

112 FERC ¶ 61,321
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket No. RP03-623-002

ORDER ON REHEARING

(Issued September 20, 2005)

1. On October 31, 2003, the Commission issued an order accepting revised tariff sheets filed by Dominion Transmission, Inc. (Dominion).¹ Dominion filed the tariff sheets to update its effective Transportation Cost Rate Adjustment (TCRA) pursuant to section 15 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff.
2. Michael J. Wilhelm (Mr. Wilhelm),² who protested Dominion's filing, seeks rehearing of the October 31, 2003 Order. The Commission grants rehearing to the extent discussed below.

I. Background

3. Dominion filed the revised tariff sheets on September 30, 2003, proposing to adjust its Current Account No. 858 base rates to collect its Current Transportation Costs in accordance with GT&C section 15.3 and to update its TCRA surcharge rates effective November 1, 2003, pursuant to GT&C sections 15.4 and 15.5. Dominion stated that, as

¹ *Dominion Transmission, Inc.*, 105 FERC ¶ 61,173 (2003) (October 31, 2003 Order).

² Mr. Wilhelm is a former employee of Dominion, and is a residential customer of Hope Gas Inc., a local distribution company that receives firm transportation and storage service from Dominion.

required by GT&C section 15.3A, it set its Current Transportation Costs equal to \$37,484,997 per year.³

4. Dominion stated that it also had updated its Unrecovered Transportation Cost Account balance pursuant to section 15.4A of the GT&C. According to Dominion, this computation required the inclusion of certain refund amounts described in section 15.4B of the GT&C, but that it had received no refunds in the period covered by its September 30, 2003 filing. Dominion further stated that section 15.4C of the GT&C required it to include applicable credits to its Unrecovered Transportation Cost Account relating to certain capacity release revenues. Additionally, Dominion stated that it had calculated interest on the deferred account balance in accordance with section 15.4D of the GT&C.

5. Finally, Dominion stated that GT&C section 15.5C requires that, if its actual transportation costs are less than the Current Transportation Costs at issue here, it must share 50 percent of the savings with its customers. Accordingly, Dominion stated that it was returning \$970,000 to its customers by way of a credit to the TRCA surcharge.

6. Mr. Wilhelm protested the filing, contending that it violated the Commission's orders in previous Dominion cases, the Commission's regulations, and Dominion's tariff. Mr. Wilhelm also argued that Dominion repeated certain violations of the tariff and further asserted that the relief he requested would result in at least \$2.2 million in Cost reductions to Dominion's customers. In its answer to Mr. Wilhelm's protest,⁴ Dominion agreed with certain of Mr. Wilhelm's assertions, disagreed with others, and filed proposed changes to its TCRA surcharge rates in pro forma tariff sheets to reflect corrections it agreed to make.

7. In the October 31, 2003 Order, the Commission found that Dominion's answer sufficiently addressed Mr. Wilhelm's concerns; therefore, the Commission directed Dominion to file actual tariff sheets consistent with the *pro forma* proposals in its Answer.

³ Section 15.4A of the GT&C provides, in pertinent part: "Current Transportation Costs shall equal \$37,484,997 per year in total." That provision resulted from a settlement approved in Docket No. RP00-15-000 in *CNG Transmission Corp.*, 89 FERC ¶ 61,261 (1999).

⁴ Answer of Dominion Transmission, Inc. to Protest of Individual, Docket No. RP03-623-000 (October 27, 2003) (Answer).

II. Discussion

A. Summary of Protest, Answer, and the October 31, 2003 Order

8. A more complete review of Mr. Wilhelm's protest to Dominion's September 30, 2003 filing, Dominion's Answer, and the Commission's October 31, 2003 Order will be helpful in understanding the issues on rehearing.

9. In his protest, Mr. Wilhelm generally asserted that Dominion's filing contained blatant violations of its tariff and that such violations were of a recurring nature. In part, Mr. Wilhelm asserted that Dominion posted confiscated gas quantities on its bulletin board for the July 2002 through June 2003 period, but that Dominion's current filing was silent on the crediting of any amount to customers through the TCRA in accordance with its tariff. Mr. Wilhelm further alleged that the same facts existed in Dominion's prior TCRA filing in Docket No. RP02-565-000. Mr. Wilhelm asked the Commission to require Dominion to comply with its tariff for the TCRA periods at issue in the instant filing and in Docket No. RP02-565-000.

