

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. RP02-551-002
RP02-551-003

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued November 3, 2004)

1. On November 26, 2003, Dominion Transmission, Inc. (DTI) filed a joint compliance filing and request for clarification (or in the alternative rehearing) in response to an order issued by the Commission on October 27, 2003.¹ In that order, the Commission held that certain unauthorized overrun charges (including both a charge for the underlying service ("penalty charge"²) as well as an amount to be retained by DTI ("retention amount")³) in DTI's tariff sheets were fixed in Order No. 637 black box settlement (Order No. 637 Settlement),⁴ while other penalty charge and retention amounts were formula rates intended to be changed over time to track changes in various rates and charges on file. Accordingly, the Commission accepted DTI's proposed changes to the formula-based penalty charges and retention amounts, subject to DTI's providing support for those changes and revising its tariff sheets to clarify its procedures, but rejected DTI's proposed changes to the penalty charges and retention amounts that the Commission found were fixed in the Order No. 637 Settlement.

¹ *Dominion Transmission Inc.*, 105 FERC ¶ 61,128 (2003) (October 27, 2003 Order).

² Called "GTC 41 Contribution" on DTI's Sheet No. 39.

³ Called "To Be Retained by DTI" on DTI's Sheet No. 39.

⁴ 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).

2. DTI now asks the Commission to reconsider its decision to view some of the penalty charges and retention amounts as fixed and argues that the history of the Order No. 637 Settlement is such that it was the intent of the parties to allow those amounts to be modified over time. The Commission grants DTI's request for rehearing, as discussed in the body of this order. Additionally, the Commission accepts DTI's November 26, 2003 compliance filing, including DTI's proposed modifications to its tariff that clarify how revisions to the penalty charges and retention amounts will be handled in the future. Waiver of section 154.22 of the Commission's regulations is granted to permit these changes are made effective November 1, 2003, as proposed.⁵ This order is in the public interest because it clarifies DTI's tariff rates.

I. Background

3. The issues presented in this case have their genesis in DTI's Order No. 637 Settlement. Among the items resolved by the settlement were the level of penalties DTI could charge its shippers for unauthorized over-runs and the portion of penalty revenue DTI was permitted to retain, net of its costs. Both the penalty charge and the retention amounts were listed separately on *pro forma* Sheet No. 39 in the form of volumetric rates and covered unauthorized over-runs under DTI's Rate Schedules FT/FTNN, GSS, GSS II, and ISS. Together, the penalty charge and the retention amount add up to the "total rate", which is total amount paid by the offending shipper in dollars per decatherm for an over-run.

4. Although the Settlement did not specify how DTI had arrived at the penalty charges and retention amounts reflected on *pro forma* Sheet No. 39, all but two of the penalty charges and retention amounts (specifically, those related to the Daily Injection Unauthorized Overrun Charge (DIUOC) for Rate Schedules GSS and ISS) mirrored other rates in effect at the time the Settlement was filed with the Commission.⁶ Since then, DTI has, on a number of occasions filed to modify the underlying DIUOC penalty charges and retention amounts, sometimes reflecting those changes to the penalty charges and retention amounts on Sheet No. 39 and inadvertently sometimes not reflected them.⁷

⁵ 18 C.F.R. § 154.22 (2004).

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

⁷ See, e.g., DTI's Electric Power Cost Adjustment filing on September 30, 2002, in Docket No. RP02-566-000 (unpublished letter order, issued October 30, 2002), and DTI's Transportation Cost Rate Adjustment filing on September 30, 2002 in Docket No. RP02-565-000 (unpublished letter order, issued October 30, 2002).

5. The Commission's October 27, 2003 Order directed DTI to revise the General Terms and Conditions of its tariff to clarify exactly which underlying rates each such penalty charge and retention amount on Sheet No. 39 is based upon. Further, in future filings to reflect changed penalty retention amounts on Sheet No. 39 due to changes in such related rates, DTI was required to clearly indicate in the transmittal letter to the filing that the filing includes such changes and the basis for such changes.

II. Summary of DTI's November 26, 2003 Filing

6. In its November 26, 2003 compliance filing, DTI details the history of the changes to Sheet No. 39 and the other various rates that Sheet No. 39 relies upon. Specifically, DTI provides a chart explaining the derivation of each of the rates reflected on Sheet No. 39 and how DTI derived the penalty charges and the retention amounts now listed on that sheet. DTI also submits a chart with what it claims is the source of each of the rates listed on *pro forma* Sheet No. 39.

