146 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Dominion Transmission, Inc. Docket Nos. RP13-431-001
RP13-431-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued February 20, 2014)

1. On December 31, 2012, Dominion Transmission, Inc. (Dominion) filed proposed tariff records to revise its tariff provisions concerning reservation charge credits to be consistent with Commission policy. On February 27, 2013, the Commission issued an order accepting the revised tariff records effective March 1, 2013, subject to conditions.[1] On March 28, 2013, Dominion filed tariff records[2] in order to comply with the Commission's February 2013 Order On March 29, 2013, Indicated Shippers[3] filed a request for rehearing of the February 2013 Order. For the reasons discussed below the Commission denies the request for rehearing and accepts the revised tariff records effective March 1, 2013.

[1] *Dominion Transmission, Inc.*, 142 FERC ¶ 61,154 (2013) (February 2013 Order).

[2] Dominion Transmission, Inc., FERC NGA Gas Tariff, DTI Tariffs; Tariff Record 40.12, GT&C Section 10 – Force Majeure, 1.1.0; Tariff Record 40.52, GT&C Section 45 - Reservation Charge Crediting, 0.1.0.

[3] Indicated Shippers joining in the request for rehearing and the protest of Dominion's compliance filing are: BP Energy Company, Chevron U.S.A. Inc., Cross-Timbers Energy Services, Inc., Hess Corporation, Noble Energy, Inc., Shell Energy North America (US), L.P., and SWEPI LP.

I. **Background**

2. In *NGSA*,[4] the Commission encouraged interstate pipelines to determine whether their individual tariff complies with the Commission's policy concerning reservation charge credits, and, if not, make an appropriate filing to comply. In general, the Commission requires all interstate pipelines to provide full reservation charge credits for outages of primary firm service caused by non-*force majeure* events and partial reservation charge credits during *force majeure* outages. The Commission has defined *force majeure* outages as events that are both unexpected and uncontrollable. The Commission has held that routine, scheduled maintenance is not a *force majeure* event, even on "pipelines with little excess capacity"[5] where such maintenance may require interruptions of primary firm service. Commission policy recognizes that even if such outages are considered to be uncontrollable, they are expected.[6]

3. The Commission requires that the pipeline provide partial reservation charge credits during *force majeure* outages in order to share the risk of an event not in the control of the pipeline. Partial credits may be provided pursuant to: (1) the No-Profit method under which the pipeline gives credits equal to its return on equity and income taxes starting on Day 1, or (2) the Safe Harbor method under which the pipeline provides full credits after a short grace period when no credit is due (i.e., 10 days or less).[7] The Commission has stated that pipelines may also use some other method which achieves equitable sharing in the same ball park as the first two methods.[8]

4. The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (2011 Act) requires the Department of Transportation to conduct studies and consider rulemakings on various matters, including possible changes to the pipeline integrity

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[4] *Natural Gas Supply Ass'n, et al.*, 135 FERC ¶ 61,055, at P 2 (*NGSA*), *order on reh'g*, 137 FERC ¶ 61,051 (2011).

[5] *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262, at P 15 (2003).

[6] *See North Baja Pipeline, LLC v. FERC*, 483 F.3d 819, 823 (D.C. Cir. 2007), *aff'g, North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,101 (2005) (*North Baja*).

[7] *See, e.g., Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997), *as clarified by, Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006).

[8] *Northern Natural Gas Co.*, 141 FERC ¶ 61,221, at P 20 (2012) (*Northern*).

management regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA). Of particular importance for this filing is that Section 23(a) of the 2011 Act added section 60139, Maximum Allowable Operating Pressure (MAOP) to Chapter 601 of Title 49 of the United States Code. Section 60139(a) requires each owner or operator of a pipeline to conduct a verification of its records relating to pipeline segments so as to ensure that the records accurately reflect the physical and operational characteristics of the subject pipelines and to confirm their established MAOP. For each pipeline segment for which its records are insufficient, PHMSA must require the pipeline owner or operator to reconfirm a MAOP as expeditiously as economically feasible, and PHMSA must determine what interim actions are appropriate to maintain safety until a MAOP may be reconfirmed. Section 60139(c)(2) requires PHMSA, in determining the interim actions for each pipeline owner or operator to take, to consider "potential consequences to the public safety and the environment, potential impacts on pipeline system reliability and deliverability, and other factors, as appropriate."