10. Mr. Wilhelm also contended that Dominion historically has ignored its tariff methodology and the Commission's regulations in calculating interest in its TCRA and has failed to exclude unpaid accruals from its interest calculation. In particular, Mr. Wilhelm stated that, in years prior to the year at issue in the instant filing, Dominion had provided monthly TCRA costs, but that it failed to do so in Docket No. RP02-565-000, as well as in its 2003 filing. Additionally, he claimed that Dominion incorrectly calculated the TCRA balance in the 2003 filing because of a misstatement of Actual Transportation Costs for the 2001-2002 TCRA period. Mr. Wilhelm further maintained that a change by Dominion to the format of Workpaper 7 in the earlier period did not provide sufficient information to permit a precise calculation of the amount for TGP FT-A/Capstone. Claiming to rely on public information sources, Mr. Wilhelm calculated what he believed to be the correct amount, which would reduce the Docket No. RP02-565-000 Actual Transportation Costs and the Prior TCRA Balance to reflect the correct revenue sharing amount.

11. Mr. Wilhelm also contended that Dominion should be required to explain discrepancies in various quantities and rates stated in the filing. In particular, he cited monthly billing units, usage quantities, rates, and the mathematical calculations included in the workpapers. Finally, he argued that Dominion should indicate the TCRA revenues received from customers under negotiated rate agreements.

12. In the Answer, Dominion stated that Mr. Wilhelm raised five issues, the largest of which was his assertion that Dominion incorrectly applied one provision of its 1999 settlement in Docket No. RP00-15-000 during the TCRA period from July 1, 2001,

through June 30, 2002. Dominion contended that its treatment of the costs of its Capstone project in the previous year's TCRA was (1) consistent with the RP00-15-000 settlement, (2) not contested by any of Dominion's customers, and (3) was accepted by the Commission in a letter order issued October 30, 2002 in Docket No. RP02-565-000. Thus, Dominion argued that the issue is now *res judicata* and that no new circumstances exist that warrant revisiting the issue.

13. Dominion further contended that the final four issues raised by Mr. Wilhelm had a cumulative impact of approximately \$300,000 on its filing. Dominion agreed that it erroneously confiscated a portion of the unauthorized gas during the TCRA period and erroneously continued to reflect such quantities as a reduction of the gas otherwise required for fuel. Dominion provided a revised Workpaper 7 to correct the error in its TCRA calculation. Dominion also corrected its filing to incorporate the proper revenue sharing credit and reduce applicable interest costs. Otherwise, Dominion asserted that its interest computations were consistent with its tariff and applicable settlement provisions.

14. Dominion asserted that claimed discrepancies between various quantities in its workpapers arose from the mathematics involved in its preparation of the filing and the rounding of certain amounts. Dominion emphasized that this would cause no measurable impact to its proposed tariff rates.

15. Concerning the application of revenues from negotiated rate agreements in the TCRA filing, Dominion maintained that, for the previous year and at the recommendation of Mr. Wilhelm, it used a total contract demand approach to evaluate TCRA recoveries from volumetric negotiated rates, and upon further evaluation, Dominion believed that such an approach is incorrect. Thus, Dominion stated that it would treat all volumetric negotiated rates like any other usage rate to determine TCRA recovery amounts, and it included a revised page 2 to Workpaper 5.

16. In the October 31, 2003 order, the Commission concluded "that [Dominion's] proposed changes to its filing reflected in its answer adequately address [Mr. Wilhelm's] concerns about [Dominion's] filing and will be accepted. The Commission ordered Dominion to file actual tariff sheets consistent with the *pro forma* proposals in its Answer.

B. Request for Rehearing of the October 31, 2003 Order

17. In his request for rehearing, Mr. Wilhelm articulates six challenges to the October 31, 2003 Order. The Commission grants rehearing to the extent discussed below.

