

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Dominion Transmission, Inc.

Docket No. RP02-551-001

ORDER ON REHEARING AND CLARIFICATION

(Issued October 27, 2003)

1. On November 22, 2002, Dominion Transmission, Inc. (DTI) requested clarification, or in the alternative rehearing of a October 23, 2002 letter order rejecting a filing DTI ostensibly made to adjust base rates to comply with a prior rate case settlement, but which also reflected adjustments to certain penalties and to the amounts of penalty revenues it may retain as listed on Sheet No. 39 of its tariff. DTI seeks rehearing and clarification of that order in light of the Commission's acceptance of subsequent filings including similar changes to Sheet No. 39. In this order, the Commission denies rehearing, clarifies which tariff sheet is in effect, and clarifies the appropriate procedure DTI is to follow under its Order No. 637 Settlement regarding changes in penalties and penalty retention amounts. Further, the Commission is directing DTI to revise its tariff to clarify these procedures for future filings and to remove or justify certain revised penalties. This order is in the public interest because it clarifies DTI's tariff obligations in an open and transparent manner.

Background

2. On March 30, 2001, DTI filed a proposed settlement of its Order No. 637 compliance proceeding in Docket No. RP00-344-000 (Order No. 637 Settlement or Settlement), which was subsequently accepted by the Commission.¹ Among the issues settled were the level of penalties DTI could charge for unauthorized overruns and what

¹ The Order No. 637 Settlement resolved issues arising out of DTI's June 15, 2000 Order No. 637 Compliance filing in Docket No. RP00-344-000, and DTI's September 29, 2000 Imbalance Netting and Trading filing in Docket No. RP00-601-000. The Order No. 637 Settlement was accepted by the Commission on May 31, 2001, in Dominion Transmission Inc., 95 FERC ¶ 61,316 (2001).

portion of the penalty revenues DTI could retain consistent with the Commission's policy that penalty revenues must be credited to customers net of the pipeline's costs. As approved by the Commission, the Settlement included a pro forma tariff sheet No. 39 which set forth penalties for unauthorized overruns under DTI's Rate Schedules FT/FTNN, GSS, GSS II, and ISS, as well as a stated portion of penalty revenues that DTI could retain expressed as per unit amounts for each such service. Although the settlement was silent on the source of these penalty retention amounts, with two exceptions,² each of the penalty retention amounts listed on that sheet was the same as some other rate in effect at the time the Settlement was filed with the Commission. For example, the amount DTI could retain from each \$10.00 of penalty revenues for overruns under the FT/FTNN rate schedules (\$0.2063) was identical to the maximum IT rate in effect at the time the Settlement was filed with the Commission.³

3. In addition to listing settled penalty retention amounts on Sheet No. 39, the Settlement also established an alternative mechanism for determining the amounts of penalty revenues DTI may retain.⁴ It specified that DTI could retain from penalty revenues its "Related Costs," which were defined as "all out-of-pocket costs incurred as a direct result of an Offending Customer's unauthorized overrun, failure to abide by an OFO, or other misconduct, provided that DTI demonstrates that the costs are not already recovered in rates."⁵ The Settlement provided, however, that DTI was not required to credit amounts below the settled penalty retention amounts listed on Sheet No. 39. To date, DTI has always elected to retain the amounts specified on Sheet No. 39.⁶ Finally, the Settlement provided that DTI may file new penalties, *inter alia*, "if reasonably required to ensure its continued ability to render service to its firm customers".⁷

² For example, although very close to the GSS and ISS Excess Deliveries from Customer Balance base rate of \$0.6277, there was no rate on file that corresponded exactly to the \$0.6327 retention amount for Rate Schedule GSS or ISS Unauthorized Withdrawal Overrun Charges.

³ See 6th Revised Sheet No. 32 to DTI's FERC Gas Tariff, Third Revised Volume No. 1.

⁴ See DTI's General Terms and Conditions, §41(E)(1); see also DTI's March 30, 2001 Offer of Settlement and Explanatory Statement in Docket Nos. RP00-344-000 and RP00-601-000.

