121 FERC ¶ 61,164
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Dominion Transmission, Inc. Docket No. CP07-10-001

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued November 14, 2007)

1. In an order issued June 6, 2007, the Commission, under section 7(c) of the Natural Gas Act (NGA), authorized Dominion Transmission, Inc. (Dominion) to upgrade existing facilities on Dominion's TL-263 transmission line in southern West Virginia.[1] The upgraded facilities, collectively known as the TL-263 Expansion Project, will allow Dominion to accept an additional 21,250 dekatherms (Dth) a day of natural gas into Line TL-263.

2. As part of the proposal, Dominion requested approval of a new Rate Schedule Access Service (ACS) for access to Dominion's system and for approval of initial recourse rates for this service. The Commission rejected Dominion's ACS proposal, and instead required Dominion to establish incremental firm transportation rates to recover the cost of service associated with constructing and operating the approved facilities.

3. Dominion filed a timely request for rehearing of the Commission's rejection of its ACS proposal. In the alternative, Dominion requested that the Commission clarify that Dominion may offer transportation of the additional volumes on an interruptible basis only, rather than under its existing firm rate schedules, and that it may enter into negotiated-rate interruptible transportation (IT) contracts that will guarantee its cost recovery. For the reasons discussed below, the Commission will deny Dominion's request for rehearing and grant clarification as described below.

<u>Background</u>

4. TL-263 is a 12-inch diameter pipeline extending approximately 55 miles from the Oscar Nelson Compressor Station (Oscar Nelson) in Wyoming County, West Virginia in a northerly direction to the Kanawha River near Chelyan, West Virginia. The TL-263 transmission line is part of Dominion's Appalachian System, a network of gathering and

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[1] *Dominion Transmission, Inc.*, 119 FERC ¶ 61,242 (2007) (June 6 Order).

transmission lines connecting supply areas in West Virginia, Pennsylvania and New York to distribution markets and storage locations. Dominion's tariff divides the Appalachian System into northern and southern aggregation areas, each with a virtual market center pooling point (Appalachian Pooling Point South and Appalachian Pooling Point North) located at the downstream terminus of the respective area, just north and south of a liquids extraction plant at Valley Gate junction in Pennsylvania. The TL-263 transmission line is located within the southern aggregation area, and gas received into that line is pooled at the Appalachian Pooling Point South.

5. In this proceeding, Dominion proposed to install looping and replace certain sections of the TL-263 transmission line, to install overpressure protection, and to modify, but not increase the horsepower of, its Loup Creek Compressor Station. The Commission approved the project in the June 6 Order, finding that the proposed expansion will benefit the public by providing much needed additional infrastructure for producers to transport natural gas from a capacity constrained area to the marketplace.

6. To recover the costs of the project, Dominion proposed to charge shippers for the right to access the TL-263 line at the points where the additional volumes will be received from producers.[2] As proposed by Dominion, the costs of the project would be recovered through a reservation access charge under new Rate Schedule ACS. The service shippers would receive under the proposed Rate Schedule ACS would consist only of Dominion's receiving their gas volumes at designated points. Shippers would be responsible for arranging transportation of gas from the receipt point under a separate transportation agreement. According to precedent agreements submitted as part of the application, two prospective customers would enter into ACS service agreements with 15-year terms for a combined 21,250 Dth per day of access quantities, corresponding to the amount of additional transmission capacity that will be created by the project on the TL-263 line.

7. The Commission rejected Dominion's proposal to recover the costs of the approved facilities through a separate access charge. The Commission found that Dominion must instead propose incremental firm transportation rates to recover those costs because the facilities to be constructed would add transportation capacity on Line TL-263, not simply create access to Dominion's system.

<u>Dominion's Request for Rehearing</u>

8. In its rehearing request, Dominion argues that the Commission erred in rejecting Rate Schedule ACS and requiring it to offer firm transportation service on Line TL-263 under incremental recourse rates. Dominion avers that it is not operationally capable of

[2] Two natural gas producers, Dominion Exploration & Production, Inc. and Penn Virginia Oil & Gas Corporation, executed precedent agreements for ACS service.

providing firm incremental transportation service on the TL-263 line downstream of the proposed facility upgrades, as would be required under the June 6 Order. Dominion explains that all gas entering Line TL-263 must eventually pass through the Cornwell Compressor Station located downstream of Line TL-263. Although the expansion project will create additional capacity on the TL-263 line between Oscar Nelson and Cornwell, the project will not create additional capacity downstream of Cornwell. According to Dominion, its system is fully subscribed on a firm basis downstream of the Cornwell station so that Dominion cannot provide firm primary transportation for the project shippers' gas volumes beyond that point.[3] Dominion states that, because Dominion's rates and services are designed on a postage stamp basis, any obligation to transport the additional volumes on a firm basis would also apply downstream of Cornwell. Dominion maintains, however, that it cannot perform such incremental firm service for the additional project volumes.