7. DTI contends that the Commission should interpret DTI's Order No. 637 Settlement as allowing for all of its GSS and ISS rate schedule DIUOC penalty charges and retention amounts to be floating rates. DTI argues that, due to an administrative error on its part, the DIUOC penalty charges and retention amounts for these two rate schedules found in *pro forma* Sheet No. 39 were not modified to reflect changes to the underlying rates between the period when *pro forma* Sheet No. 39 was filed with the Commission on March 30, 2001, and when *pro forma* Sheet No. 39 was accepted by the Commission on July 31, 2001. During that time period, DTI alleges, the penalty charges and retention amounts were changed with the Commission's approval, but that DTI failed to make the corresponding changes to Sheet No. 39.⁸ According to DTI, this was an administrative oversight that accounts for the discrepancy the Commission noted in the October 27, 2003 Order in the GSS and ISS DIUOC penalty charges and retention amount numbers. DTI now requests that the Commission grant rehearing or clarification to the extent necessary to approve DTI's current compliance filing.

8. DTI's also proposes two changes to its tariff to comply with the October 27, 2003 Order. First, it proposes modifications to Original Sheet 1503 of its General Terms & Conditions (GT&C) that explains how each rate on Sheet No. 39 is derived. DTI also proposes to make conforming changes to Sheet No. 39 that explains in various footnotes what each penalty charge and retention amount is based on.

⁸ See RP01-359-000 (unpublished letter order, issued June 27, 2001), RP97-406-18, *et al.* (CNG Transmission Corp., 85 FERC ¶ 61,216 (1998)), and RP01-74-002, *et al.*, (Dominion Transmission Inc., 94 FERC ¶ 61,329 (2001)).

III. Notice

9. Public notice of DTI's November 26, 2003 compliance filing was issued on December 10, 2003, with protests due on or before December 22, 2003. No protests or comments were received.

IV. Discussion

10. DTI is correct that the penalty charges and retention amounts for Rate Schedules GSS and ISS, as initially proposed on *pro forma* Sheet No. 39 match the rates in effect for the relevant service under the GSS and ISS rate schedule in effect on March 30, 2001. However, by the time *pro forma* Sheet No. 39 was accepted by the Commission on June 1, 2001, DTI had already changed the underlying rates several times without making the appropriate amendments to *pro forma* Sheet No. 39.

11. For instance, the DIUOC retention amount for the GSS rate schedule included on *pro forma* Sheet No. 39 is equal to the Total Injection Charge for the GSS rate schedule on Substitute Third Revised Sheet No. 35; while the total rate included on *pro forma* Sheet No. 39 is equal to the Excess Deliveries Total rate on Substitute Third Revised Sheet No. 35.⁹ Substitute Third Revised Sheet No. 35 was then superceded by Fourth Revised Sheet No. 35, which took effect on April 1, 2001.¹⁰ Once Fourth Revised Sheet No. 35 was placed into effect, DTI should have filed to amend the rates then pending before the Commission on the *pro forma* Sheet No. 39. However DTI failed to do so, and the Commission accepted *pro forma* Sheet No. 39 on June 1, 2001, with the outdated rates still reflected.

12. Likewise, the DIUOC retention amount for the ISS rate schedule included on *pro forma* Sheet No. 39 is equal to the Total Injection Charge for the ISS rate schedule on Substitute Third Revised Sheet No. 35. The DIUOC total rate on *pro forma* Sheet No. 39 is likewise equal to the Authorized Overrun Total Injection Charge rate for the ISS rate schedule on Substitute Third Revised Sheet No. 35.

13. The Commission is convinced that DTI's Order No. 637 Settlement should be interpreted as allowing DTI to modify Sheet No. 39 to reflect changes in the underlying ISS and GSS rate schedules, consistent with the settlement's provisions for tracking changes in other penalty charges and retention amounts. Further, the Commission is also satisfied that DTI's proposed modifications to Ninth Revised Sheet No. 39 and Original

⁹ This rate became effective on January 1, 2001 in *Dominion Transmission, Inc.*, 93 FERC ¶ 61,272.

¹⁰ Fourth Revised Sheet No. 35 was placed into effect by an unpublished letter order dated April 11, 2001, in Docket No. RP00-632-002.

Sheet 1503 will adequately clarify how the penalty charges and retention amounts on future Sheet No. 39s will be determined. Therefore, we grant DTI's request for rehearing. Waiver of section 4(d) of the Natural Gas Act's notice requirements and the applicable regulations is granted to permit DTI's compliance filing to become effective November 1, 2003, subject to revision. DTI is directed to file a revised Sheet No. 39 within 15 days of the date of this order updating the penalty charges and retention amount for Rate Schedules FT/FTNN, GSS, and ISS with the currently effective rates on Sheet Nos. 31, 32 and 35 of its tariff.

The Commission orders:

(A) DTI's request for rehearing of the Commission's October 27, 2003 Order is granted.

(B) Waiver of section 154.22 of the Commission's regulations is granted and DTI's proposed modifications to Ninth Revised Sheet No. 39 and Original Sheet No. 1503 are accepted effective November 1, 2003, as discussed above.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.