UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Distrigas of Massachusetts LLC | Docket No. RP06-385-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS,
SUBJECT TO CONDITIONS

(Issued July 5, 2006)

1. On June 5, 2006, Distrigas of Massachusetts LLC (DOMAC) filed revised tariff sheets[1] to update the billing and payment provisions and to add creditworthiness provisions for its liquefied natural gas (LNG) services. DOMAC requests that the tariff sheets become effective July 6, 2006. As discussed below, the Commission will accept DOMAC's proposed tariff sheets, subject to refund and subject to conditions, to become effective July 6, 2006.

Details of the Filing

Billing and Payment Provisions

2. DOMAC proposes to revise the billing and payment provisions at sections 6.1, 6.2, and 6.3 of the General Terms and Conditions (GT&C) to provide the time period when invoices will be deemed received by the buyers by various methods and that all payment are to be made by wire transfer within 11 days after receipt of the invoice. The audit and billing provision (section 6.2) was revised to provide that no adjustment or correction shall be made on or with respect to any error or inaccuracy that occurred more than one year prior to the discovery thereof; previously, changes could be made to errors or inaccuracies which occurred up to three years prior to the discovery thereof. This section also was revised to provide that refund or payment to correct an over- or under-charge shall be made with interest, assessed from the date that payment for the invoice with the overcharge or undercharge was received by the seller (in case of overcharges) or due to seller (in case of undercharges). DOMAC revised the time when any amounts must be paid after resolution of a billing dispute or determination that a billing error has occurred not later than 11 days following receipt of the adjusted invoice. DOMAC

[1] See Appendix for a listing of the tariff sheets.

proposes to calculate the interest applied to delinquent payments to be based on the national prime interest rate published in the Wall Street Journal plus two percent and may not exceed the maximum rate permitted by law.

3. DOMAC proposes to revise section 6.4 of the GT&C concerning the suspension and termination for non-payment provisions to provide that it can suspend service if a payment delinquency continues for two business days and to terminate a buyer's contract if the delinquency continues for 15 days. DOMAC argues that, as a seller of LNG, it is exposed to significantly greater risks than an interstate pipeline if a buyer defaults on its payment obligation and, therefore, it needs the ability to suspend service more quickly than the Commission has typically allowed. DOMAC acknowledges that the Commission has typically allowed pipelines to suspend service only after a 15 day delinquency.[2] DOMAC contends that it would be uniquely disadvantaged if it must wait more than 15 days following non-payment to terminate a service agreement since it could be precluded during such period from entering into firm agreements for the contract quantity. DOMAC requests that the Commission waive section 154.602 of the Commission's regulations requiring 30 days notice before terminating service and accept DOMAC's proposal of a 15-day notice period.

4. DOMAC proposes in its transmittal letter, but does not include proposed tariff revisions to reflect that during periods of suspension buyers will continue to be liable for "call" payments, if any, that are otherwise scheduled to be paid during a period of suspension. Call payments are described as payment for fixed costs incurred by DOMAC in operating its terminal and arranging supplies, and for other aspects of performing under the service agreement with its buyer. DOMAC explains that it incurs these costs throughout the term of its service agreement and that if DOMAC suspends service, or if a buyer chooses not to take gas during a particular month, DOMAC still incurs the costs associated with the buyer's service agreement because it had previously contracted and arranged for the supply necessary to honor its sales obligations. Furthermore, DOMAC explains that call payments are prepayments, often made in several installments. The sum due in a particular month, therefore, may not necessarily correspond to the level of service expected to be provided in that month. According to DOMAC, a call payment may be due during suspension for service provided over the entire period of the service agreement. DOMAC also expresses the concern that if call payments can be suspended during periods of suspension, a shipper might try to game the system and avoid call payments by defaulting.

5. DOMAC proposes to revise section 6.5 of the GT&C to allow a buyer to dispute invoices without incurring a late charge. DOMAC requires that a buyer must make

[2] *Trailblazer Pipeline Co.*, 103 FERC ¶ 61,255 at P 27 (2003) (*Trailblazer*).

reasonable efforts to resolve any billing disputes within five business days of giving notice of the dispute and that if the buyer fails to take steps within this period to resolve the dispute, DOMAC may consider the buyer to be in default and suspend service.

