UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc. Docket No. CP03-41-001

Texas Eastern Transmission, L.P. Docket No. CP03-43-001

ORDER DENYING REHEARING AND CLARIFYING ORDER

(Issued December 23, 2003)

1. Washington Gas Light Company (WGL) requests rehearing, and Texas Eastern Transmission, L.P. (Texas Eastern) requests clarification or, in the alternative, rehearing, of the Commission's order issued on September 11, 2003.[1] For the reasons discussed herein, this order denies WGL's request for rehearing and grants Texas Eastern's request for clarification.

Background

2. On January 24, 2003, Dominion Transmission, in Docket No. CP03-41-000, and Texas Eastern Transmission, in Docket No. CP03-43-000, filed applications for certificates of public convenience and necessity pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission=s Rules and Regulations. Dominion requested approval of its Mid-Atlantic Expansion Project for which it proposes to construct certain compression facilities on its existing system in Pennsylvania, Virginia, and West Virginia, to lease capacity on Texas Eastern's system in Pennsylvania, and to provide certain firm transportation and storage services on the new and leased capacity. Texas Eastern requested approval of its Dominion Expansion Project for which it proposed to construct facilities that will increase the firm transportation capacity on its system by 223,000 dekatherms per day (Dth/d) and to lease this incremental capacity to Dominion.

3. As a result of an open season, Dominion entered into precedent agreements with

[1] Dominion Transmission, Inc., 104 FERC ¶ 61,267 (2003).

ten-year terms with five customers: WGL, Virginia Natural Gas (VNG), Virginia Power Energy Marketing (VPEM), Columbia Gas of Virginia, and City of Richmond, Virginia (Richmond), for a total of 223,000 Dth/day of firm transportation service and with four of the five transportation customers for a total of 5.6 Bcf of firm storage services. Dominion proposed to charge an incremental, postage stamp Transportation Reservation rate of $8.9868 per Dth per month and a Quantico Compression Reservation rate of $1.9001 per Dth per month for the expansion project. Dominion asserted that all expansion shippers would pay the incremental Transportation Reservation rate, but only those shippers whose delivery point is Quantico, Virginia (the terminus of the PL-1 Line) would be charged the Quantico compressor charge.[2]

The September 11, 2003 Commission Order

4. The September 11, 2003 Order found that the projects are in the public interest because they will provide Dominion's customers with access to an increased supply source via Texas Eastern's upstream supply markets and increase flexibility and reliability on Dominion's and Texas Eastern's pipeline systems. The order further found that Dominion's use of leased capacity on Texas Eastern's system avoids the construction of duplicative facilities, thus minimizing cost and environmental impacts and that the applicants' existing customers will not subsidize the projects. The Commission rejected Dominion's rate proposal and required that Dominion's existing maximum Part 284 rate be its maximum recourse rate for firm storage service and established $9.9070 per Dth per month as Dominion's initial maximum incremental recourse rate for firm transportation service. That order granted the requested certificate authorizations subject to certain modifications and conditions.[3]

Discussion

[2]Since one shipper, WGL, elected Leesburg as its delivery point, it was not to be charged the Quantico compressor charge.

[3]The full background and details of the proposals are set forth in the September 11, 2003 Order at ¶ 4 *et seq*.

Dominion's Precedent Agreement with WGL

5. Washington Gas Light Company contends that the Commission erred in denying it the benefit of securing needed incremental capacity under the rates and terms and conditions as proposed by Dominion.

Summer Rate

6. Dominion proposed to charge WGL a summer reservation rate of $4.2583 for gas transported between Loudoun and Leesburg, Virginia. The September 11 Order rejected the proposed summer rate.

7. On rehearing, WGL argues that the Commission should permit Dominion to charge the summer rate for service between Loudoun and Leesburg as provided in the Precedent Agreement. WGL contends that this would "preserve the sanctity" of the Precedent Agreement that makes the project feasible. WGL also contends that no other shipper is adversely affected, as the costs would not be shifted to them and Dominion is willing to assume the cost of under-recovery. Additionally, WGL avers that other shippers simply would be expected to pay for the costs they incur. WGL asserts that the accepted rate design methodology for the design of system-wide rates should not be controlling for an incremental project wherein rates are designed based on new incremental costs. WGL states that it should not be denied the value associated with the capacity because others did not choose the same option, either by electing the rate differential or electing the Loudoun primary receipt point at the time of the Mid-Atlantic capacity offering.

