

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 15, 2005

In Reply Refer To:
Dominion Transmission, Inc.
Docket No. RP06-95-000

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

Attention: Machel F. Grim
Manager, Regulatory & Pricing

Reference: Revisions to Penalty Provisions

Dear Ms. Grim:

1. On November 15, 2005, Dominion Transmission, Inc. (Dominion) filed revised tariff sheets (see Appendix) to replace its existing fixed price penalties with penalties that are the higher of a fixed price or a multiple of a daily index price. The proposed revised penalties apply to shippers who violate curtailment, interruption, or OFO orders, who take unauthorized overruns in excess of contractual levels, or who fail to replace excess storage withdrawals within 48 hours after notification. The Commission rejects the revised tariff sheets for the reasons discussed below.

2. Dominion proposes to change its \$5.00 per Dth penalty to the higher of \$5.00 per Dth or one and a half times the midpoint price for Dominion South Point as published in Platts Gas Daily for the day on which the penalty is incurred. The price associated with the beginning of the Gas Day will be applicable for the entire Gas Day. Dominion proposes to change its current \$10.00 per Dth penalty to the higher of \$10.00 per Dth or two times the index price, and to change the current \$25.00 per Dth penalty to the higher of \$25.00 per Dth or three times the index price. These penalties apply to shippers who violate curtailment, interruption, or OFO orders, who take unauthorized overruns in excess of contractual levels, or who fail to replace excess withdrawals within 48 hours after notification has been provided.

3. Dominion states that section 7.3 of the settlement of its Order No. 637 proceeding in Docket No. RP00-344-000, *et al.*, (637 Settlement)¹ provides that “DTI shall be permitted to institute on a prospective basis by appropriate filing, subject to comment and full participation by interested parties in the proceeding to address that filing, new penalty or unauthorized overrun charge and provisions during the Settlement Period.” It notes that section 7.3 also provides that “...DTI shall invite the parties listed in Appendix A to a meeting to discuss any filing made pursuant to this section prior to making the filing with the Commission.” However, Dominion asserts that it is not required to meet with the Appendix A parties in this instance prior to filing because Dominion is not proposing any “new penalty or unauthorized overrun charges,” but rather is proposing changes to existing penalties and charges.

4. Notice of Dominion’s filing was issued on November 17, 2005, with interventions and protests due as provided in section 154.210 of the Commission’s regulations, 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. South Jersey Gas Company (South Jersey), Statoil Natural Gas LLC (Statoil), City of Richmond, Virginia (Richmond), Amerada Hess Corporation (Amerada Hess), and Niagara Mohawk Power Corporation d/b/a/ National Grid (National Grid) filed protests to the proposal. National Fuel Gas Distribution (National Fuel) filed comments. On December 6, 2005, Dominion filed a Motion for Leave to Respond and Response to certain protests (Answer), and on December 8, 2005, Richmond filed an Answer to Dominion’s Answer.² The protests, comments, and answers are discussed below.

5. Richmond and National Grid protest Dominion’s filing for, among other things, Dominion’s failure to meet with its customers prior to making the filing in violation of section 7.3 of the 637 Settlement. Both protestors request rejection of the filing because Dominion did not hold a meeting with its customers as required by the 637 Settlement.

¹ On May 31, 2001, the Commission issued an order approving a settlement of Order No. 637 issues between Dominion and all but one of its customers. Sections 2.1 and 2.2 of the Settlement precludes Dominion from filing new penalty tariff provisions during a moratorium period. *Dominion Transmission, Inc.*, 95 FERC ¶ 61,316 (2001). *See also Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005) (approving settlement amendment that extended the moratorium period until the earlier of when the Commission makes effective: (a) a new section 4 general rate case or (b) a section 5 rate decrease, neither of which has occurred).

² We will waive Rule 213(a)(2), 18 C.F.R. § 213(a)(2) (2005), which does not permit answers to protests or to answers, because the answers may aid in the disposition of the issues of this case.

