106 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc. Docket No. RP04-119-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued January 22, 2004)

1. On December 23, 2003, Dominion Transmission, Inc. (Dominion) filed revised tariff sheets[1] to authorize the sale of excess gas that it has obtained through system operations. Dominion requests an effective date of January 22, 2004. As discussed below, the proposed tariff sheets are accepted, subject to conditions.

2. This order benefits customers because it provides for the sale of excess gas incidental to Dominion's operations that can be used to supplement the nation's energy supply.

Proposal

3. Dominion states that its tariff does not contain authorization for sales of gas incidental to operations. It states that the proposed tariff sheets add a new Section 42 to the General Terms and Conditions (GT&C) of its tariff to authorize the sale of excess gas that it has obtained through system operations.

[1] Fourth Revised Sheet No. 1001, Original Sheet No. 1504, and Sheet Nos. 1505-1999 to FERC Gas Tariff, Third Revised Volume No. 1.

4. Dominion cites to three sources for gas that may be sold as incidental to its operations pursuant to proposed Section 42: (1) excess fuel retainage; (2) excess gathering and products extraction gas; and (3) confiscation of unauthorized gas. Dominion states that any gas sales incidental to Dominion's operations shall be made on an unbundled basis, and the purchaser of the gas shall be responsible for any transportation.[2]

5. Dominion contends that it is entitled to retain compensation for sales of excess fuel retainage and gathering and products extraction gas. Dominion indicates that in the event it sells gas that it confiscates pursuant to GT&C Section 29 or collects as a minimum turnover charge (Dominion claims that this is the only circumstance in which gas it retains is in the nature of a "penalty"), it will continue to credit the value of that gas to its customers as provided in GT&C Section 15.5, independent of the disposition of the gas, whether it is sold or consumed by Dominion's system operations.

6. In addition, Dominion requests waiver of Section 284.286 of the Commission's regulations for all sales made pursuant to proposed GT&C Section 42. It states that these sales are distinguishable from any "merchant" activity because they will be incidental to operations. Dominion notes that the Commission has recognized that these types of sales will not render the Dominion personnel engaged in them the functional equivalent of a marketing affiliate and to require Dominion to create a separate marketing division to make these sales would be unduly burdensome.[3] Dominion requests clarification that no separation of Dominion personnel, or other application of the marketing affiliate standards of conduct, is required as a result of the proposed sales.

---

[2] Dominion states that in accordance with 18 C.F.R. § 284.283 (2003), the point of sale shall be at Dominion's Receipt Points, at the points of interconnection with upstream pipelines prior to receipt into Dominion's system, points located upstream of Dominion's gathering system, or Appalachian Aggregation points.

[3] Citing, e.g., Dominion Cove Point LNG, LP, 104 FERC ¶ 61,218 (2003) (Dominion Cove Point); Columbia Gulf Transmission Co., 100 FERC ¶ 61,344 (2002); Trunkline LNG Co., 81 FERC ¶ 61,147 (1997); Steuben Gas Storage Co., 77 FERC ¶ 61,218 (1996).

Notice, Interventions and Protests

7. Public notice of the filing was issued on December 30, 2003. Interventions and protests were due as provided in Section 154.210 of the Commission regulations, 18 C.F.R. § 154.210 (2003). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2003), all timely filed motions and motions to intervene out of time filed before the issuance of this order are granted.[4] Granting late interventions at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

8. Doswell Limited Partnership (Doswell) and Rochester Gas and Electric Corporation and New York State Electric Gas Corporation (collectively Rochester) filed protests and The East Ohio Gas Company d/b/a Dominion East Ohio, and The Peoples Natural Gas Company d/b/a Dominion Peoples (Dominion LDCs), New Jersey Natural Gas Company and NUI Utilities, Inc (Elizabethtown Gas Division) (collectively, New Jersey Natural), National Fuel Gas Distribution Corporation (National Fuel), Niagara Mohawk Power Corporation (Niagara), and Michael J. Wilhelm (Wilhelm) a residential customer of Dominion Hope filed comments. Dominion filed an answer to the protests and comments.[5] The protests, comments and answer are addressed below.

9. Doswell contends that although Dominion states in its transmittal letter that it will credit certain revenues from sales of excess retained gas, the proposed tariff language does not contain any reference to crediting revenues from the sale of excess retained gas. Doswell argues that consistent with the crediting provisions of Order No. 637, Dominion should be required to revise its tariff to make clear that it will credit the value of gas it obtains through confiscation pursuant to GT&C Section 29 or through the minimum storage turnover charge. New Jersey Natural requests confirmation that the authority sought by Dominion would not afford it the right to engage in any sales of base gas or other gas considered a fixed asset or otherwise included in Dominion's rate base. Rochester also questions the sale of base gas, contending that Dominion should not be permitted to include tariff language that would permit it to abrogate its rate settlements concerning the sale of excess gas consisting of base gas or other non-base gas.[6]

---

[4] See Dominion Transmission, Inc., 105 FERC ¶ 61,173 (2003) (where the Commission previously accepted Mr. Wilhelm's intervention in another Dominion proceeding, Docket No. RP03-623-000).