5. In the recent decisions in *Gulf South, et al.*,[9] the Commission stated that it would allow partial reservation charge crediting for outages of primary firm service required to comply with orders issued by PHMSA pursuant to section 60139(c) for a transitional two-year period. The Commission found that such outages are comparable to those for which partial crediting is allowed as *force majeure* events.[10] The Commission held that the nature and timing of any other new safety requirements PHMSA may adopt pursuant to the 2011 Act are too speculative at this time to justify modifying Commission policy to treat any outages resulting from such new requirements similarly to *force majeure* events.

6. As requested by the Commission in *NGSA*, on December 31, 2012, Dominion proposed a new section of its General Terms and Conditions (GT&C) of its Tariff, Section 45 – Reservation Charge Crediting, in order to be consistent with Commission policy. Below, we describe those aspects of Dominion's proposal relevant to the issues raised on rehearing of the February 2013 Order and in protests to Dominion's compliance filing. For *force majeure* outages, Dominion proposed to use the Safe Harbor method

[9] *Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,224, at P 40 (2012) (*Gulf South I*), *order on reh'g and compliance filing*, 144 FERC ¶ 61,215 (2013) (*Gulf South II*); *Gulf Crossing Pipeline Co. LLC*, 141 FERC ¶ 61,222, at P 40 (2012) (*Gulf Crossing*); *Texas Gas Transmission, LLC*, 141 FERC ¶ 61,223, at P 39 (2012) (*Texas Gas*) (collectively referred to as *Gulf South, et al.*).

[10] *Gulf South I*, 141 FERC ¶ 61,224 at n.25; *Gulf Crossing*, 141 FERC ¶ 61,222 at n.24; *Texas Gas*, 141 FERC ¶ 61,223 at n.26 (citing *Florida Gas Transmission Co.*, 107 FERC ¶ 61,074, at P 32 (2004)).

under which, beginning on the eleventh day of a *force majeure* outage, a customer will receive the applicable reservation charge credits as specified for non-*force majeure* events. In addition, Dominion proposed to expand the definition of *force majeure* to include outages that are required to comply with orders issued by PHMSA pursuant to section 60139(c) for a two-year transitional period beginning March 1, 2013, as consistent with *Gulf South, et al.*

7. For non-*force majeure* outages, Dominion proposed in GT&C section 45.1.B to provide full reservation charge credits applied to the lesser of: (1) the applicable Maximum Daily Transportation Quantity (MDTQ) less the amount delivered; (2) nominated quantities not to exceed the MDTQ, less the amount delivered; (3) if advance notice of seven days or less is provided, the average of the previous seven gas days' daily firm quantities delivered to the impacted primary delivery point(s) immediately preceding the service interruption; and (4) if more than seven days advance notice is provided, the average of the daily firm quantities delivered to the primary delivery point(s) in the previous calendar year for the same calendar days as the non-*force majeure* event.

8. Dominion also proposed to clarify the calculation of the reservation charge credits provided to its firm storage customers. Dominion's firm storage rates include two reservation charges. One reservation charge, the "Storage Demand Charge," is based on the shippers' maximum daily entitlements to withdraw gas from storage. The other reservation charge, the "Storage Capacity Charge," is based on the shippers' maximum storage inventory entitlements. Dominion proposed to eliminate current GT&C section 35.2B, which describes the Storage Demand Charge credits Dominion must provide when it is unable to schedule a storage shipper's daily nomination of a storage withdrawal. Dominion proposed to replace that provision with GT&C section 45.1.C.2, providing that in situations where Dominion is unable to provide storage withdrawals, it would provide Storage Demand Charge credits in the same manner as it provides reservation charge credits for its transportation services.

9. However, Dominion proposed to retain its existing section 35.2.A concerning the Storage Capacity Charge and Storage Demand Charge credits it will provide when it is unable to inject gas into storage up to a shipper's maximum storage inventory entitlements during the April to October summer injection period. Under that section, if the shipper's Storage Gas Balance is less than its total storage inventory entitlement at the end of the Summer Period due to Dominion's inability to inject into storage the gas nominated by the shipper during the Summer Period, both the Storage Demand Charge and the Storage Capacity Charge are proportionately reduced.