1. **Limiting TCRA Corrections to the July 2002 through June 2003 Period**

18. Mr. Wilhelm asserts that the Commission erred in limiting Dominion's TCRA corrections to the period from July 2002 through June 2003. According to Mr. Wilhelm, section 15 of Dominion's GT&C addresses recovery of the Transportation Costs at issue. Mr. Wilhelm contends that section 15.4.A specifies that the Unrecovered Transportation Cost Account is the difference between costs accrued and revenues recovered. In other words, explains Mr. Wilhelm, as capped by the level established in section 15.3.A of its GT&C, Dominion's customers are required to pay these costs, with the limited exception of the cost savings provision of section 15.5.C.

19. Mr. Wilhelm maintains that, because Dominion's TCRA is essentially a cost tracker, the Commission should evaluate Dominion's filing under its cost tracker policy. Mr. Wilhelm also cites *Transcontinental Gas Pipe Line Corp. (Transco)*,⁵ contending that the Commission determined in that order that the pipeline had the right to collect costs as much as eight years old through its cost tracker mechanism, stating that "no party should gain or lose" through the tracker mechanism.

20. Mr. Wilhelm further asserts that the Commission's failure to correct TCRA costs claimed prior to July 2002 is amplified given that Dominion acknowledged in its Answer that it had overcollected costs from its customers in at least three ways prior to July 2002. However, continues Mr. Wilhelm, Dominion's Cost Quote then contradicts these admissions.

21. First, Mr. Wilhelm claims that Dominion admitted overcharging customers when it agrees that "its methodology should have changed as a result of the RP00-632 settlement, consistent with Section 15.5.F of the GT&C."⁶ Mr. Wilhelm asserts that the Commission approved this change in its October 26, 2001 Order in Docket No. RP00-632 and that First Revised Sheet No. 1117 became effective November 1, 2001.⁷

⁵ 95 FERC ¶ 61,299 (2001).

⁶ Mr. Wilhelm cites the Answer of Dominion Transmission, Inc. to Protest of Individual, Docket No. RP03-623-000 (October 27, 2003) at 3-4. Section 15.5F of the GT&C provides, in part, "Revenue credits ... shall be returned to customers as an adjustment to the Pipeline's Unrecovered Transportation Cost Surcharge."

⁷ Dominion Transmission, Inc., Docket Nos. RP00-632-005 and RP00-632-006, Unpublished Office Director Letter Order (October 26, 2001).

22. Mr. Wilhelm states that Dominion further admitted overcharging its customers in its calculation of interest. Mr. Wilhelm points out that Dominion acknowledged that "incorporating the revenue sharing credit should be done" and, thus, reduced its interest overcollection.⁸ However, Mr. Wilhelm argues that the improper methodology that was included in the calculation of interest in Dominion's prior TCRA (Docket No. RP02-565-000) was not corrected.

23. Mr. Wilhelm claims that the third admission of overcharging involves the application of revenues from negotiated rate agreements.⁹ Mr. Wilhelm contends that Dominion acknowledged that it previously used an approach that it now believes is incorrect. In particular, Mr. Wilhelm asserts that, while Dominion made a correction for the period from July 2002 through June 2003, it failed to correct the prior overcollection.

24. Finally, states Mr. Wilhelm, the Commission's failure to review Dominion's Capstone facilities costs for the period July 2001 through June 2002 appears to be based on Dominion's false claim that the Commission approved Dominion's annual TCRA filing in Docket No. RP02-565-000 in an October 30, 2002 letter order (RP02-565-000 order) and that there are no new circumstances that would warrant revisiting these costs.¹⁰ Mr. Wilhelm argues that, in Paragraph 9 of the RP02-565-000 order, the Commission accepted the filing with the caveat that "such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company." In other words, continues Mr. Wilhelm, like all tracker filings, the proceeding in Docket No. RP02-565-000 was not approved, but accepted pending future action. Moreover, Mr. Wilhelm challenges Dominion's claim that there are no new circumstances, which he contends ignores the issues he raised in his protest. Mr. Wilhelm emphasizes that he raised claims in his intervention in the instant proceeding that were not raised in Docket No. RP02-565-000, but must be addressed now.