⁵ *Id.*

⁶ See, e.g., DTI's Report of Overrun/Penalty Revenue Distribution filed July 22, 2002, in Docket No. GT02-31-000.

⁷ Settlement, at Section 7.3.

4. Following implementation of the Settlement, on February 15, 2002, DTI filed a revised Sheet No. 39 (Third Revised Sheet No. 39) in Docket No. RP02-159-000 that reflected reduced penalty retention amounts and reduced Rate Schedule GSS and ISS Daily Injection Unauthorized Overrun Charge penalties. In its transmittal letter, DTI stated:

It recently came to DTI's attention that subsequent to the effective date of Second Revised Sheet No. 39, DTI has changed its underlying rates in TCRA, EPCA, and ACA proceedings but neglected to track these changes through its overrun charges as shown on Sheet No. 39. Third Revised Sheet No. 39 is filed to correct this error.

The filing was unopposed and was accepted in an unpublished director letter order issued March 13, 2002.

5. On September 19, 2002, DTI filed 44 revised tariff sheets in the instant Docket No. RP02-551-000, containing revised base rates with a proposed effective date of November 1, 2002, which it stated was in compliance with its 1988 settlement of its general rate proceeding in Docket Nos. RP97-406-018, *et al.* However, although it did not so indicate in the transmittal letter, the filing included a revised Sheet No. 39 (Fourth Revised Sheet No. 39) which reflected increased penalty retention amounts for the FT/FNN, GSS, and ISS overrun charges relative to the retention amounts reflected on the Sheet No. 39 in effect at the time (*i.e.*, Third revised Sheet No. 39 as accepted by the March 13, 2002 letter order). Further, the new revised Sheet No. 39 reflected increased GSS and ISS Daily Injection Unauthorized Overrun Charge penalties. Finally, unlike the Settlement Sheet No. 39, the new revised Sheet No. 39 reflected penalty retention amounts for GSS and ISS Unauthorized Withdrawal Overrun Charges as well as GSS and ISS Daily Injection Unauthorized Overrun Charge penalties that appeared to track the GSS "From Customers Balance" total rate on another tariff sheet included in the September 19, 2002 filing.⁸ In a letter order issued October 23, 2003, the Commission rejected Fourth Revised Sheet No. 39 because it reflected changes not reflected in the transmittal sheet and not otherwise justified, and because the sheet did not comply with Part 154.7(4)⁹ of the Commission's Regulations for a new NGA Section 4 filing.

The Request for Rehearing and Clarification

6. In its Request for Clarification and Rehearing, DTI states that on September 19, 2002, it filed, among other sheets, Fourth Revised Sheet No. 39 to implement the phase

⁸ See Eleventh Revised Sheet No. 35.

⁹ 18 C.F.R. § 154.7 (2003).

out of the GSS-II rate schedule, pursuant to a settlement.¹⁰ Fourth Revised Sheet No. 39 also revised rates for unauthorized overrun charges under the remaining rate schedules, because, DTI asserts, “the portion of the overrun charges retained by DTI is derived from the underlying rates for the applicable services. So when the underlying rates change . . . the amount of the overrun charges retained by DTI must change.”¹¹ DTI then explains that, while action was pending on Fourth Revised Sheet No. 39, it filed a Fifth Revised Sheet No. 39 to reflect changes to its Electric Power Cost Adjustment filing on September 30, 2002, in Docket No. RP02-566-000. The Fifth Sheet also had a proposed effective date of November 1, 2002 and the filing stated that it was to replace Fourth Revised Sheet No. 39 in DTI's tariff. This filing was accepted by a Director letter order issued on October 30, 2002.¹² Also on September 30, 2002, DTI filed Sixth Revised Sheet No. 39 in Docket No. RP02-565-000, reflecting DTI's Transportation Cost Rate Adjustment. The filing was accepted by Director letter order on October 30, 2002, with an effective date of November 1, 2002.¹³ That order states that the tariff sheets accepted as part of RP02-565-000 supercedes any filings made in RP02-566-000 or RP02-551-000.