10. In the February 2013 Order, the Commission accepted Dominion's filing effective March 1, 2013, subject to Dominion revising certain aspects of its proposal and filing further information. As here relevant, the Commission held that Dominion's proposal to provide partial credits for outages resulting from PHMSA orders under section 60139(c)

was generally consistent with *Gulf South, et al.* The Commission accordingly accepted that proposal, subject to two revisions. First, the Commission stated that, while *Gulf South, et al.* established a policy allowing partial reservation charge crediting for such outages, those orders did not find that these outages are necessarily *force majeure* events. Therefore, the Commission directed Dominion to remove its proposal from its standard definition of *force majeure* events and include it as a separate transitional provision in its tariff. Second, the Commission ordered Dominion to file revised tariff records including a requirement that its notice to customers of an outage caused by PHMSA action under section 60139(c) identify the specific PHMSA order causing that outage.[11] The Commission denied Indicated Shippers' request that the proposal be rejected, and denied Indicated Shippers' request that, if the proposal was not rejected, the Commission require partial credits to be provided pursuant to the No Profit Method, rather than the Safe Harbor Method.

11. Indicated Shippers and others protested Dominion's proposal in section 45.1.B.4 as to how it would calculate reservation charge credits when it gives more than seven days' advance notice of an outage. Dominion proposed that, in that situation, credits would be based on the shipper's average usage during the same calendar days one year before the outage. The Commission found that Dominion's proposal provides a reasonably representative historical average for calculation of reservation charge credits, except where there is no prior year average usage data available (i.e., when a customer had no service agreement in the preceding calendar year) or where a customer's primary firm contract entitlement has changed in the past year (i.e., when a customer has recently increased its primary firm entitlements in connection with a system expansion). Dominion agreed to address this problem by revising its proposal to provide that (1) if a customer's contract was not in effect in the previous calendar year, it would use the seven days immediately before the outage and (2) if a customer's firm entitlements have changed in the past year, the average usage quantity during the preceding year will be adjusted up or down *pro-rata* based on any increase or decrease in the customer's firm entitlements. The Commission accordingly directed Dominion to file revised tariff records containing this clarification.[12]

12. The February 2013 Order also required Dominion to make various other changes to its filing, which no party now contests. Finally, the Commission required Dominion to

[11] February 2013 Order, 142 FERC ¶ 61,154 at PP 17-28.

[12] The Commission also required Dominion to remove the provision that credits be calculated based on the "lesser of" the various calculation methods, finding that each of the calculation methods applies to a mutually exclusive situation.

further explain its proposal concerning reservation charge credits for firm storage services. The Commission noted that Dominion had not explained the basis for the differences between its crediting provisions related to storage injections versus storage withdrawals, particularly why credits for its inability to inject gas nominated by the shipper are calculated on a seasonal basis, while credits for its inability to withdraw gas nominated by the shipper are calculated on a daily basis.[13] The February 2013 Order also required Dominion to provide a further explanation of its decision to retain current section 35.2.A concerning billing adjustments related to Summer Period storage injections.

II. Request for Rehearing

13. On March 29, 2013, Indicated Shippers filed a request for rehearing of the February 2013 Order. For the reasons detailed below, we deny rehearing.

A. Partial Credits for PHMSA Compliance

14. Indicated Shippers argue that the Commission erred in allowing partial reservation charge credits for outages of primary firm service require to comply with orders issued by PHMSA pursuant to section 60139(c) of the 2011 Act. Indicated Shippers argue that compliance with such orders is best considered to be a type of routine maintenance that does not qualify as a *force majeure* event. They note that the Commission has held that "Testing and maintenance are part of the service provider's duties . . . that are not appropriately considered a *force majeure* event.[14] By allowing Dominion to provide anything less than full reservation charge credits during outages to comply with PHMSA orders under section 60139(c), Indicated Shippers argue, the Commission is acting contrary to its longstanding principles on risk-sharing. Indicated Shippers also contend that the Commission failed to take into account the substantial time period provided to pipelines since enactment of the 2011 Act to identify those segments for which reconfirmation is necessary.

15. Further, Indicated Shippers argue, the Commission is impermissibly speculating on what PHMSA will require Dominion to do. Indicated Shippers note that PHMSA has

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[13] *Id.* February 2013 Order, 142 FERC ¶ 61,154 at PP 56-61.

[14] Request for Rehearing at 11 (quoting *Texas Eastern Transmission, LP*, 140 FERC ¶ 61,216, at P 9 (2012) (*Texas Eastern*) and *Orbit Gas Storage, Inc.*, 126 FERC ¶ 61,095, at P 68 (2009)).

yet to issue any orders under section 60139(c), and pipelines have yet to disclose the scope of activity that will need to be undertaken in order to comply.[15]

16. We deny rehearing. Indicated Shippers raise the same arguments that the Commission considered, and rejected in detail, in *Gulf South II*[16] and other recent Commission orders. As explained in *Gulf South II*, the Commission has clarified its policy concerning when pipelines must provide full reservation charge credits for outages caused by compliance with government requirements and when only partial reservation credits are required:

