

108 FERC ¶ 61,110
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 Resources, Inc.;
Dominion Transmission, Inc.;
Dominion Energy Clearinghouse;
Northern Illinois Gas Company; and
Columbia Gas Transmission Corporation

Docket No. IN04-2-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENTS

(Issued August 2, 2004)

1. The Division of Enforcement, Office of Market Oversight and Investigations (Enforcement) executed three Stipulation and Consent Agreements (Agreements), one each with the following entities: (1) Dominion Resources, Inc. (Dominion Resources) Dominion Transmission, Inc. (DTI) and Dominion Energy Clearinghouse (DEC); (2) Northern Illinois Gas Company (Nicor); and (3) Columbia Gas Transmission Corporation (Columbia). The Agreements were executed following a formal, non-public investigation involving the named entities.¹ The Agreements resolve issues relating to unauthorized communication of non-public natural gas storage inventory information by companies subject to the Commission's jurisdiction. The Agreements are in the public interest because they settle issues and provide appropriate relief. We therefore approve them.

2. The Agreements disclose that employees of interstate natural gas pipeline companies DTI and Columbia, and Nicor, a local distribution company (LDC) that has a blanket certificate pursuant to subpart C of Part 284 of the Commission's regulations, communicated their respective companies' actual storage injection or withdrawal volumes over extended periods of time. DTI communicated this information to an affiliated risk group employee, who in turn communicated it to a Dominion Resources gas trader, who in turn communicated it to industry participants outside of Dominion. Nicor and Columbia communicated this information to certain customers. None of the storage inventory information was public at the time it was communicated.

¹ See 18 C.F.R. Part 1b (2004).

3. Transportation of natural gas in interstate commerce includes storage.² By communicating non-public storage inventory information from DTI, the interstate pipeline, to DEC, its marketing affiliate, DTI and Dominion Resources, according to the Agreement the entities executed, violated Standard F of the Commission's standards of conduct requirements. Standard F states that, to the extent a natural gas pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and non-affiliated, on its system.³ Nicor's communication of storage information to a certain customer constituted an undue preference that, according to the Agreement Nicor executed, violated the Commission's regulations.⁴ The Agreement with Columbia also settles its communication of storage information to certain customers.

4. The investigation in this docket has revealed that a number of market participants have sought to obtain and exploit non-public storage inventory information to gain a competitive advantage in wholesale gas markets. Most or all of the natural gas traders and other natural gas industry participants that received the non-public storage inventory information from Dominion Resources, Nicor and Columbia apparently valued it because they believed it provided insight with respect to one or more of the following: (a) NYMEX natural gas contract futures prices immediately following the Thursday 10:30 a.m. Eastern Time release by the United States Department of Energy's Energy Information Administration (EIA) of its Weekly Natural Gas Storage Report; (b) off-exchange traded natural gas-based instruments; (c) fluctuating price differentials between major receipt and delivery points; (d) general market conditions; (e) the value of storage as a price hedging mechanism; or (f) pipeline operations affecting transportation or storage of gas.

² 18 C.F.R. § 284.1(a) (2004).

³ 18 C.F.R. § 161.3(f) (2003). In November 2003, the Commission issued Order No. 2004, which supersedes the provisions of Part 161 of the Commission's regulations that the Dominion entities violated. Standards of Conduct for Transmission Providers, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 107 FERC ¶ 61,032 (2004), *reh'g pending*. In Order No. 2004, the Commission adopted standards of conduct that apply uniformly to interstate natural gas pipelines and public utilities. The Commission codified these standards of conduct in Part 385 of the Commission's regulations and revised Part 161 of its regulations. The Commission included section 358.5(b), 18 C.F.R. § 385.5(b) (2004), which is comparable to the former Standard F. The provisions of Part 161 apply to the conduct of the Dominion entities because that conduct predates the issuance of Order No. 2004.

⁴ 18 C.F.R. §§ 284.9(b) and 289.7(b)(1) (2004).

5. The Commission has a continuing duty to maintain the integrity of jurisdictional natural gas sales markets.⁵ The Commission will vigilantly exercise oversight of pipelines' standards of conduct compliance and activities that provide transportation-related advantages to some but not all pipeline customers.

The Agreements

Dominion Resources, DTI and DEC (The Dominion entities)

6. The Agreement with the Dominion entities provides for refunds to DTI's storage customers in the amount of \$4,500,000 in proportion to each customer's share of the total firm storage reservation revenues received by DTI applicable to services rendered in 2002. As explained in the Agreement, the maximum trading benefit that Dominion Resources could reasonably have derived from the wrongful communication of storage inventory information from DTI to the Dominion gas trader was approximately \$4,900,000. While it may be unlikely that more than 90 percent of all relevant trading profits earned by Dominion Resources during the affected period could be attributed to the wrongful communication of transportation-related information to DTI's marketing affiliate that occurred, the Agreement reflects the Commission's determination that Dominion Resources not profit from its standard of conduct violation.

