

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket Nos. RP05-267-000
RP97-406-033
RP00-15-005
RP00-344-004
RP00-632-014

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued May 27, 2005)

1. On April 1, 2005, Dominion Transmission, Inc. (Dominion) filed a stipulation and agreement (Agreement) to amend four existing settlements previously approved by the Commission. Dominion states that the Agreement is jointly sponsored by Dominion and the Public Service Commission of the State of New York (PSCNY). Dominion states that the Agreement is either supported or not opposed by customers representing at least 85 percent of Dominion's annual jurisdictional revenue. The Commission approves the Agreement and directs Dominion to file tariff sheets pursuant to Natural Gas Act (NGA) section 4(d) which implement the Agreement consistent with its terms. The order benefits customers by approving an uncontested settlement that will result in an annual rate reduction of \$49 million for the next five years.

Background

2. Dominion's rates for its jurisdictional transportation and storage services, and certain terms of those services, are governed by four Commission-approved settlements. First, Dominion's last general section 4 rate case in Docket No. RP97-406, *et al.*, was resolved by a settlement filed on August 31, 1998, and approved by the Commission on November 24, 1998 (the Rate Case Settlement). *CNG Transmission Corp.*, 85 FERC ¶ 61,261 (1998). Second, the Rate Case Settlement was amended to address issues related to Dominion's use of capacity on other pipelines by the stipulation filed on

October 5, 1999, in Docket No. RP00-15, and approved by the Commission on December 21, 1999 (the Docket No. RP00-15 Settlement). *CNG Transmission Corp.*, 89 FERC ¶ 61,304 (1999). Third, Dominion and its customers resolved all issues related to compliance with Order No. 637 by the settlement filed on March 30, 2001, in Docket No. RP00-344, and approved by the Commission on May 31, 2001 (the Order 637 Settlement). *Dominion Transmission, Inc.*, 95 FERC ¶ 61,316 (2001). Fourth, the parties resolved issues arising from Dominion's Transportation Cost Rate Adjustment (TCRA) by the stipulation filed on June 22, 2001, in Docket No. RP00-632, and approved by the Commission on September 13, 2001 (the Docket No. RP00-632 Settlement). *Dominion Transmission, Inc.*, 96 FERC ¶ 61,288 (2001).

3. The Rate Case Settlement provided for a moratorium on the effective dates for general NGA section 4 and 5 proceedings, from January 1, 1998, through December 31, 2002. The Docket No. RP00-632 Settlement extended the rate moratorium period for certain purposes through July 1, 2003.

4. The Rate Case Settlement defined a "Settlement Period" that continued until the earlier of (a) the date that a general rate filing by Dominion under NGA section 4 is made effective by the Commission or (b) the date of any change in Dominion's general system base tariff rates resulting from a Commission order issued under NGA section 5. The Docket No. RP00-15 Settlement and the Order No. 637 Settlement included provisions applicable during this same Settlement Period. The Docket No. RP00-632 Settlement established a "TCRA Settlement period" that is coterminous with the Settlement Period.

5. In the fall of 2004, the PSCNY notified Dominion of its intention to file a complaint under NGA section 5 challenging the level of Dominion's rate recovery, based on 2003 results publicly available in Dominion's FERC Form No. 2. Dominion and PSCNY negotiated the potential resolution of the anticipated complaint to avoid protracted litigation, to provide customers with immediate rate relief and rate certainty and to provide Dominion with revenue certainty. Those negotiations culminated in an agreement in principle between Dominion and the PSCNY in early 2005.

6. In a series of meetings with its customers, Dominion with the support of the PSCNY described the agreement in principle and negotiated certain modifications of that agreement. The results of those negotiations are reflected in the Agreement, which Dominion states it has filed pursuant to Rule 385.602 of the Commission's procedural rules applicable to settlements. The Agreement is designed as a limited amendment to the existing Commission-approved settlements of Dominion proceedings. Thus, Dominion states that the Agreement will preserve the benefits of previously settled issues while providing rate relief to the Settling Parties, ensuring rate certainty for all and avoiding the costs and risks of litigation.

7. Dominion states that customers representing at least 85 percent of its annual jurisdictional revenue have agreed to support, or not oppose, the Agreement. Given this level of support, Dominion submits the Agreement to the Commission for its approval, together with *pro forma* tariff sheets showing how Dominion will revise its tariff to implement the Agreement.

Details of the Agreement

8. Article I, Background, describes the background leading to the filing of the Agreement. It describes the four settlements that currently govern Dominion's rates and certain terms of service. It also describes how the instant Agreement came about in response to the potential section 5 complaint of PSCNY.