Creditworthiness Provisions

6. DOMAC proposes to add credit standards to its tariff which it claims are consistent with the Commission's creditworthiness rulemaking,[3] the recently issued *Policy Statement*,[4] and various Commission creditworthiness orders. DOMAC proposes the following creditworthiness provisions.

7. DOMAC proposes at section 17.1.1 of the GT&C the specific types of information that it may request for a credit evaluation. DOMAC contends that the only item that it intends to request that is not included in the *Policy Statement* is a list of the buyer's owner and shareholders. DOMAC argues that because of the entry of new market participants, there is good reason to request this information about the nature of the entity seeking credit. DOMAC asserts that requiring a buyer to provide a list of owners and shareholders will not be unduly burdensome as this information should readily available.

8. DOMAC proposes at section 17.1.2 that the buyer acknowledge receipt of DOMAC's request for information within 24 hours and to provide the information within five business days of DOMAC's request. This provision further provides that if the buyer cannot provide all of the information requested, it must provide a written explanation of why the requested information is not available.

9. Section 17.1.3 provides DOMAC with the right to conduct ongoing credit evaluations of its buyers to ensure that they continue to meet the credit standards after service commences and where necessary to request additional information from its buyers. Section 17.2.2 provides that the minimum requirement for a buyer to receive services is a BBB- rating by Standard and Poor's (S&P) or Baa3 rating by Moody's Investor Service (Moody's). If a buyer is not rated by S&P or Moody's, a proxy rating similar to the ratings generated by S&P or Moody's will be employed, using the criteria described in section 17.2.4, which will enable DOMAC to consider the individual circumstances of each buyer. Section 17.2.5 provides a table with the dollar amount of credit available to a buyer which is function of the buyer's tangible net worth and the buyer's credit rating, with adjustment for other relevant credit factors. Further, the new

---

[3] *Creditworthiness Standards for Interstate Natural Gas Pipelines*, 106 FERC ¶ 61,123 (2004).

[4] *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, Regulations Preambles, FERC Stats. & Regs. ¶ 31,191 at P 24 (2005) (Policy Statement).

credit provisions recognize that buyers with a good payment history qualify for credit limit increase. Section 17.2.6 provides that a buyer with three or more years of demonstrated payment history and a rating of BBB- or Baa3 or higher receive an increase in their assigned credit limit based upon the number of years they have received service from DOMAC and the number of delinquent payments in the previous 12 months. Section 17.2.7 provides that buyers may request that DOMAC consider any other information that may be relevant to that buyer’s financial strength while under section 12.2.8, DOMAC will provide service only up to the level of credit for which a buyer qualifies.

10. DOMAC explains that because the amount of credit extended to a buyer depends upon the buyer’s credit status, section 17.2.9 requires that each buyer notify DOMAC within two business days of the occurrence of events that could materially affect the credit determinations made pursuant to sections 17.2.2 or 17.2.3. DOMAC contends that requiring buyers to provide information on changes in its credit status will protect DOMAC from the risk of maintaining credit for a buyer that may be at risk of losing its previous credit status.

11. DOMAC proposes at section 17.3.1 that no service will be available to insolvent or non-creditworthy buyers and that a buyer’s insolvency will be demonstrated by the filing of a voluntary petition in bankruptcy or the determination by a court that a buyer (or a buyer’s parent company) is bankrupt or insolvent. Section 17.3.2 provides that DOMAC will provide a buyer a written explanation of buyer’s credit evaluation within five days of the buyer’s request and that if a buyer is not creditworthy, they will have the right to challenge DOMAC’s determination. Section 17.3.2 also provides the means by which a non-creditworthy buyer may receive service. Within five days of receiving notice of losing its creditworthiness status, a buyer must pay any delinquent outstanding balances and provide credit assurances equal to one month of service. Then within 15 days of the notice, the buyer must provide credit assurance equal to the value of a second month of service, on a rolling basis. The credit assurance may take one of the following forms: (1) prepayment for the buyer’s estimated service requirements; (2) an irrevocable letter of credit in favor of DOMAC; (3) a guarantee by parent or affiliates that satisfies DOMAC’s credit appraisal; or (4) other mutually agreeable forms of credit assurance. Unless otherwise agreed, the buyer must maintain the credit assurance until the buyer attains a satisfactory credit status or the buyer’s service agreement terminates with DOMAC returning any collateral held within five business days of a buyer’s return to a creditworthy status or termination of the service agreement.