[5] While the Commission's Rules of Practice and Procedure generally prohibit answers to protests or answers, the Commission will accept the answer to allow a better understanding of the issues. See 18 C.F.R. § 385.213(a)(2) (2003).

[6] Rochester cites Article VI of the settlement in Docket No. RP00-632-003 (concerning changes in fuel retention), see Dominion Transmission, Inc., 96 FERC ¶ 61,288 (2001), and Article VI of the settlement in Docket No. RP97-406-027

Rochester also requests a technical conference. Dominion LDCs argue that the Commission should approve Dominion's tariff subject to the following conditions: (1) Dominion agrees to implement a tracking collection mechanism to deal with overcollections and undercollections at the expiration of its at risk condition;[7] (2) Dominion agrees to submit information on System Gas operational sales sufficient to permit interested parties to reconcile such gas sales with related overcollection data; and (3) approval of the proposed tariff language does not trump, supersede or cancel any terms and conditions of any other previously approved settlements or order of current effect.

10. In its answer, Dominion opposes Mr. Wilhelm's intervention on the basis that Mr. Wilhelm has a personal agenda related to his retirement compensation. Irregardless of Mr. Wilhelm's claimed motives, as an indirect customer of Dominion Mr. Wilhelm has shown sufficient interest in this proceeding to warrant a grant of his motion to intervene.

11. National Fuel requests in its comments, which are supported by Niagara, that Dominion's proposal be approved subject to four conditions. First, National Fuel requests that Dominion limit the sale of excess gas proposed in GT&C Section 42 to the three sources cited in the transmittal letter. Second, National Fuel argues that curtailment procedures should be incorporated into the proposed Section 42, specifically the Supply Curtailment Procedures contained in Dominion's USS Rate Schedule,[8] or some comparable form thereof. Third, National Fuel alleges that since the proposal requires unbundled sales, Dominion should publicly solicit bids for the gas by posting any volumes available on its electronic bulletin board, EScript. National Fuel argues that this step would provide all of Dominion's shippers with an opportunity to compete for the gas and should return a fair value to Dominion. Fourth, National Fuel contends that Dominion should be required to file a report annually listing each sale of gas pursuant to Section 42, the source of the gas, the volumes involved, and the revenues from the sale. National Fuel avers that such a reporting requirement would allow customers to monitor the sales process and further the Commission's goal of ensuring a transparent environment. Mr. Wilhelm contends in his comments that Dominion has a rate case settlement obligation to credit the sales from the excess gas to its customers. He states

---

(concerning credit for the sale of excess gas), see Dominion Transmission, Inc., 94 FERC ¶ 61,329 (2001).

[7] See, e.g., Dominion Cove Point at P15-18 (2003) (conditions on Commission approval of sale of excess gas by Dominion Cove Point).

[8] See Section 7, provisions 7.1 through 7.6 of Dominion's USS Rate Schedule at Original Sheet Nos. 101 through 104 of Dominion's FERC Gas Tariff, Third Revised Volume No. 1.

that in the instant filing Dominion is seeking the rights to keep all revenues from the sales of excess gas on its system. Mr. Wilhelm argues that because Dominion cannot distinguish the excess base gas on its system from any other excess gas, the Commission should require Dominion to treat the first sales of gas under Section 42 as sales of excess base gas. He states that this would require Dominion to fulfill its prior settlement obligations. Mr. Wilhelm also argues that the Commission should require Dominion to file a monthly report on the sale of excess gas in sufficient detail for Commission and customer review.

Discussion

12. The Commission finds that Dominion's proposal to sell excess gas on its system is just and reasonable, with several modifications to the proposed tariff language. While Dominion indicates in its filing that it is aware of three potential sources of gas that may be sold because they are incidental to its operations,[9] it is unclear whether Dominion has identified all of the sources of gas it may choose to sell. Since Dominion may in the future become aware of other potential sources of gas, Dominion will be required to submit tariff revisions for Commission review and acceptance identifying those new sources of incidental gas which it plans to sell. Therefore, Dominion is required to revise proposed Section 42 of the GT&C, identifying the three sources of gas identified in this proceeding. In the future, if Dominion becomes aware of other sources of gas incidental to its system operations that it wishes to sell, Dominion will have to file for and receive the appropriate Commission approval to add that source or sources to the proposed GT&C Section 42.

13. Dominion indicates in the transmittal letter that in the event it sells gas that it confiscates pursuant to GT&C Section 29 or collected as a minimum turnover charge (Dominion claims that this is the only circumstance in which gas it retains is in the nature of a "penalty"), it will continue to credit the value of that gas to its customers as provided in GT&C Section 15.5, independent of the disposition of the gas, whether it is sold or consumed by Dominion system operations. While Dominion explains in its transmittal letter that it will continue to credit confiscated gas as required by Order No. 637, which requires that penalty revenues, net of cost, should be credited to a pipeline's customers,[10]

[9] See supra P 4.

