

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Tuscarora Gas Transmission Company

Docket No. RP06-380-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued July 3, 2006)

1. On May 31, 2006, Tuscarora Gas Transmission Company (Tuscarora) filed pursuant to Rule 207 of the Commissions regulations,¹ *pro forma* tariff sheets² and a petition for Commission approval of an uncontested settlement agreement (Settlement Agreement) that was negotiated outside the context of an existing rate proceeding, and which resolves all issues concerning Tuscarora's firm and interruptible transportation rates from June 1, 2006 to May 31, 2010. The Commission approves the Settlement Agreement, effective June 1, 2006 as requested, and directs Tuscarora to file revised tariff sheets, within 30 days of the issuance of this order to implement the Settlement Agreement consistent with its terms.

Background

2. Tuscarora states that in January of 2006 it began working with its customers and the Public Utilities Commission of Nevada (PUCN) to discuss issues surrounding Tuscarora's current rate levels. Tuscarora states that it concluded that a negotiated resolution would best satisfy the needs of all stakeholders on the Tuscarora system, particularly in light of the benefits for all parties of the timely implementation of any negotiated agreement that the parties might ultimately reach in lieu of Commission proceedings. Tuscarora asserts that the efforts of all parties culminated in the instant Settlement Agreement which is supported by all firm customers on the Tuscarora system, and by the PUCN. Tuscarora does not have a proceeding pending with the Commission

¹ 18 C.F.R. §385.207(a)(5) (2005).

² The subject *pro forma* tariff sheets are contained in Appendix C to the Settlement Agreement.

that it wishes to resolve by the instant Settlement Agreement. However, Tuscarora asserts that the Commission has recognized the benefits of granting pipelines and customers the flexibility to resolve rate-related issues outside the traditional format of an expensive, time-consuming, and contentious rate case. Accordingly, Tuscarora states that it has filed the instant Settlement Agreement pursuant to Rule 207(2) (5) of the Commission's regulations consistent with the Commission's guidance for implementing such settlements outside the context of an existing proceeding as set forth in *Dominion Transmission Inc.*³

3. Tuscarora states that the Settlement Agreement is in the public interest and should be promptly approved without modification or condition. According to Tuscarora, the Settlement Agreement will provide Tuscarora's customers with significant rate reductions, in a timely fashion and without the expense of a hearing and lengthy litigation.

Details of the Agreement

4. Article I, provides that the Settlement Agreement resolves all issues relating to whether Tuscarora's rates for firm and interruptible transportation services are lawful under sections 4 and 5 of the Natural Gas Act (NGA) during the four-year period from the Effective Date until May 31, 2010 (Settlement Term). Article V indicates that the Effective Date of the Settlement Agreement is June 1, 2006.

5. Article II provides that within seven business days of the Approval Date of the Settlement Agreement, Tuscarora shall file tariff sheets that are substantively identical to the *pro forma* tariff sheets included with the Settlement Agreement, with an effective date of June 1, 2006.

6. The tariff sheets shall provide the following changes in rates for the "Settlement Parties" (defined in Article III): (i) a reduction of the maximum reservation charge for firm transportation service, from \$14.6330 per Dth to \$12.1667 per Dth, exclusive of any applicable charges, surcharges and/or penalties set forth in the Tuscarora tariff; (ii) a reduction of the maximum commodity charge for interruptible transportation service, from \$0.4830 per Dth to \$0.4019 per Dth, inclusive of the Annual Charge Adjustment (ACA), but exclusive of any other applicable charges, surcharges and/or penalties set forth in the Tuscarora tariff; (iii) a reduction of the volumetric reservation charge for capacity release, from \$0.4811 per Dth to \$0.4000, exclusive of ACA and any other applicable charges, surcharges and/or penalties set forth in the Tuscarora tariff; and (iv) a reduction of the maximum authorized overrun charge, from \$0.4830 per Dth to \$0.4019 per Dth, inclusive of ACA.

³ 111 FERC ¶61,285 (2005).

7. Article II further provides that the “Non-Settling Parties” (defined in Article III) shall maintain the rates currently stated in Tuscarora’s tariff.