12. Section 17.3.5 provides that the buyer which DOMAC has determined not to be creditworthy may request that DOMAC re-evaluate its credit status. DOMAC within five business days will provide either a decision as to the buyer’s credit status or an

explanation as to when such decision will be made. DOMAC will provide a decision as to the buyer's credit status not later than 20 business days after receiving the buyer's request for a re-evaluation.

13. Section 17.3.6 provides that DOMAC may immediately suspend service if a buyer fails to provide the requested information or credit assurance within the specified time period. DOMAC indicates that when it notifies a buyer that it has lost its credit status, it will notify the buyer that it will suspend service if appropriate credit assurance is not provided within the allotted time. DOMAC proposes that it may terminate service if the buyer's failure to provide the requested information or credit assurance continues for 15 days. DOMAC argues that good cause exists to impose the proposed timelines on suspending service[5] and that its position as a commodity seller of LNG justifies a departure from the timeliness for suspension/termination appropriate for pipeline companies that sell only transportation capacity.

14. DOMAC proposes at section 17.4.1 that a buyer who has defaulted on outstanding payments is deemed to be non-creditworthy. Section 17.4.2 provides that if a buyer has more than one service agreement with DOMAC and the buyer defaults on one service agreement, DOMAC may deem a default by the buyer on that one service agreement as a loss of creditworthiness on any other service agreement the buyer has with DOMAC, provided that this does not affect amounts disputed by the buyer in good faith. DOMAC proposes under section 17.5 that it may increase temporarily the credit limit that would otherwise apply to its buyers. DOMAC contends that it will exercise this authority under unusual circumstances when short-term market conditions threaten to disrupt DOMAC's operations, reduce throughput or cause DOMAC to incur additional supply costs. DOMAC argues that the proposed waiver provision is designed to respond to temporary events and thereby to avoid specific operation problems and will be applied in a non-discriminatory manner.

Notice, Intervention and Protests

15. Public notice of this filing was issued on June 8, 2006. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), all timely filed motions to intervene and any 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 this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

---

[5] DOMAC cites as support *Tennessee Gas Pipeline Co.*, 103 FERC ¶ 61,275 at P 18, in which the Commission permitted immediate suspension if the credit assurances are not provided within five days.

Commission Determination

16. As discussed below, the Commission will accept and suspend DOMAC's proposed tariff revisions, subject to refund and subject to conditions, to become effective July 6, 2006, as requested.

Waiver to Permit Termination on 15 Days Notice

17. DOMAC's request for waiver of section 154.602 of the Commission's regulations to provide a 15 day notice period at sections 6.4 and 17.3.6 of the GT&C instead of the Commission's required 30 days notice period before terminating service is denied. Because termination of service is abandonment of service under the Natural Gas Act,[6] the Commission's regulations require at least 30 days notice of termination to ensure that the shipper has the opportunity to raise questions about its termination before abandonment occurs.[7] In *Trailblazer Pipeline Co.*,[8] the Commission similarly rejected a filing seeking to limit notice of termination to 15 days.

18. DOMAC contends that it faces greater risks as a seller of LNG by providing bundled sales service than an interstate pipeline company. But even if such risks are greater than those faced by other pipelines, DOMAC has failed to show such significant harm that the Commission should waive its regulation to permit abandonment on less than 30 days notice. DOMAC still has the ability to suspend service on shorter notice to protect against the consequences of a shipper's breach of contract.[9] We, therefore, deny DOMAC's request to terminate service within 15 days of notice and require DOMAC to remove this language from its tariff. DOMAC may add language which allows it to terminate the service agreement within 30 days of written notice consistent with our regulations.