25. The Commission finds that Dominion's tariff does not appear to preclude prior period adjustments to correct errors. In fact, section 15.4B of the GT&C states that all Transportation Cost refunds prior to February 1, 2000, surcharges, and out-of-period adjustments shall be debited or credited to the appropriate subaccount. Additionally, it is

⁸ Mr. Wilhelm cites the Answer of Dominion Transmission, Inc. to Protest of Individual, Docket No. RP03-623-000 (October 27, 2003) at 4.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 3.

generally consistent with Commission policy to find that trackers are intended to make the pipeline and its shippers whole and that prior period adjustments to tracker rates are appropriate if the tariff has not been followed. Accordingly, we grant rehearing to the extent we find that we are not precluded from addressing Mr. Wilhelm's concerns regarding prior periods.

26. In addition, upon further consideration, the Commission finds that it is unclear whether Dominion's statement at page 4 of its Answer, that "Correcting the omission results in crediting \$14,846 to Actual Transportation Costs," refers back to the period covered by the settlement in Docket No. RP00-632-000,¹¹ *i.e.*, July 1, 1999, through June 30, 2000, or only to the period covered by Dominion's September 30, 2003 filing in the instant proceeding, *i.e.*, July 1, 2002, through June 30, 2003. The Commission grants rehearing with respect to this issue and directs Dominion to clarify the effective date of its correction to the methodology. If Dominion's correction dates only to the period covered by its September 30, 2003 filing in the instant docket, Dominion is further directed to correct its rates and make appropriate credits if necessary back to November 1, 2001, the effective date of the Docket No. RP00-632-000 settlement.

2. Review of TGP FT-A/Capstone Costs in Docket No. RP02-565-000

27. Mr. Wilhelm argues that the Commission erred in accepting Dominion's claim that the Commission cannot review the TGP-FT-A/Capstone costs included in Dominion's filing in Docket No. RP02-565-000. Mr. Wilhelm maintains that the Commission should reject what he characterizes as Dominion's inaccurate claim that the level of TGP FT-A/Capstone costs included in Docket No. RP02-565-000 is settled. Mr. Wilhelm contends that the Commission should require Dominion to explain why it charged the TCRA with \$19.8 million of costs for the period from July 2001 through June 2002, despite the fact that the Capstone facilities were not placed in service until November 2001. Mr. Wilhelm provides an alternate calculation that he claims would reduce the Docket No. RP02-565-000 Actual Transportation Costs by at least \$3.8 million, resulting in a reduction of TCRA costs by at least \$1.9 million. Specifically, Mr. Wilhelm contends that the Commission should require Dominion to restate the correct TGP FT-A/Capstone amounts for the period from July 2001 through October 2001. Then, continues Mr. Wilhelm, the Commission should require Dominion to make adjustments to reflect the correct revenue sharing amount.

¹¹ Approved in *Dominion Transmission, Inc.*, 96 FERC ¶ 61,288 (2001).

28. Mr. Wilhelm states that the basis of the \$19.8 million annual cost level included in Docket No. RP02-565-000 is the Commission-approved settlement in Docket No. RP00-15-000 (Docket No. RP00-15-000 settlement).¹² According to Mr. Wilhelm, section 5.3 of the stipulation and agreement filed in Docket No. RP00-15-000 permitted Dominion to charge \$19.8 million annually for TGP FT-A/Capstone once Dominion placed the Capstone facilities in service. Mr. Wilhelm contends that Dominion's November 2, 2001 filing in Docket No. CP00-64-000 reflects an in-service date of November 1, 2001, for the Capstone facilities. In other words, continues Mr. Wilhelm, Capstone was in service for only the final eight months of this TCRA period, so Dominion should have included only eight months of the annual \$19.8 million for Capstone, plus the actual TGP FT-A costs for the period July 2001 through October 2001. Further, Mr. Wilhelm states that, by changing the format of Workpaper 7 in Docket No. RP02-565-000, Dominion did not provide sufficient information to allow a determination of the amount for TGP FT-A/Capstone. Although he asserts that the Commission should require Dominion to provide the actual monthly information for the relevant TCRA period, Mr. Wilhelm states that he used various public information sources to estimate that the correct amount as follows:

1) July-October, 2001 TGP FT-A costs	
2) Total 2001 TGP FT-A costs	\$7,108,320
(2001 Dominion Form 2, Page 332, Line 1, Column c)	
3) Less January-June, 2001 TGP FT-A costs	\$5,029,165
(Docket No. RP01-626, Workpaper 7, Line 4, Columns 8-13)	
4) Net costs	\$2,079,155
(Line 2 - Line 3)	
5) July-October 2001 TGP FT-A fuel estimate	\$700,585
(Estimate - Docket No. RP01-626, Workpaper 7, Line 5, Columns 10-13)	

¹² See *CNG Transmission Corp.*, 89 FERC ¶ 61,304 (1999).