8. Article III defines the term “Non-Settling Party” as a person or entity that has standing to contest the Settlement Agreement, and files a pleading with the Commission that contests the approval of the Settlement Agreement without condition or modification, or that advocates a change to the Settlement Agreement. “Non-Settling Party” also includes a person or entity that the Commission determines has raised a genuine issue of material fact about the Settlement Agreement; however, if the Commission determines that such person or entity is subject to the Settlement Agreement, that person or entity will not be considered a Non-Settling Party. Additionally, the term "Non-Settling Party" includes any person or entity that is not a customer of Tuscarora at the time of Commission approval of the Settlement Agreement but that becomes a customer of Tuscarora during the term of the settlement, and prior to the commencement of service, notifies Tuscarora that such person or entity does not agree to be bound by the terms of the Settlement Agreement.

9. The term “Settlement Party” is defined as any person or entity that is a customer of Tuscarora at the time of Commission approval of the Settlement Agreement or becomes a customer of Tuscarora during the term of the settlement, unless such person or entity is a Non-Settling Party. The term Settlement Party" also includes the PUCN and Sierra Pacific Resources.

10. Article III further provides that none of the terms, benefits or obligations of the Settlement Agreement shall apply to Non-Settling Parties nor will anything in the Settlement Agreement affect the rights of the Non-Settling Parties or Tuscarora with respect to the Non-Settling Parties, as these rights exist pursuant to statute or contract. In addition, any Commission findings or orders in response to an NGA section 5 filing by a Non-Settling Party (or a general NGA section 4 filing by Tuscarora applicable to Non-Settling Parties) shall not apply to any Settlement Party.

11. Article IV provides for a rate moratorium period extending from June 1, 2006 to May 31, 2010, during which Tuscarora is prohibited from initiating a NGA section 4 rate case and the Settlement Parties are prohibited from initiating or supporting any rate review of Tuscarora’s rates, including the filing of a complaint pursuant to section 5 of the NGA. Tuscarora is not prohibited from filing to implement rates for any expansion project filed pursuant to section 7 of the NGA, but the Settlement Parties are prohibited from protesting or commenting in opposition to such a section 7 filing if the proposed rates for the expansion are equal to the rates under the Settlement Agreement.

12. Under Article IV, Tuscarora and the Settlement Parties are not prohibited from taking positions before the Commission concerning service and tariff-related issues but

they may not argue for or advocate a service or tariff-related change that would affect the rates under the Settlement Agreement.

13. In addition to establishing the Effective Date as June 1, 2006, Article V provides that the "Approval Date" of the Settlement Agreement is the date upon which the Commission has approved the Settlement Agreement by an order (a) that does not subject the Settlement Agreement to modification or condition and (b) that is no longer subject to rehearing or appeal.

Notice of Filing and Interventions

14. Notice of the subject filing was issued on June 6, 2006, with interventions and protests due on or before June 9, 2006. Pursuant to Rule 214, (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. No protests or comments in opposition to the Settlement Agreement were filed.

Discussion

15. The Settlement Agreement is consistent with the Commission's guidance for settlement outside the context of an existing proceeding as set forth in *Dominion Transmission Inc.* As the Commission explained in *Dominion Transmission Inc.*, the Commission encourages pipelines and interested parties to negotiate their differences, before making a filing with the Commission, to enable the quick processing of rate reductions that benefit customers without the expense of a hearing and lengthy litigation.⁴ When a pipeline negotiates an agreement with its customers and others to change its rates or terms and conditions of service, and it desires approval of the agreement before making an actual section 4 tariff filing, it may file, pursuant to Rule 207(a)(5),⁵ a petition for approval of the agreement, along with *pro forma* tariff sheets reflecting how the agreement will be implemented.⁶ This is the procedure Tuscarora has followed here.

16. Here, consistent with the requirements set forth in *Dominion Transmission*, Tuscarora has submitted an agreement reached with its customers and others, that results in a rate reduction for all settling parties and that will provide rate certainty in the form of a rate moratorium until May 31, 2010. This agreement was reached in lieu of proceedings before the Commission and will provide customers utilizing Tuscarora's system with the benefits of a significant rate reduction, without the expense and time

⁴ *See id.* at P 30.

⁵ 18 C.F.R. §385.207(a)(5) (2005).

⁶ *Dominion*, 111 FERC ¶61,285 at P 32.

required for hearing and litigation procedures. Accordingly, the Commission finds that the proposed Settlement Agreement appears to be fair and reasonable and in the public interest, and therefore approves the Settlement Agreement to be effective June 1, 2006 as requested.

The Commission orders:

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

(B) Tuscarora is directed to file actual tariff sheets, and to make refunds and adjustments in accordance with the terms of the Settlement Agreement.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.