

146 FERC ¶ 61,068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Dominion Transmission, Inc.

Docket No. RP14-262-000

ORDER ON UNCONTESTED SETTLEMENT

(Issued February 5, 2014)

1. On December 6, 2013, Dominion Transmission, Inc., (Dominion) filed a Stipulation and Agreement (Settlement) pursuant to Rule 207(a)(5) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission.¹ Dominion states that the Settlement is a limited amendment to a series of prior-approved Dominion settlements that preserves the benefits of previously settled issues.² According to Dominion, the Settlement: (1) reduces Dominion's fuel retention percentages; (2) provides for the receipt of odorized gas at receipt points in the state of New York; and (3) provides for a three-year moratorium on complaints by Settling Parties under section 5 of the Natural Gas Act (NGA). As discussed below, the Commission approves the Settlement as being fair and reasonable and in the public interest.

2. The terms of the Settlement are described briefly immediately below.

3. Article I of the Settlement sets forth the background of proceedings related to this Settlement.

4. Article II of the Settlement sets forth Dominion's proposed reduced fuel retention percentages. The Settlement provides for a uniform fuel retention percentage of 1.95 percent (inclusive of the retainage Adders established in a prior Dominion settlement) which will apply to all transportation, storage, and Rate Schedule MCS services. According to Dominion, this represents a reduction of nearly 24 percent from the existing fuel retention percentage for storage services, and a reduction of over

¹ 18 C.F.R. § 385.207(a)(5)(2013).

² The most recent of these prior-approved settlements is *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005).

31 percent from the existing fuel retention percentages for transportation services. The Settlement sets forth a January 1, 2014, effective date for the reduced fuel retention percentages. The Settlement also requires Dominion to provide refunds with interest to each Settling Party reflecting the value of the difference between the actual quantities of fuel retained from the Settling Party from January 1, 2014, until the effective date of the Settlement, and the application of the Settlement fuel retention percentages provided for by the Settlement.

5. Article III of the Settlement provides that Dominion will accept odorized natural gas from shippers at all receipt points on its system located in the state of New York, provided certain conditions are met as set forth in the Settlement. Pursuant to the Settlement, this applies to natural gas received from New York local distribution systems that has been odorized to distribution levels, natural gas received from New York intrastate transmission and gathering systems that has been odorized, and natural gas received from interstate gathering or midstream systems that has been odorized to distribution or transmission levels.

6. Article IV of the Settlement provides that certain moratoriums set forth in underlying settlements still apply. It also provides that, for a three-year period beginning on the effective date of this Settlement, the Settling Parties and their successors, assignees, replacement shippers, and agents relinquish all of their rights under NGA section 5 to propose, advocate, seek, initiate, or support any reductions, changes, modifications, or adjustments to Dominion's applicable rates, charges, or fuel retention percentages or mechanism. The Settlement allows this requirement to be eliminated if Dominion submits a general rate filing under section 4 of the NGA during the three-year period, in which case all parties may fully participate. Further, the Settlement does not preclude the Commission from initiating an NGA section 5 proceeding on its own volition.

7. Article V of the Settlement provides that the Settlement terms apply only to Settling Parties, defined as all parties that are not Severed Parties. Article V defines Severed Parties as a person or entity that: (a) is a party; (b) files initial comments on the Settlement in a timely manner; and (c) affirmatively states in its initial comments that it intends to be a Severed Party. Article V provides that, in addition, any party that files comments (or any other pleading) with the Commission that opposes or challenges approval of the Settlement without condition or modification or that advocates any change to the Settlement, or which the Commission determines raised a genuine issue of material fact about the Settlement, is a Severed Party unless certain conditions exist as set forth in the Settlement.

8. Article VI of the Settlement sets forth details governing the implementation of the Settlement. Pursuant to Article VI, the effective date of the Settlement is the first day of the first month after the Commission approves all of the terms and provisions of the Settlement without modification or condition in a Final Order, meaning an order that is

no longer subject to rehearing. Under Article VI, a modification or condition on the Settlement will be deemed acceptable unless either Dominion or the New York Public Service Commission (NYPSC) is not willing to accept that modification or condition. If the Commission conditions or modifies the Settlement, each Settling Party (other than Dominion and NYPSC) may elect to become a Severed Party. Article VI also provides that within 30 days of when the Settlement becomes effective, Dominion will file revised tariff records, to become effective January 1, 2014, corresponding to the *pro forma* tariff records included as Appendix B to the Settlement.

9. Article VII of the Settlement provides the refund mechanism to be used for refunding any over-collected fuel as a result of the Settlement. Pursuant to Article VII, Dominion will provide Settling Parties with refunds, including interest, reflecting the value of the difference between the actual quantities of fuel retained from the Settling Party from January 1, 2014, until the effective date of the Settlement, and the application of the Settlement fuel retention percentages provided for by the Settlement. Valuation of the over-collected fuel will be based upon the Valuation Method set forth in section 15.5E of Dominion's General Terms and Conditions.

10. Article VIII of the Settlement provides that the Settlement is an integrated package and that none of the terms of the Settlement are agreed to without each of the others.

11. Article IX of the Settlement provides certain reservations. Pursuant to Article IX, once effective, the standard of review for any change to the Settlement by an Settling Party shall be the "public interest" standard established in *United Gas Pipeline Co. v. Mobile Gas Services Corp.*, 250 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Article IX further provides that the standard of review for any change to the Settlement proposed by a non-Settling Party, or the Commission itself, shall be "the most stringent standard permissible under applicable law."

12. Public notice of Dominion's Settlement was issued on December 11, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2013)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2013)), all timely filed motions to intervene and any unopposed motion 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. The NYPSC and Chesapeake Energy Marketing, Inc. (Chesapeake) filed comments in support of the Settlement. No party filed a protest or adverse comments. Dominion filed an answer to Chesapeake's comments.

13. In its comments in support of the Settlement, Chesapeake posed a question relating to the Settlement's requirement that Dominion accept odorized natural gas for transportation at receipt points within the state of New York. Chesapeake requested that Dominion confirm that the receipt of odorized natural gas in the state of New York would

not prevent Dominion from meeting the natural gas quality standards of downstream pipelines. In its answer, Dominion explained that based on the limited quantities of odorized natural gas it receives from New York, and the location of the receipt points from which it receives the odorized natural gas, it does not anticipate that the Settlement provisions governing the receipt of odorized gas will adversely affect natural gas flows to downstream pipelines.

14. Because the Settlement provides that the standard of review for changes to the Settlement by non-Settling Parties or the Commission itself is “the most stringent standard permissible under applicable law,” we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement by non-Settling Parties or the Commission itself.

15. The *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Ass’n v. FERC*,³ however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

16. The Commission finds that the Settlement is fair and reasonable and in the public interest, and therefore, the Commission approves the Settlement pursuant to Rule 602(g), 18 C.F.R. § 385.602(g) (2013). The Commission’s approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

The Commission orders:

(A) The Settlement is approved, as discussed in the body of this order.

³ *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

(B) Within 30 days of the effective date of the Settlement, Dominion must file revised tariff records consistent with the terms of the Settlement.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.