6. The Protesters also object to the filing for: 1) proposing substantial penalty increases that are unnecessary for achieving Dominion's goals;³ in particular, charges assessed during non-critical periods, which are contrary to Commission policy,⁴ and 2) failing to justify the need for the proposed increases in penalties.⁵ Protesters also seek clarification from Dominion as to how applicable penalties will be determined when the index price for Dominion South Point is unavailable on a given day.⁶ National Grid also objects to Dominion's proposed increased penalties in that they would likely shift operating risks to local distribution companies (LDCs).⁷

7. In its Answer, Dominion argues that, since neither Richmond nor National Grid were listed on Appendix A of the Settlement, they have no right to attend such a meeting and, therefore, have no cause for complaint about the lack of a meeting. Thus, Dominion argues that, unlike the parties entitled to such a meeting under Appendix A, none of whom expressed views on the matter, Richmond and National Grid's complaints should have no bearing on the adoption of Dominion's proposed tariff changes. Further, Dominion asserts that the settlement requirement to meet before proposing "new penalty or unauthorized overrun charges and provisions" is triggered only by a more substantial change in approach to penalties than what it is proposing.⁸ It asserts that the changes it is proposing are, in its words, "merely" an "updating [of] the existing penalty levels to reflect the market reality of high and volatile gas prices . . ."⁹ Dominion also asserts that the proposed tariff changes are: 1) required to ensure continued reliability of service, 2)

³ South Jersey Protest at 2; National Grid Protest at 9.

⁴ Statoil Protest at 2-5 ("[Dominion's] proposal to increase penalties incurred during non-critical periods is contrary to Commission policy as articulated in Order No. 637," which states that "penalties should be designed to deter conduct that is actually harmful to the system")(internal footnotes omitted); Richmond Protest at 8 ("As [Dominion] knows full well . . . the establishment of any penalty for unauthorized overruns during non-critical times contravenes Order No. 637)(internal footnotes omitted).

⁵ Amerada Hess Protest at 4 (Dominion fails to explain why the penalty level they have proposed serves as an adequate deterrent for violations); National Grid Protest at 5-6 (Dominion does not provide documentation or supporting evidence to explain the need for its proposed increased penalties).

⁶ National Fuel Protest at 3; National Grid Protest at 9-10.

⁷ National Grid Protest at 6-8.

⁸ Transmittal Letter to the November 15, 2005 Filing at 4.

⁹ Dominion Answer at 12.

necessary to prevent perverse incentives to incur penalties on Dominion's pipelines (should its penalties be lower than those of others in the region), 3) appropriate for OFO violations, 4) in keeping with a uniform line of Commission decisions,¹⁰ and 5) expressly provided for in the 637 Settlement, which retained Dominion's pre-existing authorized and unauthorized overrun provisions and penalty structure. Dominion adds that neither National Grid or National Fuel cite to any Commission precedent in support of the need to address how Dominion's penalty provisions would apply if the applicable index price – Dominion South Point – were unavailable on a given day. Finally, Dominion argues that National Grid's concern about its own penalties is not an appropriate consideration to the approval of Dominion proposal.

8. In its Answer, Richmond argues that Dominion mischaracterizes the Order No. 637 Settlement and asserts that Richmond has a right to attend a meeting as required by section 7.3 of the 637 Settlement. Richmond explains that "the phrase 'Intervenors listed on Appendix A' was a term of art."¹¹ A party was considered included among the parties listed on Appendix A so long as it did not oppose the Settlement.¹² Richmond concludes that because it "did not explicitly oppose the Order 637 Settlement"¹³ it should therefore be considered a party listed on Appendix A of the settlement, with a right to meet with Dominion prior to Dominion's filing of its proposal. Richmond further argues that Dominion is not only required to meet with parties prior to proposing a "change [to] *any* tariff provision,"¹⁴ but that the meeting requirement was triggered in this instance because Dominion, in fact, proposed a substantial change in approach to penalties-

¹⁰ *Columbia Gulf Transmission Co.*, 113 FERC ¶ 61,204 (2005); *Columbia Gas Transmission Co.*, 113 FERC ¶ 61,191 (2005); *Algonquin Gas Transmission, LLC*, 113 FERC ¶ 61,146 (2005); *Eastern Transmission, LP*, 113 FERC ¶ 61,145 (2005); *Northern Border Pipeline Co.*, 113 FERC ¶ 61,126 (2005); *Midwestern Gas Transmission Co.*, 112 FERC ¶ 61,345 (2005); *Viking Gas Transmission Co.* 112 FERC ¶ 61,098 (2005).

¹¹ Richmond Reply Answer at 4.

¹² Richmond relies on the following excerpt from page 1 of the 637 settlement:

[A]ny party that does not explicitly oppose this Settlement in Initial Comments filed in accordance with Commission procedures shall be deemed to support, not oppose, or waive all objections to the Settlement, *and shall be considered as included among the parties listed in Appendix A.* (emphasis added)

¹³ Richmond Reply Answer at 4.