6) Eight months of \$19.8 million Capstone annually \$13,200,000

(\$19.8 million / 12 months * 8 months)

7) Total estimated TGP FT-A/Capstone (Line 4 + Line 5 + Line 6) \$15,979,740

29. Mr. Wilhelm contends that using these figures would reduce the Docket No. RP02-565-000 Actual Transportation Costs by more than \$3.8 million (\$19,800,000 - \$15,979,740). Thus, he claims that, by applying the revenue sharing principles of section 15.5 of Dominion's GT&C, Dominion should have reduced its TCRA costs by at least \$1.9 million (50 percent of \$3.8 million). Mr. Wilhelm maintains that the Commission should first require Dominion to reflect the correct TGP FT-A amounts for the period July 2001 through October 2001, and then the Commission should require Dominion to make adjustments to reflect the correct revenue sharing amount.

30. Section 15.5C of Dominion's tariff states: "If Actual Transportation Costs are less than Current Transportation Costs, then fifty percent of any amount by which Actual Transportation Costs are less than Current Transportation Costs shall be returned to customers as an adjustment to the Pipeline's Unrecovered Transportation Cost Surcharge."

31. Upon further review, the Commission finds that Dominion's Answer did not address Mr. Wilhelm's concerns adequately. Accordingly, the Commission directs Dominion to explain why it charged the TCRA with the full \$19.8 million of annual costs instead of a reduced amount to reflect the fact that the Capstone facilities were in service only for the eight-month period beginning November 1, 2001, during the twelve-month period covered by that filing. Alternatively, the Commission directs Dominion to recalculate its TCRA to reflect an appropriate reduced cost amount for that period and an appropriate adjustment to reflect the 50 percent sharing requirement.

3. Confiscated Gas Amounts

32. Mr. Wilhelm argues that the Commission erred in accepting Dominion's inclusion of confiscated gas amounts as Actual Transportation Costs. According to Mr. Wilhelm, Dominion acknowledged in its Answer that it originally filed to retain amounts that should have been credited to the TCRA. Mr. Wilhelm points out that, on Workpaper 7, Page 2, Dominion lists the monthly quantities it confiscated with no reconciliation to its bulletin board postings. For example, continues Mr. Wilhelm, Dominion asserts that it confiscated 212 Dth of gas in January 2003, while its bulletin board posting for the same month listed two customers -- one with 244 Dth and the other with 677 Dth.

Mr. Wilhelm states that, “[g]iven its admission of past guilt on this issue,”¹³ Dominion should be required to reconcile Workpaper 7 with its bulletin board postings.

33. Mr. Wilhelm states that Dominion calculates the value of confiscated gas for the period as \$14,846 and includes this amount as a reduction to Actual Transportation Costs on Workpaper 7, Page 1. However, Mr. Wilhelm maintains that Dominion has no tariff or other basis for crediting this amount to Actual Transportation Costs. Rather, he continues, section 15.5.F of Dominion's GT&C states that this amount "shall be returned to customers as an adjustment to the Pipeline's Unrecovered Transportation Cost Surcharge."

34. Mr. Wilhelm contends that, while the difference in approach may appear to be semantic, the result has financial impact. Mr. Wilhelm maintains that Dominion's Answer would permit it to keep half of the \$14,846 because of the cost sharing provisions of the TCRA. However, Mr. Wilhelm emphasizes that Dominion's tariff provides that all of the \$14,846 is to be credited to the TCRA, and he asks the Commission to correct the error.