> The basic distinction is between: (1) outages necessitated by compliance with government standards concerning the regular, periodic maintenance activities a pipeline must perform in the ordinary course of business to ensure the safe operation of the pipeline; and (2) outages resulting from one-time, non-recurring events. Thus, the Commission has consistently treated outages related to compliance with PHMSA's integrity management regulations as non-*force majeure* events, which are reasonably within the control of the pipeline and expected, and therefore the Commission has required full credits for those outages. However, one-time, non-recurring testing required by government order, may qualify as a *force majeure* event outside the pipeline's control. For example, in *TransColorado*, the Commission clarified that if PHMSA requires special, one-time tests after a pipeline failure, including on parts of the system not affected by the failure, that testing requirement may be treated as a *force majeure* event for which partial reservation charge crediting is reasonable. Such testing is not part of the regular periodic maintenance activities the pipeline must perform in the ordinary course of its business, and thus is not "expected" in the same sense as outages related to an ongoing integrity management program. The Commission noted that the pipeline could have less discretion concerning the timing

[15] Request for Rehearing at 12.

[16] 144 FERC ¶ 61,215 at PP 25-46.

> of such special tests than it has concerning the timing and location of routine scheduled maintenance.[17]

17. Under these general principles, a PHMSA order pursuant to section 60139(c) would only trigger a partial crediting requirement. The 2011 Act created a one-time obligation on pipelines to reconfirm MAOP and any costs pipelines incurred as a result of a PHMSA order pursuant to section 60139(c) would be non-recurring costs not eligible for inclusion in the pipeline's rates.

18. Further, we reject arguments that the *Gulf South, et al.*, policy is unnecessarily speculative concerning the nature of any MAOP reconfirmation process PHMSA may require. By clarifying the scope of any crediting requirement for outages resulting from section 60139(c) in advance for a two-year transitional period, rather than waiting for the specific compliance orders to be issued, the Commission aims to provide upfront certainty concerning the pipeline's obligation to provide reservation charge credits during such outages, without the need for time-consuming case-by-case consideration of the circumstances of each individual outage. As explained in *Gulf South II*, this approach is consistent with Congress' concern that pipelines reconfirm the MAOP of segments with insufficient documentation as expeditiously as feasible in order to ensure public safety, after completion of the records verification process. The fact we have limited the blanket partial crediting authorization to a two-year transitional period will permit reconsideration of this issue at the end of that period in light of circumstances then present, including what policies PHMSA has developed concerning the MAOP reconfirmation process.

B. Use of Safe Harbor Method

19. Indicated Shippers argue that the Commission erred in allowing Dominion to use the Safe Harbor Method for providing partial credits during outages resulting from PHMSA section 60139(c) orders. Indicated Shippers note that under the Safe Harbor Method, Dominion would only need to provide credits beginning on the eleventh consecutive day of an outage. Indicated Shippers argue that the fundamental Commission policy on reservation charge crediting is that shippers and pipelines should share the risk of outages. Indicated Shippers argue that PHMSA section 60139(c) compliance outages are a "new category of *force majeure* that the Commission has created," and that the Commission erred in its "reliance on the holdings and reasoning in

[17] *Gulf South II*, 144 FERC ¶ 61,215 at P 32.

previous orders and court decisions" that, Indicated Shippers argue, were concerned with fundamentally different categories of *force majeure*.[18]

20. Indicated Shippers argue that since pipelines have some control over when to schedule these compliance actions, such outages by their nature "would rarely if ever exceed ten days," so any outages that fall into this category would result in shippers bearing all the burden of the outage.[19] Thus, assuming *arguendo* that partial crediting should be permitted for outages resulting from PHMSA section 60139(c) outages, Indicated Shippers argue that the specific facts of the situation compel "departing from the reasoning underlying the Commission's previous orders" and instead only allowing pipelines to use the No-Profit Method.[20]

21. We reject this argument. As the Commission explained in *Gulf South II*,[21] while both the Safe Harbor and the No-Profit methods achieve an equitable sharing of the risks of *force majeure outages*, they allocate the risks of short and long-term outages in different ways.[22] The Safe Harbor method allocates the entire risk of *force majeure* outages of 10 days or less to the firm shippers. However, the requirement that the pipeline provide full credits after Day 10 of the outage then allocates to the pipeline a progressively greater share of the risk from the *force majeure* outage the longer the outage continues. By contrast, the No-Profit method allocates the same proportionate risk to the pipeline regardless of the length of the *force majeure* outage because beginning on Day One of the outage, and continuing until the outage ends, the pipeline must provide a credit to shippers equal to its return on equity and associated income taxes. Unlike the Safe Harbor method, the No-Profit method requires the pipeline to bear some of the risk of short duration *force majeure* outages. However, because a pipeline's return on equity and associated income taxes in almost all cases constitute less than 50 percent of the pipeline's fixed costs, for long term *force majeure* outages the No-Profit method allocates less of the risk to the pipeline than does the Safe Harbor method.