7. The Dominion entities further agree to pay a civil penalty in the amount of \$500,000. The civil penalty is warranted by the severity of the Dominion entities' conduct. As explained in the Agreement, the risk group employee received DTI's storage inventory information by e-mail. The risk group employee previously worked for DTI but his name was not removed from the distribution list after he left DTI. DTI should have purged the risk group employee's name from the distribution list promptly after his employment with DTI ended. The risk group employee should not have communicated the storage inventory information that he received from DTI to the Dominion gas trader. The Dominion gas trader should not have communicated this information to other industry participants. In approving the size of the civil penalty, the Commission has also considered that the Dominion entities voluntarily brought the violation to the attention of Enforcement.

⁵ *E.g., In the Matter of Amendments to Blanket Sales Certificates*, 107 FERC ¶ 61,174 at P 11 (2004) (The Commission's "responsibility to ensure the integrity of the jurisdictional gas sales market required it to revise its regulations to place additional conditions on its grant of market based sales certificates[,]” *citing*, Order No. 644, Amendments to Blanket Sales Certificates, FERC Stats. & Regs., Regulations Preambles ¶ 31,153 (November 17, 2003).

8. The Dominion entities also agree to extensive employee training intended to deter future similar violations. The substantive material incorporated in the Agreement indicates the subject matter of instruction that the Dominion entities will provide its employees. This information includes instruction on the Commission's standards of conduct, why the conduct recited in the Agreement was wrongful, and detailed elements of Order No. 2004.

9. Since July 29, 2003, Dominion has posted its weekly net injection and withdrawal activity on Mondays, the same day of the week that it reports its storage inventory information to EIA. Because sunshine is the best disinfectant, this measure should go far in deterring future similar violations.

Nicor

10. The Agreement with Nicor provides for Nicor to pay a civil penalty of \$600,000. This penalty is warranted because selective disclosure of Nicor's storage inventory information could have provided an operational advantage to the favored customer. If Nicor intended to share its storage inventory information, it should have shared it with all its customers. Nicor states in the Agreement that the penalty will not affect retail rates or service.

11. The Agreement does not require Nicor to post its storage inventory information. As a local distribution company, Nicor has gas purchase obligations to meet retail demand that differ from interstate pipelines that provide service pursuant to subparts B and G of part 284 of the Commission's regulations. These obligations could potentially be affected by posting of actual daily injection and withdrawal volumes. Because the Commission has not explored whether, and if so, the extent to which, Nicor's gas purchase obligations may be affected by posting its storage inventory information, we are approving the Agreement without a posting provision.

12. Lastly, Nicor agrees to conduct extensive annual, onsite training to provide guidance to its employees regarding compliance with the Commission's requirements. Nicor further agrees to modify its corporate policies to specifically prohibit the disclosure of its storage inventory information to parties outside Nicor.

Columbia

13. The Agreement with Columbia provides for Columbia to pay a civil penalty of \$2,500,000. The Agreement recites that Columbia did not profit from the disclosures of its non-public storage inventory information. It appears from the Agreement that Columbia should have better supervised the dissemination of its daily injection and withdrawal information, given the apparent operational and market-related value of this

information. The prolonged and persistent nature of the communications weakened the desired practices that commodity trading be based on public information and that all pipeline customers be apprised of transportation-related information equally.

14. The Agreement contains two measures meant to deter future similar activity. Columbia agrees to post each Monday its net aggregate injection and withdrawal volumes for the previous week. In addition, Columbia agrees to automatically record for one year all telephone conversations between its customer service representatives and customers, and will retain these recordings for an additional year. As the Agreement recites, it was a Columbia customer service representative who communicated Columbia's non-public storage inventory information to selected customers.

Related Matters

15. The Commission directs its staff to terminate the investigation with respect the following three entities that are named in one or more of the Agreements: (1) Alliance for Cooperative Energy Services Power Marketing LLC; (2) Interstate Gas Supply, Inc.; and (3) Sequent Energy Management, LP. These firms provided information to Enforcement that materially advanced the investigation. The Commission has not concluded that these firms violated the Commission's regulations with respect to their conduct referenced in any of the Agreements.

16. The acuteness of interest in non-public storage inventory information evinced by the investigation in this docket, the apparently widespread nature of industry activity that is focused on storage inventories, and the bearing that storage inventories appear to have on commodity markets and pipeline operations counsel in favor of more complete, consistent and comprehensible posting by pipeline companies of their storage inventories than the Commission currently requires. On this date the Commission is issuing notice of a technical conference to explore issues related to achieving greater transparency in storage inventory information. The technical conference will provide an opportunity for interested persons to provide information and opinions regarding the costs and benefits of improved posting of storage inventory information.

Conclusion

17. The Commission finds that the Agreements with the Dominion entities, Nicor and Columbia are fair and reasonable and in the public interest. They resolve issues and provide for remedies that address the conduct described in the respective Agreements.

The Commission orders:

(A) The Commission approves the attached Stipulation and Consent Agreements without modification.

(B) The Commission's approval of the Agreements does not constitute precedent regarding any principle or issue in any proceeding.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.