35. The Commission finds that Dominion's Answer did not adequately address this issue and grants rehearing as follows. In its Answer, Dominion clarified that the amounts posted on its EBB are unauthorized gas and only include some portion of the gas that is confiscated. Therefore, there is no inherent discrepancy between the information posted on its EBB and its confiscated gas figures. However, to ensure clarity and transparency, the Commission directs Dominion to provide the actual confiscated amounts by month. Moreover, the Commission directs Dominion to list confiscated gas volumes separately on its EBB and record them in a separate account. Further, the Commission directs Dominion to either explain why the value of confiscated gas is credited to Actual Transportation Costs or correct its rates to reflect the appropriate crediting. The Commission can find no tariff basis for this crediting, but rather, consistent with Mr. Wilhelm's assertion, it appears that section 15.5F of Dominion's tariff provides for this amount to be returned to Dominion's customers as an adjustment to the Unrecovered Transportation Cost Surcharge.

4. Dominion's Interest Calculation

36. Mr. Wilhelm asserts that the Commission erred in accepting Dominion's interest calculation, which was based on the full \$37.5 million in stipulated annual Current Transportation Costs, as set forth in GT&C section 15.3.A, without reduction for unpaid

¹³ Request of [sic] Rehearing of Michael J. Wilhelm (November 28, 2003) at P 21.

accruals. Dominion stated in its Answer that Article 4.1A of the stipulation and agreement in Docket No. RP00-15-000 provides that its Current Transportation Costs shall be deemed to be \$37.5 million, regardless of “actual costs incurred. According to Dominion, consistent with GT&C section 33, it applied the Commission carrying charge rate to this \$37.5 million settlement-established cost level as the appropriate “carrying charge base” to calculate the interest component of its TCRA. Dominion further stated that it had identified “Actual Transportation Costs” in order to implement the shared savings aspect (Article 4.2) of the RP00-15-000 settlement.

37. Mr. Wilhelm states that section 15.4.D of Dominion's GT&C refers to section 33 for the calculation of interest on its TCRA balances.¹⁴ Specifically, asserts Mr. Wilhelm, section 33.2 specifies that interest will be at the prevailing Commission interest rate times the carrying charge base. Mr. Wilhelm also states that this section requires that unpaid accruals must be excluded prior to calculating interest.

38. Mr. Wilhelm maintains that page 4 of Dominion’s Answer reflects the pipeline’s lack of understanding of the concept of unpaid accruals. Mr. Wilhelm maintains that Dominion is correct in stating that the Docket No. RP00-15-000 settlement provides that Current Transportation Costs are deemed to be \$37.5 million, regardless of actual costs incurred. However, Mr. Wilhelm argues that Dominion’s claim that this amount is the correct carrying cost base for interest calculation ignores GT&C section 33.2.A, which provides that the carrying cost base must be "reduced for unpaid accruals."

39. Mr. Wilhelm contends that Dominion fails to understand the meaning of the term "unpaid accruals," which he claims are merely amounts that are legitimately included in an account using accrual accounting for which no payment has been made. Mr. Wilhelm further maintains that the principle of excluding unpaid accruals from interest calculation reflects the fact that a pipeline need not collect interest on funds it has not expended. Mr. Wilhelm challenges what he claims is Dominion’s apparent belief that, even if it spent nothing on TCRA costs, it could still charge interest as if it had spent \$37.5 million.

¹⁴ Section 15.4 of Dominion’s GT&C provides as follows:

Each month the Transportation Cost sub-account of Account No. 186 shall be debited (in the event of a debit balance) or credited (in the event of a credit balance) with interest on the prior month’s ending balance calculated by utilizing the procedures set forth in Section 33 of the General Terms and Conditions.

40. Mr. Wilhelm contends that the Commission should require Dominion to state its actual monthly TCRA costs for all relevant periods so that it can calculate the carrying charge base correctly, as well as computing interest correctly. According to Mr. Wilhelm, because Dominion consistently has spent less than the Current Transportation Costs, its customers will receive lower interest costs.

41. The Commission agrees with Mr. Wilhelm on this issue and, accordingly, grants rehearing. Section 33.2A of the GT&C states as follows: “The carrying charge base for the refund, revenue credits, and billing adjustments subaccount will be the prior month’s ending refund, revenue credit, and billing adjustment subaccount balance of Account No. 186, adjusted for any applicable deferred income taxes recorded and reduced for any unpaid accruals.”