7. In support of this request, DTI explains that Sheet No. 39 was established as part of DTI's Order No. 637 Settlement and that when a customer takes an unauthorized overrun, “DTI retains only the amount it would retain for providing the service were it authorized; the rest of the overrun charge is credited back to non-offending customers.”¹⁴ DTI goes on to explain that if the portion of the overrun charges retained by DTI is not adjusted when the underlying rates change, DTI will either retain too much (if the underlying rates have decreased) or not enough (if the rates have increased).

8. DTI now requests clarification that the correct rates (including the amount of the overrun charge to be retained by DTI) are now in effect and that Sixth Revised Sheet No. 39 is the tariff sheet currently in effect. Finally, DTI requests that the Commission give effect to what DTI claims was the intent of the parties in DTI's Order No. 637 Settlement that the portion of the overrun penalty charges retained by DTI are adjusted as the underlying cost of the service changes.

¹⁰ See CNG Transmission Corp., 85 FERC ¶ 61,261 (1998).

¹¹ DTI's November 22, 2002 Request for Rehearing and Clarification, at 2.

¹² Unpublished letter order in Docket No. RP02-566-000, issued on October 30, 2002.

¹³ Unpublished letter order in Docket No. RP02-565-000, issued on October 30, 2002.

¹⁴ DTI's November 22, 2002 Request for Rehearing and Clarification, at 4.

Discussion

9. DTI's Order No. 637 Settlement was silent on the issue of whether DTI could adjust the amount of penalty revenues it retains to track changes in rates for various services on its system. However, based on the fact that, with the two exceptions noted earlier herein, the Settlement's penalty retention amounts were the same as some other rate in effect at the time the Settlement was filed with the Commission and it has filed, without objection from the parties, several revised Sheets No. 39 to track changes in such other rates. It is, therefore, reasonable to find that the Settlement was intended to provide for such a tracking procedure relative to the penalty retention amounts listed on that sheet. To ensure that this is clear, DTI is directed to file, within 30 days of this order, revised tariff provisions in the General Terms and Conditions of its tariff to clarify exactly to which rates each such penalty retention amount on Sheet No. 39 relates. Further, in each future filing to reflect changed penalty retention amounts on Sheet No. 39 due to changes in such related rates, DTI must clearly indicate in the transmittal letter to the filing that the filing includes such changes and the basis for such changes.

10. DTI has failed to show, however, authority under the Settlement to file to change its GSS and ISS Daily Injection Unauthorized Overrun Charge penalties. Unlike with respect to the majority of its penalty retention amounts, there was no rate on file at the time the Settlement was filed that corresponded to the \$0.6327 Rate Schedule GSS and ISS Daily Injection Unauthorized Overrun Charge penalties in the Settlement's Sheet No. 39. Nor has DTI attempted to show that the revised penalties it has filed are "reasonably required to ensure its continued ability to render service to its firm customers" as required by Section 7.3 of the Settlement. Within 30 days of this order, DTI must either refile Sheet No. 39 to prospectively restore those penalties to the \$0.6327 penalties approved in the Settlement or explain why its revised penalties are authorized by the Settlement.

11. Turning to the other issues raised by DTI in its request for rehearing, the Commission finds that it was not error to reject its September 19, 2002 filing of Fourth Revised Sheet No. 39 for the reasons stated in the October 23, 2002 letter order. While the Commission denies rehearing of the order rejecting Fourth Revised Sheet No. 39, it clarifies that Sixth Revised Sheet No. 39 was the tariff sheet in effect at the time it filed the instant request for rehearing.

The Commission orders:

- (A) Rehearing is denied and clarification is granted as set forth above.

(B) DTI shall, within 30 days of this order, filed revised tariff sheets and supporting explanation, as appropriate, to comply with the directives specified in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.