

114 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Dominion South Pipeline Company, L.P.

Docket Nos. CP05-76-001
CP05-77-002
and CP05-78-001

ORDER DENYING REHEARING AND GRANTING CLAIRIFICATION

(Issued January 19, 2006)

1. On October 20, 2005, the Commission issued an order granting Dominion South Pipeline Company, L.P (Dominion South) certificate authorization under section 7 of the Natural Gas Act (NGA) to construct and operate a new interstate pipeline system, consisting of approximately five feet of 12-inch diameter pipe, with a capacity of 200,000 dekatherms of natural gas per day (Dth/d), to be located in Matagorda County, Texas.¹ On November 21, 2005, Dominion South submitted a timely request for rehearing and clarification of the October 2005 Order. Dominion South claims the Commission erred by not permitting it to include an imbalance penalty provision in its tariff. In addition, Dominion South asks the Commission to clarify that the initially approved rates are not, as stated, negotiated rates, but are maximum recourse rates. We will deny the rehearing request and grant the clarification request, for the reasons discussed below.

¹ *Dominion South*, 113 FERC ¶ 61,064 (2005). The October 2005 Order granted Dominion South (1) blanket certificate authorization under Part 157, subpart F, of the Commission's regulations to construct, acquire, operate, and abandon facilities; (2) blanket certificate authorization under Part 284, subpart G, of the regulations to provide open access firm and interruptible transportation services with associated pregranted abandonment; and (3) approval of tariff terms and conditions and initial recourse rates.

Background

2. The October 2005 Order granted Dominion South, a new company, authorization to construct and operate a five-foot segment of pipe to connect and move gas from an existing Transcontinental Gas Pipe Line Corporation (Transco) mainline to an existing Florida Gas Transmission Company (Florida Gas) mainline. The Transco and Florida Gas mainlines currently cross, but do not connect, in Matagorda County, Texas.

Request for Rehearing

3. As part of its initial application, Dominion South submitted a proposed tariff containing imbalance penalty provisions.² Section 284.12(b)(2)(iii) of the Commission's regulations states that "[a] pipeline with imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances." Dominion South explained that it intended to include imbalance penalty provisions in its tariff without offering imbalance management services, because offerings such services would not be operationally practicable. Accordingly, Dominion South sought a waiver from the Commission in order to impose imbalance penalties without offering shippers any means to avoid such penalties.

4. In our October 2005 Order, we provisionally granted Dominion South's requested waiver. However, consistent with our regulatory requirements, as described in Order No. 637,³ we found that if Dominion South did not offer imbalance management services, it

² See section 37.4 of the General Terms and Conditions (GT&C) of Dominion South's pro forma tariff, providing for a penalty of \$0.75 per Dth on any day a customer tenders a quantity of gas that is in excess of or deficient by the greater of 400 Dth or four percent of its takes at the point(s) of delivery. See also GT&C section 31.4, which provides for a monthly cashout mechanism that includes a tiered penalty for imbalances greater or less than two percent of contract quantity.

³ Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, FERC Stats. & Regs. Regulations Preambles (July 1996 - December 2000) ¶ 31,091 (Feb. 9, 2000); *order on reh'g*, Order No. 637-A, FERC Stats. & Regs. Regulations Preambles (July 1996 - December 2000) ¶ 31,099 (May 19, 2000); *reh'g denied*, Order No. 637-B, 92 FERC

would be inequitable to subject shippers to imbalance penalties.⁴ Accordingly, we waived the requirement that Dominion South offer imbalance management services, provided Dominion South remove all imbalance penalty provisions from its tariff.

5. On rehearing, Dominion South seeks to retain imbalance penalty provisions in its tariff without being obliged to provide imbalance management services. Dominion South contends that by precluding it from imposing imbalance penalties when it is operationally unable to provide imbalance management services, “the Commission made an unjustified and unsupported change to its policy.”⁵ Dominion South argues that “Order No. 637 did not prohibit pipelines from imposing imbalance penalties where it is not operationally feasible to provide imbalance management services.”⁶

6. In Order No. 637, we state that “[t]he availability of imbalance management services is critical for providing many shippers with the flexibility they need to avoid or correct imbalances, which in turn obviates the need for pipelines to impose OFO’s and penalties.”⁷ Moreover, we state our expectation that pipelines will “provide as many different imbalance management services as is operationally feasible, and to work to develop new, innovative services that help shippers manage or prevent imbalances.”⁸

7. In this case, we accept Dominion South’s assertion that by entering into operational balancing agreements (OBAs) with both of its interconnecting pipelines,

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¶ 61,062 (2000); *aff’d in part and denied in part sub nom. Interstate Natural Gas Association of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002).