Two Days Notice for Suspension of Service for Payment Delinquency

19. DOMAC proposes at section 6.4 that it can suspend service if a payment delinquency continues for two business days. DOMAC has failed to justify why it is just and reasonable to suspend service for failure to pay within two business days of the shipper's receipt of notice. It is unclear that such a short notice period provides sufficient time for a shipper to cure its deficiency prior to suspension. The Commission has

---

[6] 15 U.S.C. § 717f (2000).

[7] *See Northern Natural Gas Co.*, 103 FERC ¶ 61,276, at P 51 (2003).

[8] 103 FERC ¶ 61,225 at P 27 (2003), (citing *Natural Gas Pipeline Co.*, 103 FERC ¶ 61,069 at P 38 (2003)).

[9] *Id.* at P 52.

permitted pipelines to suspend service within 5 business days after providing notice if a shipper is deficient in payment within 6 months after the prior deficiency.[10] While the *Policy Statement* allows pipelines to suspend service on shorter notice than termination because it allows pipelines to protect themselves against potential losses,[11] DOMAC has failed to justify its deviation from the general Commission policy of providing at least five business days notice.[12] Therefore we will require DOMAC to revise its tariff to permit at least 5 business days notice before service can be suspended.

Charges During Suspension

20. DOMAC states in its transmittal letter that it proposes that the buyer continue to be liable for "call" payments, if any, that are otherwise scheduled to be paid during a period of suspension. It further states that under DOMAC's proposed tariff provision, a suspended buyer will not be responsible for "commodity" charges that are payable for LNG actually delivered. DOMAC cites to the Commission's policy statement and the court decision in *Tennessee*[13] for the proposition that "because pipelines provide value to customers during periods of suspension, they should not be required to forgo all payments during such periods."[14]

21. Despite the discussion in the transmittal letter, DOMAC's filing does not include specific tariff provisions specifying the charges it proposes to collect during periods of suspension and those it does not propose to charge. The issue of whether DOMAC is entitled to collect such charges, therefore, is not at issue in this filing. Until DOMAC makes a section 4 filing under the Natural Gas Act, DOMAC does not have tariff authority to collect any charges during periods of suspension.

Suspension

22. Based upon a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets for filing, and suspend their effectiveness for the period set forth below, subject to the conditions in this order.

---

[10] *Id.* at P 38.

[11] *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, Regulations Preambles, FERC Stats. & Regs. ¶ 31,191 at P 24 (2005).

[12] *Id.* at P 28.

[13] *Tennessee Gas Pipeline Co. v. FERC*, 400 F.3d 23, 28 (D.C. Cir. 2005).

[14] Transmittal Letter at 4.

23. The Commission's policy regarding tariff suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted under circumstances in which suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances exist here. Accordingly, the Commission will exercise its discretion to suspend the tariff sheet for a shorter period and permit the tariff sheet to take effect on July 6, 2006, subject to conditions.

<u>The Commission orders</u>:

The Commission conditionally accepts DOMAC's revised tariff sheets, subject to refund and subject to conditions, to become effective July 6, 2006, as requested, and directs DOMAC to file revised tariff sheets consistent with the discussion above within thirty days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Distrigas of Massachusetts, LLC
First Revised Volume No. 1 to FERC Gas Tariff

Sixth Revised Sheet No. 29
Fifth Revised Sheet No. 38
Fifth Revised Sheet No. 39
Fifth Revised Sheet No. 40
Fifth Revised Sheet No. 41
First Revised Sheet No. 48A
First Revised Sheet No. 48B
First Revised Sheet No. 48C
First Revised Sheet No. 48D
First Revised Sheet No. 48E
First Revised Sheet No. 48F
First Revised Sheet No. 48G
First Revised Sheet No. 48H
First Revised Sheet No. 48I