8. The Commission denies rehearing. Dominion originally proposed the WGL summer rate as a discounted rate, later proposing it as a summer rate. The Commission rejected both proposals in the September 11 Order. Under Rate Schedule FT and FTNN, Dominion's currently effective rate design does not have a seasonal component. The Commission found that a certificate proceeding was not the appropriate forum to propose a seasonal rate design, and informed Dominion of the appropriate procedures. The Commission does not agree with WGL's premise that the difference in rate designs for similar service is of no consequence to other shippers. The Commission has previously

stated its concern with different classes of customers having disparately designed rates, as in the instant case.[4]

[4] See, e.g., Texas Eastern Transmission, LP, 101 FERC ¶ 61,120, 61,478, Preliminary Determination on Non-Environmental Issues (Oct. 31, 2002), Order Issuing

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9. The Commission will not give deference to a pricing agreement that on its face appears unduly preferential or discriminatory. WGL implies that the Commission should only consider shippers who could have bid for the new capacity. However, in evaluating rates, the Commission cannot ignore other shippers on Dominion's system. The interests of these shippers do not relate only to the future costs that may be shifted as the result of disparate rate designs; there are also concerns relating to potential competitors or suppliers to WGL in the secondary market through capacity release**.**

10. WGL argues that Dominion's proposal to be at risk for under-recovery is grounds for approving the summer rate. Dominion's willingness to accept risk, however, is not a basis for approving an initial rate that is otherwise unduly discriminatory or preferential. As explained in the September 11 Order, nothing precludes Dominion from offering a discount to WGL as long as Dominion is willing to offer the same discount to similarly situated customers. Indeed, an initial recourse rate is a maximum rate from which a pipeline may offer a discount.

11. WGL's argument in favor of a summer rate between Leesburg and Loudoun is partly based on the claim that it does not use certain of the incremental facilities (*i.e*., the Overton Interconnection) in the summer. Even if WGL does not use certain receipt points in the summer, this argument is not persuasive. Other shippers on Dominion's system may also have little use for certain receipt points during the summer. Nonetheless, Dominion's existing rates and firm transportation services are based on the premise that it is not possible to identify which transmission facilities are necessary to render a specific service. Dominion's argument for an initial rate here, based on specific facilities used between the

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Certificate, 102 FERC para. 61,245 (2003) wherein the Commission stated in part that

> "[w]hile we accept the rationale for employing peak and off-peak rates, it is not our current practice to approve such value-based rates as initial rates in the context of a certificate proceeding. We addressed this matter in Order No. 637 and determined that pipelines must "implement peak/off-peak rates either through a general Section 4 rate case or a *pro forma* tariff filing. Consequently, in this Section 7 proceeding, we limit our review of the proposed rates for expansion service to considering an initial recourse rate computed on the basis of annual service." [Footnotes omitted.]

receipt and delivery point is contrary to its overall rate design, and settled segmentation rights provided firm shippers in its Order No. 637 proceeding.[5] In the September 11, 2003 Order, the Commission rejected Dominion's rationale, without prejudice to Dominion's proposing to change its rate design and a reexamination of segmentation rights to reflect its new-found ability to path firm services. On rehearing, WGL has not presented arguments to persuade otherwise. This finding is, as stated in the September 11, 2003 Order, without prejudice to any Dominion rate filing wherein it makes such a proposal.

Quantico Compression Reservation Charge

12. WGL objects to including the Quantico Compressor Station costs in the initial incremental rate. WGL states that it does not want to pay these costs which, it contends, are a subsidization of other customers, including the City of Richmond and any other Mid-Atlantic subscriber behind Virginia Natural Gas, that are part of this expansion project. WGL reiterates its earlier argument that system-wide rates should not be controlling in the design of rates for an incremental project. WGL further contends that, under the principle of assigning costs to those who cause them, it should not be assigned Quantico Compressor Station costs. WGL contends that since it will not receive the benefits of the compression, it should not have to pay the Quantico Compressor Station costs.