9. Article II, Base Reservation Rate Reductions, establishes a series of base reservation rate reductions. Section 2.1 provides the maximum reservation charge under Rate Schedules FT (Firm Transportation) and FTNN (Firm Transportation, No-Notice) for Settling Parties beginning on the Effective Date. Section 2.2 sets forth the maximum reservation charge applicable to the incremental Lebanon-to-Leidy service for Settling Parties beginning on the Effective Date. Section 2.3 establishes the maximum reservation charge applicable to the incremental Rate Schedules X-70 and X-71 for Settling Parties beginning on the effective date. Section 2.4 provides for a lower reservation charge for certain volumes under contract for Hope Gas, Inc. beginning on the Effective Date. Section 2.5 establishes the maximum reservation charge applicable to the incremental Mid-Atlantic Project beginning the first day of the month three years after the Effective Date.

10. Dominion states that all of these rates reflect significant reductions from its currently effective rates. The lower rates are available to all current and future customers that agree to be bound by the Agreement, except for "Severed Parties." The maximum base rate levels reflect annual reductions of approximately \$40 million based on 2004 billing determinants, with approximately \$33 million of that rate relief in the form of the Rate Schedules FT/FTNN rate reductions. When combined with the storage fuel retention reduction under Article III, the total annual relief reflected in the Agreement is approximately \$49 million.

11. Article III, Storage Fuel Retention Percentage, provides that, beginning on the Effective Date, Dominion shall reduce its base fuel retention percentage applicable to Rate Schedule GSS (General Storage Service) for Settling Parties to 2.28 percent, compared to the current level of 2.78 percent. Assuming gas prices of \$6 per Dt for purposes of valuation, this reduction represents annual rate relief to the GSS customers of approximately \$9 million. Dominion's fuel retention percentages also include certain "Amortization Adders" pursuant to the Docket No. RP00-632 Settlement. The

Agreement does not modify the timing or mechanism for removal of Amortization Adders established in the Docket No. RP00-632 Settlement. Article III, does, however, update the status of Dominion's collection of the required volumes through those Adders, and acknowledge the anticipated timing of certain Adders' removal.

12. Article IV, Rate Moratorium, explains the rate moratorium established by the Agreement and provides that the existing "Settlement Period" under the Rate Case Settlement shall continue until the earlier of (a) the date that a general rate filing by Dominion under section 4 is made effective by the Commission or (b) the date of any change in Dominion's general system base tariff rates resulting from a Commission order issued under section 5. The "TCRA Settlement Period" shall continue for a period that is contemporaneous with the Settlement Period. All provisions of the four Dominion settlements that apply during the Settlement Period or the TCRA Settlement Period shall continue to apply except to the extent expressly modified in the Agreement.

13. The Agreement establishes a five-year moratorium (termed the "Moratorium Period") on the effective date for general rate changes, and changes in fuel retention percentages beginning on the Effective Date. Dominion shall not file a general section 4 rate proceeding and no Settling Party shall initiate or support a proceeding under section 5 that would cause a change in Dominion's generally applicable transportation or storage rates during the Moratorium Period. Dominion and the Settling Parties also may not propose in any proceeding that any change to the settled fuel retention mechanism, transportation or storage fuel retention percentages or the "Allocation Method" as defined in the Docket No. RP00-632 Settlement, occur during the Moratorium Period. The informational fuel filing requirements established by that settlement will remain in place.

14. The Agreement does not prohibit Dominion from making various types of filings that are not inconsistent with the terms of its settlements. Similarly, the Agreement does not bar Settling Parties from initiating section 5 proceedings as long as Settling Parties do not seek (a) to change transportation or storage rates or (b) a result inconsistent with any other provisions established by any of the four Dominion settlements or the Agreement. The Agreement also does not purport to preclude the Commission from initiating a NGA section 5 proceeding on its own volition.

15. Article V, Status Quo Option, establishes a status quo option available to any party that does not desire to be bound by the Agreement. Any party may elect to be a "Severed Party." A party may also become a "Severed Party" by contesting the settlement, advocating changes to the settlement or if the Commission determines it has raised a genuine issue of material fact. Any entity that becomes a new Dominion customer during the Moratorium Period and elects not to be bound by the Agreement shall be a "Severed Party." None of the terms, benefits or obligations of the Agreement shall apply to Severed Parties. Severed Parties shall continue to pay the rates and fuel retention

percentages in effect prior to the filing of the Agreement. The severed party provisions preserve the significant benefits of the Agreement for the parties that support it while giving any contesting parties the opportunity to litigate any objections they have.

16. Article VI, Implementation of Settlement Amendment, defines the “Effective Date” of the Agreement and explains the process of implementation. The “Effective Date” of the Agreement shall be the first day of the first month after the Commission issues a “Final Order” approving the settlement without modifications or conditions. Article VI also provides procedures for parties to withdraw from the Agreement if it is modified or made subject to conditions. Article VI explains that, within thirty days of the Effective Date, Dominion will file tariff sheets implementing the Agreement to be effective on the Effective Date. Dominion will file tariff sheets corresponding to the *pro forma* tariff sheets included in Appendix B to the Agreement.

