argued by the various parties. Dominion states it has only proposed the continuation of the pre-existing incremental rates, including the pre-existing fuel rate, as the negotiated rate as long as PSEG uses the service in the same manner as they would have used it under the individually certificated service. Dominion insists it is not in this proceeding attempting to establish new fuel rates for PSEG -- negotiated, discounted, or otherwise.

19. However, Dominion states that in its negotiations with PSEG, the parties recognized that a different rate treatment would be warranted if PSEG used its converted service differently than allowed under the prior individually-certificated service. Particularly, PSEG will have the ability to use secondary points on Dominion's system or to release their capacity in secondary markets because of the expanded Part 284 service rights. Dominion states that if PSEG avails itself of these benefits, it is appropriate for PSEG (or any replacement shipper) to be assessed the additional charges associated with these benefits that were not included as part of the rates for the prior individually-certificated service. Accordingly, Dominion proposed, and PSEG agreed, that the same maximum applicable rates and surcharges, including fuel, under Dominion's then-effective Rate Schedule FT would apply to PSEG if it (or a replacement shipper) uses secondary points. Dominion affirms that to the extent these additional surcharges are assessed, Dominion would treat any amounts collected from PSEG for fuel, including the Fuel Amortization Adder, as it would treat any other fuel collected from any other similarly situated Part 284 customer.

20. Dominion also affirms that in negotiating with PSEG, it attempted to ensure that PSEG fully paid for the cost of continuing the existing service and for the benefits it received from the converted service. Dominion asserts that it was not its intention to subsidize in any manner the requested conversion of PSEG's service to Part 284 service in either the form of dollars or fuel volumes. Dominion states that to the extent the Commission requires a change in the proposed negotiated rate to PSEG that would require Dominion to bear such additional costs, Dominion would not be willing to convert the service to Part 284.

Discussion

21. The Commission grants Dominion permission to abandon its individually-certificated service under Rate Schedule X-70. Additionally, the Commission accepts the subject negotiated rate agreement with PSEG effective August 1, 2004, subject to conditions discussed below. Dominion is directed to file actual tariff sheets within ten days of the date of this order.

22. The commenters' concerns about Dominion's instant filing focus on the fact that the negotiated rate agreement does not provide for Dominion to retain any gas to cover the cost of its fuel use. Pursuant to the 2001 Settlement, Rate Schedule FT currently includes a fuel retainage factor of 3.05 percent. Included within the 3.05 percent fuel retainage factor is a .20 percent Amortization Adder, which is intended to permit Dominion to recover from its transportation customers, over a projected period of five years, 5.2895 MMDt of natural gas. Once Dominion has recovered that those volumes, it must remove the Amortization Adder from its tariff, thereby reducing the Rate Schedule FT fuel retainage factor to 2.85 percent. Article 11 of the 2001 Settlement provided that neither Dominion nor any other party could seek a change in the fuel retention mechanism or the Settlement fuel retention percentages to be effective before July 1, 2003. Article 11.2 provides that Dominion may only seek a change in the fuel retention mechanism as part of a general section 4 rate case. However, Article 11.7 permits Dominion to seek a change in its fuel retention percentages in a limited section 4 proceeding, but no such proposed change may take effect until a Commission order on the merits approving the change. In 2002, the Commission required Dominion to modify section 24 of its GT&C concerning negotiated rates to provide that, for any negotiated rate transaction, Dominion must credit its fuel retainage accounts for which its customers bear any risk of undercollection, as if Dominion recovered the full recourse fuel retainage level from the negotiated rate shipper, regardless of the actual fuel retainage provisions of the negotiated rate agreement.[8]

23. Under Commission policy, a pipeline may not shift costs associated with its negotiated rate shippers to recourse rate shippers.[9] Consistent with this policy, the Commission has held that, when a pipeline negotiates fuel retainage percentage factors

[8] *Dominion Transmission, Inc.*, 98 FERC ¶ 61,294 (2002).

[9] *Koch Gateway Pipeline Co.*, 79 FERC ¶ 61,416, at 61,367 (1996).

with a negotiated rate shipper, the pipeline must bear the risk of underrecovery of its fuel costs, and cannot shift unrecovered fuel costs to its recourse rate shippers.[10] Accordingly, if Dominion makes a limited section 4 filing to increase it fuel retainage factor, as permitted by the 2001 Settlement, it will have the burden of showing that its proposal does not shift to its recourse rate shippers the cost of any fuel used in serving PSEG under the instant negotiated rate agreement. In this regard, the Commission notes that the 2001 Settlement further protects Dominion's customers by providing that no such limited section 4 filing may be placed into effect until the Commission has approved it on the merits. In addition, if as permitted by the 2001 Settlement, Dominion proposes in a general section 4 rate filing to modify its fuel retainage mechanism, for example by implement g a fuel cost tracker, Dominion will similarly have the burden in that filing to show that its proposal will not require its recourse rate shippers to subsidize the fuel use of its negotiated rate shippers.

24. In the meantime, section 21.4 (E) of Dominion's GT&C requires Dominion to "credit the maximum applicable recourse fuel retainage levels to its retainage accounts for which its customers bear any risk of undercollections, for any negotiated transactions that Pipeline enters into, in accordance with the Commission's negotiated rate policy." Included in the maximum applicable recourse fuel retainage (currently 3.05 percent) is 0.20 percent of actual transported volumes of gas related to the Amortization Adder. Consistent with the provisions of its tariff and the 2001 Settlement, Dominion is directed to credit the maximum applicable recourse fuel retainage levels to the retainage account for which its customers bear any risk of undercollections.

25. With regard to KeySpan's request to require Dominion to identify in its Fuel Reports, fuel amounts collected or credited under negotiated rate agreements where the fuel retention quantities differ from Dominion's maximum recourse rate retainage levels, the Commission finds that this request is beyond the scope of the instant proceeding. However, KeySpan is free to make this request when Dominion files its future Fuel Reports.

[10] *Columbia Gas Transmission Corp.*, 92 FERC ¶ 61,080, at 61,340 (2000).

<u>The Commission orders</u>:

(A) Waiver of the requirements of section 157.18 of the Commission's regulations to file certain exhibits with an application to abandon service is granted.

(B) Dominion is granted permission to abandon its individually certificated service under Rate Schedule X-70, effective August 1, 2004.

(C) The subject negotiated rate agreement with PSEG is accepted effective August 1, 2004, subject to conditions discussed in the body of this order.

(D) Dominion is directed to file actual tariff sheets identical to the *pro forma* sheets listed in the Appendix within ten days of the date of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

APPENDIX

Pro Forma Tariff Sheets

FERC Gas Tariff,
Third Revised Volume No. 1:

Third Revised Sheet No. 6
Fifth Revised Sheet No. 1404

FERC Gas Tariff
First Revised Volume No. 2:

Second Revised Sheet No. 5
First Revised Sheet No. 293
Sheet Nos. 294-308