[10] See Algonquin LNG, Inc., 96 FERC ¶ 61,301 at 62,172-3 (2001); ANR Storage Co., 96 FERC ¶ 61,162 at 61,708 (2001); and Tennessee Gas Pipeline, 99 FERC ¶ 61,017 at P 209 (2002). See also 18 C.F.R. § 284.12(b)(2)(v) (2003).

the proposed tariff language fails to reference the appropriate revenue crediting sections of its tariff for the sale of confiscated gas. Therefore, Dominion is required to revise proposed GT&C Section 42 to provide that revenues derived from the sale of confiscated gas will be credited to its shippers in accordance with the appropriate sections of its tariff.

14. Dominion is proposing to sell and then retain revenues for gas incidental to its operations for excess fuel retainage and excess gathering and products extraction gas, contending that such volumes may be removed from its system consistent with sound operating practices. While the Commission finds that removing such gas from Dominion's system and the resulting sales of excess gas is appropriate, the Commission is concerned that Dominion may charge its customers for the underrecovery of gas on its system while realizing revenue generated from the sale of gas from the overrecovery of gas. Therefore, Dominion is required to revise proposed GT&C Section 42 to incorporate a reporting mechanism for the sale of each category of excess gas, filing an annual report.[11] The annual report will help ensure that Dominion is not charging its customers for the underrecovery of gas on the one hand while realizing revenue generated from the sale of gas for overrecovery on the other. The annual filing will also provide interested parties with the opportunity to examine Dominion's sales of excess gas and question the revenues realized from such sales. Regarding Mr. Wilhelm's request for a monthly report, the Commission finds that a submission of an annual report by Dominion will be sufficient for monitoring purposes.

15. Rochester and New Jersey Natural question whether the sales of excess gas will involve the sale of base gas and the impact such sales may have on Dominion's various rate settlements. In its answer, Dominion addresses Rochester, New Jersey Natural and Mr. Wilhelm's concerns regarding the potential sale of base gas and provides a pro forma tariff sheet reflecting its proposed revision to Section 42 of the GT&C to state that Section 42 does not authorize the sale of any base storage gas included in pipeline's rate base. In particular, with respect to Mr. Wilhelm's request to treat all sales of excess gas or sales of excess base gas, Dominion states that it has specified base gas volumes and costs which remain on its books and, therefore, by definition it has not sold any base gas. Dominion's response and proposed revision adequately address the concerns raised by Rochester, New Jersey Natural and Mr. Wilhelm. We will require Dominion to file a revised tariff sheet to reflect this proposed change in addition to the other revisions to its tariff required by this order within 15 days of the date of this order.

[11] The annual report should indicate the source of the excess gas (which of the three approved categories), date of the sale, volumes, sales price, revenues from the sale, and the disposition of the revenues.

16. Rochester requests that the Commission hold a technical conference on Dominion's filing and the Dominion LDCs request that the order be conditioned upon the proposed changes to Section 42 not trumping, superseding, or canceling any terms and conditions of any other previously approved settlements or orders of current effect. The Commission finds that Dominion's proposal as modified and requiring the annual report addresses the various parties' concerns so that a technical conference is not necessary. Further, to address the Dominion LDCs' concerns about whether this proposal supersedes previously approved settlements or orders, the Commission finds that this proposal, as modified, does not supercede previous Commission action or Dominion's settlements.

17. To ensure that all parties have an opportunity to bid on the sale of any excess gas incidental to its operations, Dominion is required to revise Section 42 to provide that it will post the excess sales volumes for bid on its EScript electronic bulletin board. Posting the gas for sale will provide all of Dominion's shippers with the opportunity to compete for those volumes. Since Dominion is proposing to sell gas and the possibility exists that it could incur a force majeure event that might be mitigated by curtailment of such sale, the Commission will require Dominion to revise the proposed Section 42 to provide for the curtailment of sales of excess gas. Dominion's currently approved USS Rate Schedule, which governs all of Dominion's other sales of natural gas, provides detailed curtailment provisions that reflect Commission policies regarding the scope and priorities applicable to situations requiring curtailment of natural gas sales. Dominion is required to revise proposed Section 42, to adopt the curtailment provisions found in its USS Rate Schedule and apply those provisions to the sale of excess gas.

Waiver of Section 284.286

18. The Commission finds that consistent with our previous rulings,[12] the Commission grants waiver of Section 284.286 of our regulations, and clarifies that no separation of personnel or other application of the marketing affiliate standards of conduct is required as a result of the proposed operational sales.[13]

---

[12] See supra note 3.

[13] Such waiver also applies to modification of the standards of conduct established in Standards of Conduct for Transmission Providers, Order No. 2004, 105 FERC ¶ 61,248 at P 107 (2003).

The Commission orders:

(A) The tariff sheets listed in Footnote 1 are accepted effective January 22, 2004, subject to the conditions of this order.

(B) Dominion is directed to file revised tariff sheets within fifteen days of the date of this order, modifying its proposed tariff language as discussed above.

(C) Waiver of Section 284.286 of the Commission's regulations is granted to the extent that Dominion is not required to provide separation of personnel as a result of Dominion's proposed operational sales.

By the Commission:

(S E A L)

Magalie R. Salas,
Secretary.