

132 FERC ¶ 61,179
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 27, 2010

In Reply Refer To:
Dominion Transmission, Inc.
Docket No. RP10-1025-000

Dominion Transmission, Inc.
701 East Cary Street, 4th Floor
Richmond, VA 23219

Attention: Daniel L. Verdun
Manager, Regulation

Reference: Non-Conforming Service Agreements

Dear Mr. Verdun:

1. On July 30, 2010, Dominion Transmission, Inc. (DTI) filed a revised tariff record for inclusion in its Fourth Revised Volume No. 1.¹ DTI's revised tariff record reflects three new non-conforming service agreements, four amendments to previously reported non-conforming service agreements, and the removal of two non-conforming service agreements. DTI filed copies of these service agreements. In addition, DTI proposes to simplify the information reported for non-conforming service agreements in its tariff. For the reasons set forth below, the new and amended non-conforming agreements are accepted as permissible non-conforming service agreements and the revised tariff record referenced in footnote no. 1 is accepted. Both acceptances are to be effective August 30, 2010, as requested, subject to conditions as discussed below.

¹ Tariff Record 40.45, GT&C - Nonconforming Service Agreements, 1.0.0, to DTI Tariffs, FERC Gas Tariff, Fourth Revised Volume No. 1.

2. DTI has sold most of its production related facilities, including the underlying leasehold obligations, to CONSOL Gas Company (CONSOL). DTI states that under certain of these leases, DTI was obligated to provide gas to the affected leaseholders (or their assignees). As part of the sale to CONSOL, CONSOL has succeeded to those obligations. DTI has entered into a Rate Schedule IT Agreement with CONSOL (Contract No. E00447) under which DTI will transport gas to consumer delivery tap locations so that CONSOL may meet these obligations. DTI states that, substantially all of these delivery point locations are served off of DTI's gathering facilities. In those instances where delivery point locations are on DTI's transmission facilities, DTI and CONSOL have agreed to treat the transmission delivery points as if they were gathering points. This will permit General Terms and Conditions section 11.D.4 –Appalachian Gathering System, including the “Uneconomical and Low Volume Receipt and Delivery Point” provisions, to apply to CONSOL's service. DTI asserts that given the relatively small usage at these delivery point locations, DTI and CONSOL have also agreed to continue DTI's previous practice of reading the meter quarterly for “limited” gas usage consumers and semi-annually for “unlimited” gas usage consumers. These provisions, which are reflected on Exhibit A of CONSOL's IT service agreement, are non-conforming provisions that DTI believes the Commission would consider material deviations.

3. DTI also filed extensions of non-conforming service agreements under Rate Schedule GSS for New Jersey Natural Gas Company (Contract No. 300120), UGI Utilities (Contract No. 300126) and Southern Connecticut Gas Company (Contract No. 300125) which were previously approved and accepted by the Commission.² Each service agreement includes a provision, entered into as part of the conversion of DTI's Rate Schedule GSS-II service to Rate Schedule GSS, by which certain delivery points are only offered on an interruptible basis if operating conditions permit. DTI states that the terms were extended for each of these contracts and that the agreements are being filed as non-conforming service agreements that materially deviate from the “form of service agreement.”

4. In addition, DTI states that it recently negotiated a contract extension with UGI Central Penn Gas, Inc. (UGI) under Rate Schedule GSS (Contract No. 300110). DTI states that, like the service agreements submitted and previously accepted by the Commission in Docket No. RP10-63-000, UGI's service agreement contains the same non-conforming provisions. However, UGI's GSS service agreement in Contract No. 300110 was inadvertently omitted from the filing in Docket No. RP10-63-000. DTI now reports UGI's GSS Service Agreement as non-conforming and submits the non-conforming service agreement.

² *Dominion Transmission, Inc.*, Docket No. RP10-63-000, (Nov. 6, 2009) (unpublished letter order).

5. DTI is also submitting non-conforming service agreements under Rate Schedule FTNN (Contract No. 100115) and Rate Schedule GSS (Contract No. 300165) with Pivotal Utility Holdings, Inc. (Pivotal). DTI asserts that these agreements contain a permissible material deviation coordinating transportation and storage deliveries at a particular point. The provision originated when DTI exited its merchant function and was previously approved by the Commission.³ DTI is filing new versions of these agreements to conform to DTI's FTNN and GSS currently effective forms of service agreement.

6. DTI's Rate Schedule FT service agreement with H.P. Hood (Contract No. 200218) was recently extended with the removal of a previously reported non-conforming two-year evergreen provision. With this change, DTI states that this service agreement now conforms to the currently effective form of service agreement found in DTI's Gas Tariff and has been removed from Tariff Record No. 40.45. In addition, DTI's expired service agreement with Dominion Field Services, Inc. has also been removed from Tariff Record No. 40.45.

