

107 FERC ¶ 61, 050
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Resources, Inc. and
Consolidated Natural Gas Company

Docket No. EC99-81-006

Dominion Transmission, Inc.

Docket No. MG00-6-009

ORDER ON REMAND

(Issued April 16, 2004)

1. In Dominion Resources, Inc. v. FERC, 286 F.3d 586 (D.C. Cir. 2002) (Dominion Resources), the United States Court of Appeals for the District of Columbia Circuit vacated and remanded a series of compliance orders that had required Dominion Transmission, Inc. to observe the former Standards of Conduct at 18 C.F.R. Part 161 in its relationships with all of the energy affiliates of Dominion Resources, Inc. (Dominion) as a condition of the merger of Dominion and Consolidated Natural Gas Company (CNG).¹ Because the Standards of Conduct regulations in effect at the time the Commission issued the Compliance Order and subsequent orders are no longer in effect following the issuance of the Final Rule on Standards of Conduct for Transmission Providers in Order No. 2004,² effective February 9, 2004, and because the Commission addresses Dominion Transmission's specific objections to Order No. 2004 in a companion order,³ the Commission need not justify and explain the application of the former Standards of Conduct to Dominion Transmission. Finally, Dominion Transmission must continue to implement Order No. 2004 according to its terms.

¹ Dominion Resources, Inc., Docket Nos. EL99-81 and MG00-6, 91 FERC ¶ 61,140 (May 17, 2000) (Compliance Order), and Consolidated Natural Gas Co., 91 FERC ¶ 61,141 (May 17, 2000), reh'g denied, 93 FERC ¶ 61,214 (Nov. 24, 2000); Dominion Resources, Inc., et al., 93 FERC ¶ 61,284 (Dec. 15, 2000), order on reh'g, 94 FERC ¶ 61,135 (Feb. 15, 2001).

² Order No. 2004, 68 Fed. Reg. 69,134, III FERC Stats. & Regs. ¶ 31,155 (2003).

³ Order No. 2004-A, 107 FERC ¶ 61,032.

Procedural Background

2. In June 1999, Dominion Resources and CNG⁴ sought Commission authorization for their merger pursuant to section 203 of the Federal Power Act.⁵ The Commission conditionally approved the merger on November 10, 1999 (Merger Order).⁶ In the Merger Order, the Commission directed Dominion Transmission to revise its natural gas pipeline Standards of Conduct requirements so that they applied to the “corporate family” of affiliates as a whole.⁷

3. Dominion Transmission subsequently filed revised Standards of Conduct that proposed to limit the application of the Standards only to affiliates engaged in the wholesale merchant function. In the Compliance Order and subsequent orders, the Commission agreed with Dominion to the extent the Commission declined to apply the Standards of Conduct to the entire post-merger “corporate family.” The Commission nevertheless rejected the proposed limitation as applied only to wholesale merchant affiliates, and directed Dominion Transmission to apply the pipeline Standards of Conduct in Part 161 to its relationship with all energy companies affiliated under the merged company.

4. On review, the court ruled that the application of the Standards of Conduct to all of Dominion’s post-merger energy affiliates was unjustified and unexplained, and thus vacated the Compliance order and successor orders. Recognizing the Commission’s then-pending rulemaking to expand the scope of the generic, industry-wide Standards of Conduct to all energy companies, however, the court noted explicitly that “[o]f course, if the Commission has a general case for broader restrictions, it can make that case in the rulemaking that it has launched to expand the generic Standards of Conduct to ‘govern the relationships between the transmission providers and all of their energy affiliates, not just those engaged in marketing or sales functions.’”⁸

⁴ Dominion Resources was a holding company with predominantly electric utility interests, and CNG was a holding company with predominantly gas utility interests.

⁵ 16 U.S.C. § 824b (2000).

⁶ 89 FERC ¶ 61,162, order on compliance, 91 FERC ¶ 61,140, order denying reh’g, 93 FERC ¶ 61,214 (2000).

⁷ See 89 FERC at 61,478.

⁸ Dominion Resources, 286 F.3d at 593.

Discussion

5. The Commission issued Order No. 2004, a Final Rule on Standards of Conduct for Transmission Providers, on November 25, 2003.⁹ In that final rule, the Commission promulgated new standards of conduct for transmission providers, both natural gas pipelines and electric public utilities, and, as relevant here, applied them to the relationships between transmission providers and all of their energy affiliates.

6. In Order No. 2004-A, the companion order to this order, the Commission addresses Dominion's specific objections to the Standards of Conduct in Order No. 2004, applicable to Dominion Transmission and all transmission providers, that supercede the Standards of Conduct in Parts 161 and 37 of the Commission's regulations. In light of the Commission addressing Dominion's specific objections in Order No. 2004-A and the Commission's issuance of new Standards of Conduct in Order No. 2004,¹⁰ we need not justify and explain the Commission's application of our former Standards of Conduct to Dominion Transmission. Dominion Transmission's compliance with the new rules fully satisfies the Commission's concerns with respect to the activities of the energy affiliates of Dominion. Its compliance with the former Standards of Conduct is no longer necessary to address specific concerns identified in the Dominion merger proceeding and in the subsequent orders addressing post-merger compliance with the Standards of Conduct conditions.

The Commission orders:

Dominion Transmission shall continue to comply with the requirements of Order No. 2004.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

⁹ Supra note 2.

¹⁰ To the extent that Dominion has further concerns regarding the Commission's application of Standards of Conduct to it, the Order No. 2004-A proceeding is the appropriate forum.