22. Indicated Shippers suggests that outages from orders issued by PHMSA pursuant to section 60139(c) are likely to be less than 11 days in length. However, the

[18] Indicated Shippers Request for Rehearing at 14.

[19] *Id.*

[20] *Id.* at 15.

[21] 144 FERC ¶ 61,215 at P 49.

[22] *Northern*, 141 FERC ¶ 61,221.

Commission has no basis to assume that all such outages will be of such short duration. For example, PHMSA could take interim action requiring a pipeline to operate a portion of its facilities at a reduced MAOP for a relatively extended period until all testing and necessary pipeline repairs are made to ensure safe operation at a higher MAOP. As PHMSA has explained:

> Although hydrostatic testing is recognized to be the most direct and effective methodology for validating a MAOP or MOP, its implementation requires that operating lines be shut down, which may adversely affect customers dependent on the natural gas supplied by the pipeline, particularly if the pipe fails during the test, which could necessitate a protracted shutdown.[23]

23. Even if the pipeline had a number of other short-term outages of less than ten days, the higher level of credits for even one extended outage of primary firm service required by the Safe Harbor method could provide shippers greater overall relief than would the No-Profit method.[24]

24. Accordingly, we shall not prohibit Dominion from using the ordinary Safe Harbor method in order to fulfill its obligation to provide partial reservation charge credits during outages resulting from PHMSA section 60139(c) orders.

C. Method for estimating credits

25. Indicated Shippers argue that the Commission erred in allowing Dominion to calculate credits based on the previous year's quantities for the same calendar dates when Dominion provides more than seven days' advance notice of an outage. Indicated Shippers note that the Commission has held that, when a pipeline provides advance notice of an outage, "it is reasonable for the pipeline to use an appropriate historical average of usage … to minimize[] the potential for gaming."[25] However, Indicated Shippers argue that a shipper's usage of a full year before the outage is not an appropriate historical average. It asserts that Dominion's proposed method could deprive shippers of credits for primary firm service they would have received but for the outage. For

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[23] *Pipeline Safety*, PHMSA ADB-11-01, 76 Fed. Reg. 1504 at 1505 (2011).

[24] *See Rockies Express Pipeline LLC*, 144 FERC ¶ 61,216 (2013).

[25] Indicated Shippers Rehearing at 17 (quoting *Kern River Gas Transmission Co.*, 139 FERC ¶ 61,044, at P 45 (2012)).

example, Indicated Shippers state, a shipper's natural gas demand or even weather patterns may vary greatly from year to year. Therefore, calculating reservation charge credits based on a shipper's activity a full year prior to the outage may not accurately reflect how the shipper would have used its service at the time of the outage.

26. The Commission denies rehearing on this issue. Under the NGA, the Commission must accept a just and reasonable tariff proposal by a pipeline, regardless of whether other tariff provisions would also be just and reasonable.[26] The Commission has recognized that there is "no perfect method of estimating" the amount of service a shipper would have used during an outage, if the pipeline had not given advance notice of the outage.[27] The Commission has accepted proposals to base credits on usage during the seven days immediately preceding notice of the outage[28] and proposals to use an average of usage during several prior years.[29]

27. In this case, Dominion has proposed to base reservation charge credits on usage during the seven days immediately preceding an outage, if it has provided the shipper with advance notice of seven days or less before the outage. Thus, it is only when Dominion gives more than seven days' advance notice of an outage that Dominion proposes to base credits on the shipper's usage during the same calendar days of the preceding year. Moreover, Dominion agreed to modify its proposal to provide that (1) if a customer's contract was not in effect in the previous calendar year, it would use the seven days immediately before the outage and (2) if a customer's firm entitlements have changed in the past year, the average usage quantity during the preceding year will be adjusted up or down *pro-rata* based on any increase or decrease in the customer's firm entitlements.