7. Finally, DTI proposes that the service agreements listed on its revised tariff record be identified by the following: (1) the current contract holder name; (2) the proper rate schedule reference; (3) the original date of the service agreement; and (4) the contract reference number used by DTI. To conform to this methodology, DTI made the necessary changes to the information reflected on the revised tariff record referenced in footnote no. 1, for each affected service agreement.

8. Public notice of the filing was issued on August 2, 2010. Interventions and protests were due on or before August 11, 2010. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

9. Section 154.112(b) of the Commission's regulations,⁴ requires that a pipeline file all contracts that contain material deviations, and that all such non-conforming agreements must be referenced in the pipeline's open access transmission tariff.

10. In *Columbia Gas Transmission*,⁵ the Commission clarified that a material

³ *Dominion Transmission, Inc.*, Docket No. RP10-561-000, (Apr. 26, 2010) (unpublished letter order).

⁴ 18 C.F.R. § 154.112(b) (2010).

⁵ 97 FERC ¶ 61,221 (2001) (*Columbia Gas*). See also *ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001) (*ANR*).

deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties. However, not all material deviations are impermissible. As explained in *Columbia Gas*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.⁶

11. The Commission accepts the above-mentioned agreements as permissible non-conforming service agreements. The material deviations address particular operating circumstances related to DTI's restructuring under Order No. 636 and conversion of individually certificated services to open access service. None of the material deviations affect the rights of other shippers, and most have been previously approved. Further, the revision of the information on the tariff record, including removal of contracts which are no longer non-conforming, is appropriate. Therefore, we accept the DTI's non-conforming agreements, as detailed above, as permissible non-conforming service agreements, and also accept the related tariff record identified in footnote no. 1. Both acceptances are to be effective August 30, 2010, as requested, subject to the following conditions.

12. Consistent with our finding in *Columbia Gas Transmission, LLC*⁷ in Docket No. RP10-987-000, DTI's filing is not in compliance with the Commission's regulations and Order No. 714 with regard to the filing of a service agreement. DTI is required to file non-conforming service agreements. Section 154.112(b) of the Commission's regulations requires in part that "contracts that deviate in any material aspect from the form of service agreement must be filed."⁸

13. In Order No. 714, the Commission adopted regulations that established electronic filing requirements for filings affecting tariffs, rate schedules, service agreements, and jurisdictional contracts in order to establish an electronic database of these jurisdictional agreements accessible to the Commission and the public.⁹ The Commission stated that the database would consist of all "tariffs, rate schedules, jurisdictional contracts, and other jurisdictional agreements that are required to be on file with the Commission."¹⁰ The Commission required that these filings be made according to the electronic

⁶ *Columbia Gas*, 97 FERC at 62,002; *ANR*, 97 FERC at 62,022 (2001)

⁷ 132 FERC ¶ 61,147, at P 14 (2010).

⁸ 18 C.F.R. § 154.112(b) (2010).

⁹ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 9-12 (2008).

¹⁰ *Id.* P 13 and n.11 (2008).

formatting requirements prescribed by the Commission.¹¹ Under these electronic filing rules, all tariffs, rate schedules, and jurisdictional contracts, including service agreements such as those filed here, are required to be filed as “tariff records” so they will be included as part of the electronic database for the company.¹²

14. In the instant filing, DTI has filed a revised tariff record in conformity with these requirements that lists these new and amended service agreements as non-conforming. Although DTI included the non-conforming agreements themselves as attachments to its electronic filing, it did not comply with the requirement to file these agreements as tariff records, so that the agreements would appear in the DTI database as jurisdictional agreements. The purpose of Order No. 714 was to ensure that all such jurisdictional agreements would appear in the pipeline’s electronic tariff so that they would be transparent to the public and could be easily searched.¹³ Therefore, we condition our acceptance on DTI filing these agreements along with any transactions related to the agreements as tariff records within 15 days of the date of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ 18 C.F.R. § 154.4(a) and (c) (2010) (requiring the electronic filing of “tariffs, rate schedules, service agreements, and contracts, or parts thereof.... The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form”).

¹² The Implementation Guide states that a tariff record is “the actual ‘text’ or ‘content’ of the tariff, rate schedule, or service agreement along with its associated metadata.” Office of the Secretary of the Commission, *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings*, at 14, 20, available at <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>.

¹³ The same “tariff record” filing requirement applies to any filed jurisdictional agreement, such as negotiated rate agreements, that the pipeline chooses to file.