⁴ See, e.g., *Columbia Gas Transmission Corporation*, 113 FERC ¶ 61,118 (2005), *Missouri Interstate Gas, LLC*, 102 FERC ¶ 61,166 (2003), and *SG Resources Mississippi, L.L.C.*, 101 FERC ¶ 61,029 (2002).

⁵ Dominion South’s Request for Rehearing and Clarification at 5 (November 11, 2005).

⁶ *Id.* at 4.

⁷ Order No. 637, FERC Stats. & Regs. Regulations Preambles (July 1996 - December 2000) ¶ 31,091 at 31,311.

⁸ *Id.* at 31,310

Dominion South's shippers will not incur imbalances.⁹ Given Dominion South's assurance that Transco and Florida Gas OBAs will be adequate to preclude imbalances on Dominion South's system, we see no justification for Dominion South to include imbalance penalties in its tariff.

8. Dominion South cites *Horizon Pipeline Company, L.L.C. (Horizon)*¹⁰ and *Nortêno Pipeline Company (Nortêno)*¹¹ as cases in which we permitted pipelines to impose imbalance penalties without providing imbalance management services. In those cases, we found that Horizon and Nortêno, like Dominion South, lacked storage facilities and were too small to permit any significant line pack. As a result, we found the pipeline companies were unable to offer storage and park-and-loan imbalance management services. We did not, however, exempt those pipeline companies from offering their shippers alternative means to prevent or correct imbalances.

9. Thus, when Horizon requested a partial waiver of Order No. 637, so as not to be required to offer a park and loan service, we took into consideration that Horizon offered imbalance netting and trading and a five percent tolerance on imbalance charges, and granted a partial waiver.¹² In contrast, we denied a waiver when Nortêno – like Dominion South – sought to forego offering *all* imbalance management services yet retain imbalance penalties. Nortêno argued “that netting and trading provisions should not apply on its system” due to “the small number of customers, the limited number of delivery points and limited throughput, the operational balancing agreements in place, as well as the fact that an imbalance penalty has never been assessed on Nortêno's system.”¹³ While we accepted that Nortêno need not offer services it could not provide, *e.g.*, storage and park and loan, we explained that “Commission policy requires that pipelines with tariff authority to impose imbalance penalties also provide their customers with the opportunity to net and trade imbalances.”¹⁴

⁹ Dominion South's Application at 11 (February 28, 2005).

¹⁰ 101 FERC ¶ 61,195 (2002).

¹¹ 99 FERC ¶ 61,061 (2002).

¹² 101 FERC ¶ 61,195, P 30 (2002).

¹³ 99 FERC ¶ 61,061 at 61,284 (2002).

¹⁴ *Id.*

10. Although Dominion South may be similar to Horizon and Norteno in its inability to provide certain imbalance services (*e.g.*, storage and park and loan), Dominion South has not presented a rationale to justify waiving all imbalance management services, including netting and trading. In view of the above, we believe our decision in this case is consistent with both the outcomes in *Norteno* and *Horizon* and with our policy as set forth in Order No. 637.

11. As Dominion South's system is currently designed,¹⁵ Dominion South will not have the means to physically manipulate gas volumes transported on its system, and the single prospective shipper's receipts and deliveries should not compromise either the stability or reliability of Dominion South's transportation services or Dominion South's ability to maintain the operational integrity of its system. Since our regulations provide that "[a] pipeline may include in its tariff transportation penalties only to the extent necessary to prevent the impairment of reliable service,"¹⁶ we affirm our October 2005 finding that there is no need for Dominion South's tariff to contain imbalance penalties. As we stated in that prior order, we reach this decision "without prejudice to Dominion South proposing both imbalance penalties and the means to avoid them at a later time in response to changed circumstances."¹⁷

Request for Clarification

12. Dominion South states that in its application, it inadvertently described its precedent agreement for firm transportation service as being at a "negotiated rate," when in fact that service will be provided at the maximum recourse rate. Dominion South adds that it has now executed a firm service agreement that reflects the terms of the precedent agreement. The October 2005 Order, reflecting the description in the application,

¹⁵ Dominion South's system will consist of one receipt point connected to a single pipeline, and then five feet downstream, one delivery point connected to another pipeline. A single affiliated customer, Dominion Field Services, Inc., has committed to long term, firm transportation service for the system's full capacity.

¹⁶ 18 CFR § 284.12(b)(2)(v) (2005).

¹⁷ 113 FERC ¶ 61,064, P 37 (2005).

referred to Dominion South's "negotiated rate" agreement. We clarify that Dominion South will provide firm transportation service under Rate Schedule FT-1 to Dominion Field Services, Inc. at the maximum recourse rate.

The Commission orders:

(A) Dominion South's request for rehearing is denied, for the reasons discussed in the body of this order.

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.