17. Article VII, Non-Severability of Terms, establishes that the Agreement embodies an integrated package and that none of the terms of the Agreement are agreed to without each of the others. The various provisions of the Agreement are not severable.

18. Article VIII, Reservations, sets forth the various reservations and limitations of the Agreement. The article provides that parties agree that the Agreement is a result of a negotiated settlement and that its terms shall not be deemed “settled practice.”

19. The Agreement includes two appendices. Appendix A consists of a list of parties that either support or do not oppose the Agreement. Appendix B consists of *pro forma* tariff sheets that will implement the Agreement.

Public Notice, Intervention and Comments

20. Public notice of Dominion’s settlement was issued on April 7, 2005. interventions, protests and initial comments were due by April 21, 2005. Reply comments were due May 2, 2005. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motions 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.

21. All of the parties filing comments support or do not contest the settlement. However, several parties, while supporting the settlement, filed comments taking issue with certain statements made by Dominion in the explanatory statement to the settlement.

22. The City of Richmond, Virginia (Richmond) asserts that footnote 9 of the explanatory statement, regarding the maximum rate for the Mid-Atlantic project, is inconsistent with the controlling provisions of the Agreement. That footnote states, “[t]he maximum rate for the Mid-Atlantic project, which was placed in service in 2004,

will not decrease before that time.” *i.e.*, before the first day of the month three years after the Effective Date. Richmond recognizes that section 2.5 of the Agreement provides for a \$.015/Dt reduction in the maximum reservation charge base tariff rate applicable to firm transportation services under Dominion’s Mid-Atlantic Project for Settling Parties, which is not to take place until the first day of the month three years after the Effective Date. However, Richmond states there is a circumstance that could lead to an earlier decrease in the maximum rate for the Mid-Atlantic Project. Specifically, section 4.6 of the Agreement provides that the Commission is not precluded from itself initiating a proceeding under NGA section 5 “on its own volition,” which could result in further reductions to each and every one of the rates on the Dominion pipeline system, including those of the Mid-Atlantic Project, at any time. Accordingly, Richmond states that it is incorrect for Dominion to unilaterally assert in footnote 9 of the Explanatory Statement that the maximum rate for the Mid-Atlantic project will not decrease before the first day of the month three years after the Effective Date. Thus, Richmond contends that footnote 9 of the Explanatory Statement should be deleted or expressly held by the Commission to be inconsistent with the actual provisions of the Agreement.

23. Richmond, the American Public Gas Association, and PSCNY take issue with Dominion’s statements in the explanatory statement where it asserted that the Commission’s methods of rate regulation continue to work effectively and that interested parties have sufficient data from the FERC Form No. 2 filings to judge the reasonableness of a pipeline’s rates. They assert that the Commission’s rate review procedures, including its collection of relevant pipeline data, fall well short of what is required for the type of consumer protection envisioned by the framers of the NGA. They contend that since there is no section 4 filing requirement, a pipeline over-recovering can continue to charge unjust and unreasonable rates indefinitely. They contend that shippers are reluctant to initiate NGA section 5 proceedings because of the inordinate time and expense of such proceedings, which is exacerbated by the absence of refund relief under NGA section 5. They assert that Form No. 2 needs to be modified in order to provide a data base that allows interested parties to efficiently perform an accurate review of a pipeline’s rates.

24. In its initial comments, Dominion states that its experience with the Agreement reflects the appropriate working of the Commission’s regulatory policies. However, Dominion states that it has been brought to its attention that general consideration of the Commission’s ratemaking policies are not necessary to the Commission’s review and approval of the Agreement. Dominion agrees with this observation. Dominion confirms its views regarding the adequacy of FERC Form No. 2 are those of Dominion alone, and that Dominion’s characterization may not represent the views of other parties that otherwise support or do not oppose the Agreement.

25. Dominion filed reply comments in response to the limited comments filed by three interveners in this proceeding. Dominion states that, importantly, none of these parties (or any others) opposed, or commented adversely on, the Agreement itself. Dominion submits that the Agreement is uncontested and requests that the Commission approve the Agreement as fair and reasonable and in the public interest pursuant to section 385.602(g)(3).

26. With respect to its statement regarding the adequacy of Form No. 2, Dominion states that its views reflect the general views of interstate pipelines. However, Dominion understands and believes it clarified in its initial comments that other parties do not share the same view. Dominion submits that this dialogue regarding the adequacy of Form No. 2 and the NGA complaint procedures is tangential to the settlement and should not interfere with the Commission's review and approval of the uncontested Agreement.