28. Indicated Shippers opposes Dominion's proposal with respect to outages for which more than seven days' notice is given, on the ground that shipper usage during the seven days immediately before that notice is likely to be more representative of the usage the shippers would have made of Dominion's system during the outage, than shipper usage during the same calendar days of the preceding year as the outage. For example, Indicated Shippers state that weather patterns and the natural gas demand of the

[26] *Consolidated Edison Co. v. FERC*, 165 F.3d 992, 998, 1002-1004 (1999).

[27] *Texas Gas*, 141 FERC ¶ 61,223 at P 79.

[28] *Southern Natural Gas Co.*, 137 FERC ¶ 61,050, at P 21 (2011); *TransColorado Gas Transmission Co., LLC*, 139 FERC ¶ 61,229, at PP 36-41 (2012).

[29] *Texas Gas*, 141 FERC ¶ 61,223 at P 79.

customers served by a shipper may vary greatly from year to year. However, it is also possible for such variations to occur during the more than seven-day period between advance notice of an outage and the outage itself. In fact, as the advance notice period increases beyond seven days, there is an increasing possibility that shipper usage during the calendar days of the preceding year corresponding to the outage will be more representative of usage during the outage period, than usage during the seven days preceding notice of the outage. For example, weather during the seven days immediately before advance notice of the outage may have been unusually cold, increasing the shippers' usage of gas, whereas weather during the calendar days of the prior year corresponding to the outage may have been more normal.

29. Indicated Shippers envision scenarios in which the use of analogous dates from the previous calendar year may underestimate the credits that might otherwise be due to a particular shipper. However, as in *Texas Gas*, "[a]ny inaccuracies in the estimate produced by [Dominion's] proposed methodology should even out over time, because that methodology could as easily overestimate, as underestimate, a shipper's need for … service during the outage."[30] Indicated Shippers also suggest that the Commission could require Dominion to use the higher of current year usage or past year usage. However, Indicated Shippers have not explained why usage during the prior year should only be taken into account if it would increase the amount of credits, and not decrease the amount of credits.[31]

30. In *Texas Gas*, the Commission found that the essential question in considering a pipeline's proposal as to how to measure credits is whether the calculation would "accomplish the basic purpose of the Commission reservation charge crediting policy: provide [the pipeline] an incentive to minimize any outage of primary firm service and provide the shipper reasonable compensation for any inability to use the primary firm service."[32] The Commission finds that Dominion's proposal, with the modifications it agreed to, provides an incentive for Dominion to minimize outages of primary firm service and, for the reasons discussed above, provides shippers reasonable compensation for their inability to use primary firm service during any outages that do occur.

31. Accordingly, we deny rehearing.

[30] *Id*.

[31] *Iroquois Gas Transmission System, L.P.*, 145 FERC ¶ 61,233, at P 51 and n.55 (2013).

[32] *Texas Gas*, 141 FERC ¶ 61,223 at P 79.

III. Compliance Filing

32. For the reasons discussed below, the Commission accepts Dominion's filing to comply with the February 2013 Order.

A. Details of Filing

33. In order to comply with the February 2013 Order, Dominion submitted the following tariff revisions:

a. Moving language related to orders of PHMSA from GT&C section 10.2 to a separate PHMSA transitional provision in GT&C section 45.2.A.5.[33]

b. In GT&C section 45.2.A.5, clarifying that any notice of an outage pursuant to a PHMSA section 60139(c) order will identify the specific PHMSA order or requirement causing the outage.[34]

c. In GT&C section 45.1.B.3 (formerly 45.1.B.4), clarifying the calculation of reservation charge credits when a customer has no prior year average usage data available or where a customer's primary firm contract entitlement has changed in the past year.[35]

d. Deleting the words "lesser of" from GT&C section 45.1.B and deleting the entirety of GT&C section 45.1.B.1.[36]

e. In GT&C section 45.1.B.1 (formerly 45.1.B.2), deleting the words "that Pipeline did not deliver."[37]

f. In GT&C section 45.2.A.2, clarifying that Dominion is exempt from reservation charge crediting only in those circumstances where failure to provide service is due solely to events or conduct of shippers outside of

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[33] *See* February 2013 Order, 142 FERC ¶ 61,154 at P 19.

[34] *See id.* P 28.

[35] *See id.* PP 38-39.

[36] *See id.* P 41.

[37] *See id.* P 44.