9. Dominion notes, moreover, that under its tariff, any shipper with firm transportation rights on the Southern Appalachian System where the TL-263 line is located would also have a concomitant right to segment from its receipt points to the virtual Appalachian Pooling Point South at the downstream extremity of the system.[4] Dominion notes, however, that it could not guarantee such segmentation rights to incremental firm shippers on the TL-263 line because there would be no available corresponding firm capacity downstream of Cornwell.

10. Dominion states that to guarantee its recovery of the project's costs, while not obligating itself to offer service that would exceed its operational capabilities, Dominion proposed to charge the two shippers a firm rate for the right to access the TL-263 line, while requiring them to arrange separately for downstream transportation from the receipt points. Dominion argues that its Rate Schedule ACS is consistent with the Commission's pricing policy because it establishes incremental rates for the project.

Commission Response

11. We continue to believe that the costs associated with the facilities we approved in the June 6 Order should be recovered through a transportation rate, not an access charge. Accordingly, we will deny Dominion's request for rehearing of the June 6 Order's rejection of its proposed access service. As we explained in the June 6 Order, the proposed project not only will create access to the TL-263 for additional volumes, but will also create corresponding incremental transportation capacity on the line itself.

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[3] Dominion had not provided this information to the Commission in its application or subsequent responses to staff data requests.

[4] Such virtual segmentation rights were established under a settlement approved by the Commission in its Order No. 637 compliance proceeding.

Moreover, the additional operational information provided by Dominion in its rehearing request does not alter the fact that the bulk of the project's costs ($12.9 million of the total $14.7 million project cost) will be for facility improvements that increase transportation capacity on the line rather than for facilities that provide access to the line. Therefore, the service that will result from the project will be transportation service, not merely access service, as Dominion asserts.

Dominion's Request for Clarification

12. In the alternative, should the Commission not approve its ACS rate proposal, Dominion requests that the Commission instead allow Dominion to offer incremental interruptible (IT) service on the new capacity made possible by the project, and to allow Dominion to enter into negotiated-rate agreements with a minimum revenue commitment that will ensure cost recovery. Dominion states that offering only IT service to the project shippers accords with the physical reality that the project will not create any new capacity downstream of Cornwell, and that Dominion cannot provide firm service beyond that point. Under this proposal, shippers would pay a minimum monthly amount irrespective of the actual volume of service taken so that Dominion would recover from the project shippers their proportionate share of the cost. Without assurance of cost recovery, Dominion states that construction of the project would not be feasible. Dominion indicates that the project shippers have agreed in principle to enter into such negotiated-rate IT service agreements.

Commission Response

13. The Commission finds good cause to grant Dominion's requested clarification that it not be required to offer firm transportation to the TL-263 Expansion Project shippers. This clarification is consistent with the commercial arrangements agreed to by the parties, with Dominion's operational capabilities, and with its tariff provisions governing service on the Appalachian System. While Dominion states that the project will create much needed infrastructure on the TL-263 line upstream of Cornwell, Dominion has explained that no additional firm capacity will be created downstream of Cornwell, where the line is fully subscribed. Therefore, in light of this new information, we will not require Dominion to offer firm service that it would not be able to perform. Accordingly, we will allow Dominion to offer only incremental IT transportation service that will apply to the additional volumes entering the TL-263 line as a result of the proposed project. Furthermore, as the Commission stated in the June 6 Order, Dominion may enter into negotiated-rate IT agreements for such transportation service.