42. The issue is whether the \$37.5 million in Current Transportation Costs is the Carrying Charge Base as referred to in GT&C section 33.2A and whether that amount should be reduced for unpaid accruals as provided therein, and consequently, whether the interest calculation should be modified accordingly. Upon further review, it appears that this is the case for the reason stated by Mr. Wilhelm. Section 33.2A expressly provides for such reduction and there is nothing in the tariff or settlement that suggests otherwise. The Commission directs Dominion either to (1) credit the \$37.5 million in Current Transportation Costs for any unpaid accruals, beginning with the period covered by the Docket No. RP00-15-000 settlement, and to adjust its interest calculations for actual TCRA monthly costs accordingly, or, (2) to provide a thorough explanation for its methodology if it believes it should not make these adjustments and how its accounting methodology has been consistent with its tariff, the Docket No. RP00-15-000 settlement, and any subsequent settlements and Commission orders.

5. Collection of TCRA Amounts from Volumetric Negotiated Rates

43. Section 15.4A of the GT&C provides, in pertinent part, that the Unrecovered Transportation Cost Account shall be debited (increased) by Dominion’s current transportation costs and credited (reduced) by revenues it receives attributable to Transportation Costs reflected in its rates, *i.e.*, TCRA reservation and usage surcharges. In its Answer, Dominion stated that, in a previous year, it had used a total contract demand approach to evaluate TCRA recoveries from volumetric negotiated rates. However, Dominion stated that, upon re-evaluating the issue, it concluded that this was an incorrect approach, so it treated all volumetric negotiated rates like any other usage rate to determine TCRA recovery amounts. Dominion explained that this approach resulted in an additional \$97,104 credit to its proposed TCRA Usage Surcharge.

44. On rehearing, Mr. Wilhelm contends that the Commission erred in allowing Dominion to understate the collection of TCRA amounts from volumetric negotiated

rates. Mr. Wilhelm asserts that, on pages 5 and 6 of its Answer, Dominion indicated that it had treated "all volumetric negotiated rates like any other usage rate, to determine TCRA recovery amounts." However, Mr. Wilhelm maintains that this is not correct based on the Commission's orders relating to negotiated rates on the Dominion system.

45. Mr. Wilhelm maintains that Dominion's authority to charge negotiated rates was established in Docket No. RP96-383. Mr. Wilhelm points out that, in its September 30, 1997 order in that docket, the Commission stated that "when a pipeline chooses to use the new authority to negotiate new rate forms (such as index rates or non-SFV rates), the Commission must be assured that no harm will occur to the shippers still taking service using the existing form of rates."¹⁵ Mr. Wilhelm asserts that Dominion's recourse rates are based on an SFV rate design, under which the vast majority of TCRA costs are recovered via reservation rates. However, he explains that shippers using volumetric negotiated rates pay no such reservation rate despite having equivalent firm rights to use Dominion's system.

46. Mr. Wilhelm argues that, for Dominion to comply with the Commission mandate of "no harm," the pipeline must recover more than just usage-based TCRA costs, *i.e.*, it also must collect some level of reservation-based TCRA costs. He contends that Dominion has the ability to calculate the "no harm" collection amount quite easily, because Sheet No. 32 of its tariff includes the volumetric equivalent of its Rate Schedule FT Reservation Rate. According to Mr. Wilhelm, the sum of this rate (labeled CAPACITY RELEASE (Vol. Charge)) and the usage charge yields the 100-percent load factor rate. Mr. Wilhelm further maintains that the use of the 100-percent load factor rate for TCRA collection purposes would provide the "no harm" that the Commission mandated.