Dominion's control and, that partial reservation charge crediting is required in *force majeure* outage situations.[38]

g. In GT&C section 45.1.D, clarifying that any reservation charge credits due to a customer when a contract expires or terminates will be reflected on the final invoice to the customer.[39]

h. In GT&C section 10.2, adding "which by due diligence such party is unable to overcome" at the end of the section.[40]

34. Further, as required by the February 2013 Order, Dominion offered a justification of the differences between its crediting provisions related to storage injections versus storage withdrawals.[41] Dominion characterizes its firm storage service as a traditional single-cycle storage service, in which customers inject gas into storage throughout the April through October summer period and then withdraw that gas during the November through March winter period in order to meet winter heating needs. Thus, Dominion argues, the fundamental purpose of the system is different depending on the season. When a customer nominates withdrawals from storage, Dominion argues that it is important that the customer have the gas available on that day. Accordingly, the proposed crediting provision (GT&C section 45.1.C.2) grants credits of the Storage Demand Charge if Dominion fails to deliver on a scheduled daily withdrawal. For the injection season, however, Dominion argues that what is of paramount importance is that the customer reach its planned level of total injections up to the shipper's total storage capacity entitlement by the end of the summer season. Thus, existing GT&C section 35.2 requires a proportionate reduction in the Storage Capacity charge for the applicable storage year if the customer's storage gas balance at the end of the injection season is less than its contracted storage capacity solely because of Dominion's inability to inject gas. Dominion notes that this provision does not ignore the daily aspects of injection, because it also requires a proportionate reduction in the Storage Demand Charge for the applicable storage year if Dominion fails to inject as required. Thus, Dominion argues, the differences between its crediting provisions for injections and for withdrawals appropriately reflect the way that Dominion provides storage service to its customers.

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[38] *See id.* PP 49-50.

[39] *See id.* P 55.

[40] *See id.* P 64.

[41] *See id.* P 61.

35. Public notice of the filing was issued on March 29, 2013, allowing for protests to be filed on or before April 9, 2013. On April 9, 2013 Indicated Shippers filed a protest. On April 15, 2013, Dominion filed an answer to Indicated Shippers' protest.[42]

B. Commission Determination

36. The tariff revisions included in Dominion's compliance filing comply with the February 2013 Order, and are accepted. The Commission also finds that Dominion has reasonably explained the difference in its treatment of storage injections and withdrawals for purposes of reservation charge credits. Therefore, the Commission will not require Dominion to make any further revisions to those crediting provisions.

37. Indicated Shippers protest Dominion's proposal in the original and compliance filings to retain its existing tariff provision governing credits for unavailability of storage injection service, contained in GT&C Section 35.2.A. Indicated Shippers contend that Dominion has not justified providing reservation charge credits for the unavailability of injection service on a seasonal (rather than daily) basis.

38. Indicated Shippers disagree with Dominion's contention that, because the firm storage shippers can plan injections over the injection season, the unavailability of service on particular days does not have the same day-to-day impact as the unavailability of withdrawal service.

39. Indicated Shippers contend that the unavailability of injection rights on particular days could jeopardize the availability of storage withdrawals. Indicated Shippers state that Dominion's Rate Schedule GSS, Section 7.4.A, limits a storage shipper's daily injection rights during the Summer Period to $1/180^{th}$ of contracted capacity when it is less than 50% full, and $1/214^{th}$ when the shipper's balance is more than 50% of its contracted capacity.

40. Indicated Shippers also state that Dominion contends that it compensates a storage shipper for failure to provide adequate injection opportunities during the injection process through the provision for reductions of the Storage Capacity Charge and Storage Demand Charge if the shipper's storage gas balance at the end of the injection period is lower than the contracted level due to Dominion's inability to inject gas by the end of the injection

[42] The Commission's Rules of Practice and Procedure do not permit answers to protests or answers unless otherwise ordered by the decisional authority. 18 C.F.R. § 385.213(a)(2) (2013). However, the Commission finds good cause to accept Dominion's answer as it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will ensure a complete record.

period. Indicated Shippers argue that Dominion's argument demonstrates just how important it is to storage shipper to be able to inject their full quantity so they can protect their ability to withdraw through the withdrawal period. Indicated Shippers claim that a billing adjustment alone is inadequate to compensate fully for the unavailability of withdrawals due to the unavailability of injection rights.

41. In its answer, Dominion responds that its storage reservation charge crediting provisions fully credit storage customers for all reservation charges they pay for the storage service Dominion is unable to perform, and therefore those provisions are consistent with Commission policy. Dominion states that its storage rates do not require shippers to pay any reservation charge specifically tied to their entitlements to inject gas into storage during the summer period. Instead, as described above, its Storage Demand Charge is based on the customers' entitlement to withdraw gas from storage, and its Storage Capacity Charge is based on the customers' entitlements to maintain an inventory of gas in storage. Dominion notes that its two-part storage reservation rate design has been in place for many years, and it argues that this design is in accordance with Commission policy.