27. With respect to the maximum rate for the Mid-Atlantic Project, Dominion agrees with Richmond that footnote 9 is not intended to alter the settlement and does not preclude the Commission from initiating a rate proceeding under section 5 of the NGA which could result in a rate reduction, including a rate reduction for the Mid-Atlantic Project.

Discussion

28. The Agreement sponsored by Dominion and PSCNY is supported or not opposed by all parties to the proceeding. The Agreement reflects an annual rate reduction of \$49 million, consisting of a \$40 million per year reduction in transportation rates and a reduction in the storage fuel retention percentage of \$9 million per year. Over the five year moratorium period, the Agreement will provide Dominion's customers with \$245 million in rate relief. As pointed out by PSCNY in its initial comments, these significant and immediate rate reductions, when viewed in light of the costs and risks of litigation, and the resulting rate certainty for five years, will provide immediate and long-term benefits to all parties. Accordingly, the Commission will approve the uncontested April 1, 2005 Agreement because it appears to be fair and reasonable and in the public interest.

29. While no party contested the Agreement, several parties raised concerns about statements in the Explanatory Statement. Dominion has adequately explained that footnote 9 was not intended to change the Agreement and does not preclude the Commission from taking section 5 action to change the Mid-Atlantic Project rate prior to the effective date agreed to in the Agreement. Dominion also adequately explained that its statements concerning the adequacy of Form No. 2 was its own opinion, did not represent the views of other parties to the settlement, and was not relevant to the Commission's review and approval of the Agreement.

30. The Commission commends Dominion, PSCNY and the other parties in this proceeding for meeting with one another and negotiating their differences before making any filing with the Commission. This has enabled the quick processing of a rate reduction that benefits all of Dominion's customers, without the expense of a hearing and lengthy litigation. The Commission encourages other pipelines to act in a similar manner. However, the Commission does wish to clarify the procedures to be used in future situations when before making a section 4 filing, a pipeline has negotiated a general settlement with customers providing for a change to be made in its, rates, terms and conditions.

31. Here, Dominion chose to file the instant Agreement as a settlement pursuant to Rule 602 of the Commission's procedural rules, "Submission of Settlement Offers."¹ However, that rule only "applies to written offers of settlement filed in any proceeding pending before the Commission or set for hearing under subpart E." Since the instant Agreement does not relate to any Dominion proceeding pending before the Commission when Dominion made the instant filing, Dominion did not properly file it pursuant to Rule 602. In its filing, Dominion indicated that the Agreement related to four previous Commission proceedings concerning Dominion's rates, terms, and conditions. However, each of those proceedings has previously been concluded by final orders of the Commission, and thus was no longer pending.

32. In future situations of this kind, when a pipeline has negotiated an agreement with its customers and others to change its rates or terms and conditions of service and the pipeline desires approval of the agreement before making an actual section 4 tariff filing, the pipeline should simply file, pursuant to section 385.207(a)(5),² a petition for approval of the agreement, along with *pro forma* tariff sheets showing how the agreement would be implemented. The Commission will treat the petition for approval of the agreement as initiating a new proceeding, assign a new docket number to that proceeding, and issue a notice providing for interventions, comments, and protests. The Commission will act expeditiously on the proposal to ensure any reduced rates are implemented as quickly as possible. If the Commission approves the agreement, it will direct that the pipeline file,

¹ 18 C.F.R. § 385.602 (2004).

² 18 C.F.R. § 385.207(a)(5). That section states:

(a) *General Rule.* A person must file a petition when seeking:

.....

(5) Any other action which is in the discretion of the Commission and for which this chapter prescribes no other form of pleading.

pursuant to NGA section 4(d) and section 154.203 of the Commission's regulations, actual tariff sheets implementing the agreement consistent with the terms of the agreement as approved by the Commission. The Commission will treat such a filing as a filing to comply with the Commission's order approving the agreement, and the Commission will place tariff sheets that properly implement the agreement, as approved, into effect on the date provided for in the agreement.

The Commission orders:

(A) The April 1, 2005 Agreement filed by Dominion is approved as fair and reasonable and in the public interest.

(B) Dominion is directed to file actual tariff sheets in accordance with the terms of Article VI of the Agreement.

By the Commission. Commissioner Kelly concurring with a separate statement attached.

(S E A L)

Linda Mitry
Deputy Secretary

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KELLY, Commissioner, *concurring*:

In their comments, the Public Service Commission of the State of New York, the American Public Gas Association, and the City of Richmond, Virginia express concern about the adequacy of the FERC Form No. 2 data for analyzing the reasonableness of a pipeline's rates. They state that FERC Form No. 2 should be modified to allow interested parties to efficiently perform an accurate review of a pipeline's rates. I would support a review by Commission staff of the adequacy of the current FERC Form No. 2 data to address these concerns.

	_____ Suede G. Kelly
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