¹⁴ Richmond Reply Answer at 3 (citing Richmond Protest at 6)

“switching from the present approach of assessing fixed penalties ranging from \$5/[D]th to \$25/[D]th to an approach that sets penalties based on spot prices, which given the current market conditions, can easily range up to \$45/[D]th, or higher.”¹⁵ Richmond also asserts that: 1) the Commission should reject Dominion’s proposal to increase *all* unauthorized overrun penalties, even during non-critical times, because they contravene Order No. 637 and the 637 settlement¹⁶ and 2) Richmond’s request to eliminate penalties for unauthorized overruns does not contravene the 637 Settlement.¹⁷

9. The Commission finds that it is reasonable to interpret section 7.3 of the 637 Settlement’s reference to “new” penalties and overrun charges as to include changes in penalties and overrun charges as proposed in the instant filing. The proposed penalties are not the penalties or charges agreed to in the 637 Settlement. Not only are they potentially increased, they are also not fixed at specific dollar levels, as under the Order No. 637 Settlement but, rather, vary in relation to price indices. Accordingly, we find that section 7.3 of the 637 Settlement required Dominion to hold a meeting with the parties designated by the 637 Settlement before filing the instant change in penalties and charges and that Dominion’s failure to hold that meeting violates section 7.3 of the 637 Settlement. In that regard, the Commission finds that Dominion is required by section 7.3 of the Order No. 637 Settlement to invite parties either listed in Appendix A to the 637 Settlement or who are considered included in Appendix A by the terms of the 637 Settlement, such as Richmond or any other party meeting that criteria, to such meeting to discuss the changes proposed in the instant filing, prior to making that filing. As Richmond points out, page 1 of the 637 Settlement provides that parties who did not oppose the settlement are “considered as included among the parties listed in Appendix A.” Therefore, section 7.3’s reference to “parties listed in Appendix A” reasonably can be defined as including all parties “considered” to be so listed pursuant to the statement on page 1 of the settlement. With the understanding that Dominion is only required to

¹⁵ Richmond Answer at 3-4.

¹⁶ Richmond makes a distinction between Dominion’s proposal to increase *all* unauthorized overrun penalties that is improper and “specific penalties on unauthorized overruns . . . [allowed] in the Order 637 Settlement *only* because those penalties were agreed to as part of that settlement.” Richmond Answer at 6.

¹⁷ Richmond states that, although Dominion may have been “limited by the Order 637 Settlement to propose changes in the penalty provision pursuant to section 4 of the Act, there was no limitation on a customer’s rights to request changes to those provisions under section 5 of the Act.” Richmond Answer at 7 (citing Richmond Protest at 9, fn. 24).

invite the parties listed, or considered to be listed, in Appendix A of the 637 Settlement to the meeting to discuss the proposed penalties and charges, the Commission, nonetheless, urges Dominion to also invite all affected customers to such meetings.

9. Accordingly, the Commission rejects Dominion's filing based on Dominion's failure to comply with the meeting requirement of the 637 Settlement. At this time, the Commission declines to address the other issues raised by the comments and protests of the parties. However, the Commission advises Dominion that if it refiles to increase penalties applicable to non-critical periods, the Commission would consider such increases to be against Commission policy, as argued by Statoil and Richmond, notwithstanding the fact that the 637 Settlement permitted Dominion to collect the existing penalties in non-critical periods.¹⁸

By direction of the Commission.

Magalie R. Salas,
Secretary.

¹⁸ Pipelines may assess transportation penalties only when necessary to prevent the impairment of reliable service. 18 C.F.R. § 284.12(b)(2)(v) (2005). *See, e.g., Transcontinental Gas Pipe Line Corp.*, 113 FERC ¶ 61, 224 (2005). When the Commission approved the 637 Settlement, it recognized that the settlement's unauthorized overrun penalties were not consistent with this requirement, but the Commission nevertheless accepted them, since they were an uncontested part of an overall settlement. *Dominion Transmission, Inc.*, 95 FERC ¶ 61,316 at 62,088 (2001).

APPENDIX

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

Sixteenth Revised Sheet No. 39
Fourth Revised Sheet No. 39A
First Revised Sheet No. 103
Second Revised Sheet No. 212A
Second Revised Sheet No. 508
First Revised Sheet No. 653
First Revised Sheet No. 1043
Second Revised Sheet No. 1088
Third Revised Sheet No. 1183
First Revised Sheet No. 1503