42. Dominion argues that even without a reservation-based injection charge, GT&C section 35.2 of Dominion's Tariff offers two protections that ensure that a storage customer receives full credit if Dominion fails to inject the full quantity of gas by the end of the summer injection period. First, Dominion credits "the Storage Capacity Charge for the entire Storage Year for the amount of capacity the customer was unable to utilize."[43] Second, Dominion credits "the Storage Demand Charge at the end of the injection season for the unavailability of storage withdrawals resulting from the failure to fill the storage capacity."[44] This Storage Demand Charge credit, applicable for the current storage year, results in a credit at the start of the withdrawal season thereby providing, in advance, a credit for the customer's inability to withdraw during the winter season those quantities that Dominion was unable to inject into storage. Moreover, notwithstanding the above Storage Demand Charge credit, if there are outages during the withdrawal season that prevent Dominion from performing, Dominion provides a further Storage Demand Charge credit pursuant to GT&C section 45.

43. Since these provisions fully credit customers for all the fixed charges paid, Dominion argues, it fully complies with Commission policy. Further, Dominion argues that Indicated Shippers' request for additional credits above and beyond those already in Dominion's tariff would lead to credits in excess of the charges paid. This in turn,

[43] Dominion Answer at 2.

[44] *Id.*

Dominion claims, would obligate Dominion to "completely redesign the reservation charge crediting mechanism for storage service."[45]

44. We find that Dominion's storage reservation charge crediting provisions fully comply with our reservation charge crediting policies for the reasons stated by Dominion. When there is an interruption of service on a pipeline, and the firm shipper cannot use the capacity it reserved through the reservation charge, the Commission requires pipelines to provide shippers credits against their reservation charges, either full or partial depending upon whether the outage was caused by a *force majeure* event.[46] Usage charges, on the other hand, need not be credited, since the shipper does not incur such charges when the requested volumes are not in fact transported. As Dominion has explained, its storage customers do not pay any reservation charge in connection with their daily entitlements to inject gas into storage. Therefore, when Dominion is unable to deliver gas into storage on a particular day during the summer injection season, there is no applicable reservation charge to credit.

45. Indicated Shippers argue that "the unavailability of injection rights on particular days could jeopardize the availability of storage withdrawals."[47] Indicated Shippers also note that if Dominion is unable to deliver gas into storage during some days of the summer injection season, Dominion's daily injection restrictions or other exigencies could prevent a shipper from making up for lost time, with the result that the customer may be unable to complete its planned storage injections by the end of the summer injection season. However, as Dominion explains, its tariff provides for reasonable reservation charge credits in that situation. If unavailability of injection service on a particular day or days does indeed lead to a shipper having inadequate inventories of gas in storage at the end of an injection season, then under the GT&C Section 35.2, Dominion must provide credits of both the Storage Capacity Charge and the Storage Demand Charge. Specifically, Dominion must provide a credit against the shipper's annual Storage Capacity Charge for the relevant storage year for the amount of storage capacity the shipper was unable to use. For example, if Dominion was unable to inject fifty percent of a shipper's requested injections by the end of the injection season, Dominion must provide the shipper a credit equal to fifty percent of the annual Storage Capacity Demand Charge the shipper would otherwise have had to pay for that storage year. In addition, Dominion must provide a credit against the shipper's annual Storage Demand charge calculated in the same manner as the credit against the Storage Capacity

[45] *Id*. at 3.

[46] *NGSA*, 135 FERC ¶ 61,055 at P 15.

[47] Indicated Shippers Protest at 4.

Charge. Thus, in the example above, Dominion would have to provide the shipper a credit equal to 50 percent of the Storage Demand Charge the shipper would otherwise have had to pay for its entitlements to withdraw gas for that storage year. Therefore, Dominion's storage crediting provisions provide the shipper full compensation for any reduction in its ability to withdraw gas caused by Dominion's inability to inject into storage during the summer period the full amount the shipper was entitled to inject during that season. Moreover, if during any day during the winter withdrawal period, Dominion is unable to deliver a storage withdrawal of the gas the shipper did inject into storage Dominion must provide a further credit of the daily Storage Demand Charge applicable to that day. Since Dominion's tariff provides reservation charge credits when it cannot cure a failure to deliver, we find it to be in compliance with Commission policy.

<u>The Commission orders</u>:

(A) The tariff records listed in n.2 are accepted effective March 1, 2013.

(B) The request for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.