47. Mr. Wilhelm argues that this issue can be explained by reference to Sheet No. 1406 of Dominion's GT&C. He explains that, during the period from November 2002 through March 2003, the shipper paid Dominion \$0.40 per Dth for all transportation, with a minimum throughput of 420,000 Dth. However, he continues, based on Dominion's revised approach and assuming the minimum throughput level, Dominion credited only \$3,234 of the \$168,000 collected to the TCRA. In contrast, Mr. Wilhelm asserts that using the 100-percent load factor rate, Dominion should credit \$14,616 of the \$168,000 collected to the TCRA. In his view, using only the usage rate to determine TCRA revenues creates a shifting of costs to the recourse rate customers, an outcome that is inconsistent with the Commission's policy on negotiated rates. Therefore, concludes Mr. Wilhelm, the Commission should require Dominion to recalculate the TCRA

¹⁵ *CNG Transmission Corp.*, 80 FERC ¶ 61,401 at 62,328 (1997).

revenues for volumetric negotiated rates for all relevant periods, not just for the period from July 2002 through June 2003.

48. Upon further consideration, the Commission directs Dominion either to make the corrections as Mr. Wilhelm suggests, with supporting calculations and working papers, or to provide a more complete explanation of and support for its adjustment to the TCRA for volumetric negotiated rate revenues and to demonstrate how its adjustment is consistent with applicable settlements, its tariff, and Commission orders. In particular, Dominion must demonstrate that no shipper is harmed by its methodology.

6. Collection of TCRA Amounts from Lump Sum Negotiated Rate Payments

49. Mr. Wilhelm argues that the Commission erred in not requiring Dominion to explain the collection of TCRA amounts from lump sum negotiated rate payments. He asserts that the Commission did not require Dominion to respond to the question he raised in his protest regarding the attribution of lump sum payments under negotiated rate agreements to the TCRA. In fact, Mr. Wilhelm emphasizes that Dominion's Answer was silent on this critical issue.¹⁶

50. Mr. Wilhelm maintains that Dominion's tariff cites two types of lump sum payments. He states that the first is the minimum quantity provision, such as found on Sheet No. 1406 of Dominion's GT&C. According to Mr. Wilhelm, the second type is the purchase of reduction rights by Dominion's affiliate, Dominion East Ohio (DEO), pursuant to Sheet No. 1413 of Dominion's GT&C. Mr. Wilhelm reiterates that the Commission requires that recourse rate shippers not bear costs shifted to them from negotiated rate shippers.

51. Mr. Wilhelm contends that, for the first type of payment, the Commission should require Dominion to (1) list all revenues received to fulfill the minimum quantity provision and (2) credit the TCRA based on the 100-percent load factor rate with interest. He claims that this list should include not only this TCRA period but also all prior TCRA periods for which Dominion understated TCRA revenues received.

52. For the second type of payment, continues Mr. Wilhelm, Dominion should indicate how much revenue it has received from DEO since April 2001. Mr. Wilhelm submits that, because these payments were made to allow for DEO to reduce its firm

¹⁶ Mr. Wilhelm cites the Answer of Dominion Transmission, Inc. to Protest of Individual, Docket No. RP03-623-000 (October 27, 2003) at 5-6.

rights, and DEO has reduced its firm contract entitlements, recourse rate shippers have been forced to absorb the TCRA costs previously paid by DEO. Mr. Wilhelm asserts that, because DEO has reduced its FTNN MDTQ by 21,333 Dth, Dominion has shifted costs previously recovered from DEO for these quantities to its other customers, despite Dominion's collection of \$5,400,000 under this negotiated rate agreement since April 2001.

53. Mr. Wilhelm asserts that, to rectify this error, the Commission should require Dominion to (1) list the monthly firm entitlement reductions DEO has exercised since April 2001, (2) value these reductions by the then-effective monthly TCRA rate, (3) calculate interest on these amounts, and (4) credit this total amount to the TCRA.

54. The Commission agrees that Dominion failed to address this issue and grants rehearing for the reasons stated by Mr. Wilhelm to the extent set forth below. Dominion must file to list all revenues received to fulfill the minimum quantity provision, and must credit all lump sum reservation revenues to the TCRA based on the 100-percent load factor rate, with interest. In the filing required by this order, Dominion must (1) list the monthly firm entitlement reductions DEO has exercised since April 2001, (2) value these reductions by the then-effective monthly TCRA rate, (3) calculate interest on these amounts, and (4) credit this total amount to the TCRA.

The Commission orders:

(A) Rehearing of the October 31, 2003 Order is granted to the extent described in the body of this order.

(B) Within 20 days of the date of issuance of this order, Dominion must file to comply with requirements set forth in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.