14. To assure that it will recover the cost of the project under an interruptible rate regime, Dominion proposes to enter into an IT negotiated-rate agreement with each of its two shippers that would contain a minimum charge regardless of how much transportation is actually rendered. Dominion has included an unexecuted *pro forma* amendment to the precedent agreements for Access Service it filed with the application,

and seeks approval of its proposed rate language. In pertinent part, the amendment provides that, should the Commission deny Dominion's request for rehearing, the parties will enter into a service agreement under Rate Schedule IT and an associated negotiated-rate agreement. Under the proposed *pro forma* rate language to be added as new Paragraph H5 in section 3 of the Precedent Agreement, the parties would enter into a negotiated-rate IT agreement setting forth a usage charge of approximately $0.3030 per Dth in lieu of the system usage charge under Rate Schedule IT. Like the access charge rejected by the June 6 Order, the negotiated-rate would be calculated on a 100 percent load factor basis, using estimated minimum daily billing determinants of 21,250 Dth and estimated construction costs. The negotiated-rate agreement would provide further that, if a shipper does not deliver the specified minimum daily quantity to the receipt point on any day, the shipper would pay the usage charge as if it had delivered the minimum quantity for that particular day.

15. The Commission does not usually review negotiated-rate agreements outside the context of an NGA section 4 filing but has the discretion to do so under appropriate circumstances.[5] We will exercise our discretion to review the proposed rate language here because of the highly unusual factual circumstances, and because Dominion has stated that, without assurance that it can recover the costs of constructing the facilities approved in the June 6 Order, it will not be feasible for Dominion to proceed with the project.

16. While the level of the minimum rate proposed by Dominion for the Line TL-263 expansion capacity is designed in the same way and is equal to the access charge rejected by the June 6 Order, the proposed minimum charge will be a transportation rate, not an access charge. Thus, unlike the rejected access charge proposal, Dominion's minimum charge proposal reflects the fact that the facilities to be constructed will add transportation capacity on Line TL-263, not simply create access to Dominion's system. The Commission has permitted pipelines to enter into negotiated-rate contracts under which interruptible shippers agree to minimum revenue commitments calculated by multiplying a minimum volume level by a usage rate so long as the shippers are not obligated to actually take service at a minimum level.[6] In view of these considerations, we find that Dominion's minimum charge proposal for Line TL-263 expansion capacity is a reasonable method for recovering its construction costs and therefore will approve this proposal.

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[5] *See Southern LNG, Inc.*, 120 FERC ¶ 61,258 at P 39 – 45 (2007).

[6] *See High Island Offshore System, L.L.C.*, 100 FERC ¶ 61,031 at P 11 (2002), and *Gulfstream Natural Gas System, L.L.C.*, 107 FERC ¶ 61,303 at P 19 (2004).

17. However, Dominion's precedent agreements for the Line TL-263 expansion capacity include a provision which, if included in the final agreements, would constitute a material deviation from the Rate Schedule IT Form of Service Agreement set forth in Dominion's tariff. This language in the precedent agreements provides that "[i]n addition to [the Maximum Daily Transportation Quantity], Customer may increase the quantity furnished to Pipeline, provided that such quantity, when reduced by the fuel retention percentage specified in Pipeline's then-effective FERC Gas Tariff, does not exceed the quantity limitation specified for the [Customer's] Point of Receipt."

18. The Commission has explained that a material deviation is any provision in a service agreement that: (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties.[7] However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation. The meaning of the quoted language in the precedent agreements is unclear to us, however, and, accordingly, we cannot determine whether the deviation would constitute a substantial risk of undue discrimination. The Commission places Dominion on notice that, if Dominion includes the quoted language in its negotiated-rate agreements, it will need to explain the meaning of this language and whether such language presents a substantial risk of undue discrimination when it files tariff sheets containing the terms of those agreements.

19. Finally, the negotiated-rate contracts with the project expansion shippers will be subject to the same filing, reporting and accounting requirements that are applicable to all of Dominion's negotiated-rate contracts. Dominion is directed to file any tariff sheets reflecting service under the TL-263 Expansion Project not less than 60 days prior to the effective date of service.

The Commission orders:

(A) Dominion's request for rehearing of the Commission's rejection of its Rate Schedule ACS proposal is denied.

(B) Dominion's request for clarification is granted, as discussed in the body of this order.

(C) Dominion's *pro forma* negotiated-rate language is approved, in part, consistent with the discussion in the body of this order.

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[7] *See Columbia Gas Transmission Corporation*, 97 FERC ¶ 61,221 (2001).

(D) Dominion is directed to file any applicable tariff sheets reflecting service under the TL-263 Expansion Project not less than 60 days prior to the effective date of service.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.