13. The Commission denies rehearing. In its rehearing request WGL substantively fails to address the Commission's rationale for rejecting Dominion's proposed Quantico Compression Reservation Charge. The Commission rejected the compression charge in part because the General Terms and Conditions of Dominion's existing tariff provides for delivery at pressures reasonably necessary to accomplish such delivery to the shippers and as provided in the contracts. There is no provision for a separate compression service or compression charge. The Commission viewed Dominion's proposal as a change in the service available under its Part 284 Rate Schedules FT and FTNN. As such, the proposal amounted to a negotiated term and condition of service, which the Commission does not permit.[6] The Commission noted in the September 11, 2003 Order that Dominion could, if it so chooses, file for an open access compression service in a Section 4 proceeding, provided it was accompanied with documentation supporting the proposed rate and rate design as required by Section 154.312 of the Commission's regulations.[7]

[5] See Dominion's June 15, 2000 filing in Docket No. RP00-344-000 at p.4 of the transmittal letter and associated five affidavits with regard to segmentation and operations; and Dominion Transmission, Inc., 95 FERC ¶ 61,316 at 62,038 (2000).

[6] 104 FERC ¶ 61,267 at PP 28-31 (2003).

[7] 104 FERC ¶ 61,267 at P 31 (2003).

14. WGL, however, argues on rehearing that deference should be given to the negotiated rate design terms as if the service constituted an incremental service whereby system shippers are protected from the incremental costs. WGL's rate design argument might have some merit if the incremental facilities and services were isolated and not integrated with the rest of the pipeline's system. In such a circumstance concerns with different rate designs leading to future cost allocation inequities, current undue preferences, or discrimination among potential competitors or suppliers, might be mitigated. The cost impact might be isolated to the facilities and the incremental rates could apply equally to all shippers over the facility. However, that is not the situation here. The Mid-Atlantic project involves new facilities scattered from eastern Pennsylvania to Virginia that re-enforce Dominion's existing system, enabling it to provide new services on a firm basis.

15. While the costs attributable to the new services are initially isolated, the services are not isolated. For example, WGL's incremental Rate Schedule FT and FTNN services will have full receipt and delivery point flexibility over Dominion's whole system, as well as capacity release and segmentation rights. In addition, as these are not isolated facilities and Dominion does not capacity path, existing shippers will be afforded additional ability to flex their receipt and delivery points over Dominion's system. The Commission must take into consideration the effect of a proposed rate design on all parties to avoid undue discrimination or preference.

16. WGL argues that, since the Quantico Compressor Station is not needed to provide WGL service, WGL should not have to pay its costs. This argument ignores several factors. First, incremental rate design does not require the allocation of existing system costs to the new incremental service. Nonetheless, WGL's services will use existing Dominion facilities, but will not make a revenue contribution to cover a share of their fixed costs. Second, even if the Commission were to consider a facility attribution-to-service rate design, there is no analysis to support WGL's contention that the Quantico Compression Station is required solely because of downstream services. It may be that WGL's removal of gas upstream of these customers' delivery points will reduce the pipeline's pressure to such an extent that system compression is inadequate to serve downstream customers. Indeed, it seems quite likely that the compression required downstream of WGL's receipt will change, depending on the level of service provided daily or hourly. Dominion's postage-stamp rate design model for the initial incremental rate avoids these speculative allocations and recognizes the mutual dependence and support rendered by all facilities and services on Dominion's system to provide service.

Clarification of the September 11, 2003 Order

17. Texas Eastern requests clarification or rehearing of certain aspects of the

Commission's September 11, 2003 order. Texas Eastern requests clarification that: (a) the order does not preclude Texas Eastern from using the leased capacity on its system, for the purpose of providing open access service under Texas Eastern's blanket certificate to the extent that the leased capacity is not used by Dominion pursuant to the capacity lease agreement,[8] (b) the construction reports are to be filed on a biweekly basis, as required in Appendix B, Condition 8, rather than weekly, as suggested in Ordering Paragraph G; and (c) the scheduling requirement in Appendix B, Condition 12, may be satisfied at the same time that the implementation plan is filed, rather than within 30 days of acceptance of the certificate.

18. We will grant the above clarification as requested.

The Commission orders:

(A) Washington Gas Light Company's request for rehearing is denied.

(B) Texas Eastern's request for clarification is granted and its alternative request for rehearing is dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[8] See: Islander East Pipeline Co., *et al.*, 102 FERC ¶ 61,054 (2003) and Texas Eastern Transmission Corp., 87 FERC ¶ 61,325 at n. 17 (1999).