

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dominion Transmission, Inc.

Docket Nos. RP00-632-019
RP00-632-020
RP00-632-021

ORDER ON REHEARING, COMPLIANCE FILING,
AND FUEL REPORT

(Issued January 19, 2007)

1. On January 5, 2006 in Docket No. RP00-632-019, Dominion Transmission, Inc. (Dominion) submitted a Compliance Filing, including a revised tariff sheet¹ with a proposed effective date of February 3, 2006, in compliance with the Commission's Order Accepting Fuel Report Subject to Conditions issued on December 21, 2005 (December 21, 2005 Order).² On January 20, 2006 in Docket No. RP00-632-020, Dominion filed a Request for Rehearing of the December 21, 2005 Order. On June 30, 2006, in Docket No. RP00-632-021, Dominion filed an Informational Fuel Report for the twelve-month period ending March 31, 2006, in compliance with its tariff. This order grants in part and denies in part the Request for Rehearing, accepts the revised tariff sheet in the compliance filing to be effective February 3, 2006, as proposed, accepts Dominion's 2004 and 2005 Informational Fuel Reports without condition, and accepts Dominion's 2006 Informational Fuel Report subject to condition.

I. Background

2. On June 22, 2001, Dominion filed a settlement of its Transportation Cost Recovery Adjustment proceedings in Docket Nos. RP00-632, *et al.* (TCRA Settlement), which the Commission approved in a letter order issued on September 13, 2001.³ Of relevance here, under the TCRA Settlement, Dominion's Fuel Reimbursement

¹ Third Revised Sheet No. 1120 to Dominion's FERC Gas Tariff, Third Revised Volume No. 1.

² *Dominion Transmission, Inc.*, 113 FERC ¶61,302 (2005).

³ *Dominion Transmission, Inc.*, 96 FERC ¶ 61,288 (2001).

Percentages were fixed. Also, under the TCRA Settlement, Dominion was required to file an annual Informational Fuel Report (Fuel Report) containing 16 discrete informational items regarding its fuel use that are listed in section 16.5 of the General Terms and Conditions (GT&C) of Dominion's tariff.⁴ Dominion was required to file these reports every year until its next general rate filing under section 4 of the Natural Gas Act (NGA).

3. On May 27, 2005, the Commission approved a settlement agreement Dominion filed in Docket Nos. RP05-267-000, *et al.* (2005 Settlement) which amended the TCRA Settlement and three other previous settlements.⁵ Of relevance here, Article IV of the 2005 Settlement provided the following:

- A five-year moratorium is placed on the effective date for general rate changes, and changes in fuel retention percentages beginning on the effective date of the settlement.
- Dominion shall not file a general section 4 rate proceeding and no Settling Party shall initiate or support a proceeding under section 5 that would cause a change in Dominion's generally applicable transportation or storage rates during the Moratorium Period.
- Dominion and the Settling Parties may not propose in any proceeding that any change to the settled fuel retention mechanism, transportation or storage fuel retention percentages or the "allocation method" as defined in the TCRA Settlement occur during the Moratorium Period.
- Nothing in the settlement precludes the Commission from initiating an NGA section 5 proceeding on its own motion.
- The informational fuel filing requirements established by the TCRA settlement will remain in place.

4. When Dominion made its annual informational fuel filings in Docket Nos. RP00-632-013 and -017 for the periods ending in 2004 and 2005, respectively, KeySpan Energy Delivery (KeySpan) filed comments asserting that waivers or credits for negotiated fuel transactions at maximum recourse rate retainage levels were not reflected in the report and requested that Dominion be required to revise its Fuel Reports to include: (1) the quantity of fuel waived by Dominion in the relevant annual period by function, (2) the quantity of fuel collected or credited under negotiated rate agreements where the fuel retention quantities differ from Dominion's maximum recourse rate

⁴ See Second Revised Sheet No. 1120 to Dominion's FERC Gas Tariff, Third Revised Volume No. 1.

⁵ *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005).

retainage, and (3) the amounts that should be collected or credited pursuant to the Commission's order requiring Dominion to credit maximum rate retainage levels to its retainage accounts for any negotiated rate transactions.

5. In its December 21, 2005 Order, the Commission accepted Dominion's 2004 and 2005 Fuel Reports subject to conditions. The Commission cited its policy prohibiting one class of customers from subsidizing another class, as might happen if one class of customers were exempt from paying for fuel retainage or paid a lower rate than another class of customers. The Commission said that although Dominion had complied with the specific information requirements of the TCRA Settlement and section 16.5 of the GT&C of the tariff, granting KeySpan's request for more detailed information in Dominion's Fuel Reports would enhance the transparency of Dominion's transactions and assure all parties and the Commission that there is no cost-shifting or subsidization on Dominion's system.

6. The Commission found that under section 5 of the NGA, section 16.5 of Dominion's GT&C was unjust and unreasonable insofar as it failed to require additional information regarding waivers and discounting and should be revised to require such information to be just and reasonable. The Commission directed Dominion to file, within 15 days, a revised section 16.5 to reflect: 1) the quantity of fuel waived by Dominion in the relevant annual period by function; 2) the quantity of fuel collected or credited under negotiated rate agreements where the fuel retention quantities differ from Dominion's maximum recourse rate retainage; and 3) the amounts that should be collected or credited pursuant to the Commission's July 30, 2004 Order requiring Dominion to credit maximum rate retainage levels to its retainage accounts for any negotiated rate transactions.⁶

7. The Commission also directed Dominion to refile its June 30, 2004 and June 30, 2005 Fuel Reports to add this information, and to include this information in its future Fuel Reports consistent with revised section 16.5.

II. Summary of Filings

8. On January 5, 2006, pursuant to the December 21, 2005 Order, Dominion made a compliance filing in Docket Nos. RP00-632-017 and -019 submitting a revised section 16.5 of the GT&C of its FERC Gas Tariff which included the additional information items required by the December 21, 2005 Order. Public notice of the filing was issued with protests due as provided in section 154.210 of the Commission's regulations.⁷ On January 17, 2006, KeySpan filed a Request for Summary Rejection of Dominion's

⁶ *Dominion Transmission, Inc.*, 108 FERC ¶ 61,106, at P 17 (2004).

⁷ 18 C.F.R. § 154.210 (2006).

January 5, 2006 Compliance Filing, arguing that the filing failed to comply in that it did not include revised Fuel Reports for 2004 and 2005. Dominion filed an answer to KeySpan's Request for Rejection, arguing it was in full compliance because the Commission had set no deadline on filing the revised 2004 and 2005 Fuel Reports and immediate filing would deprive Dominion of the benefits sought in its rehearing request.

9. On January 20, 2006, Dominion filed the instant Request for Rehearing pursuant to Rule 713 of the Commission's Rules of Practice and Procedure. KeySpan filed an answer on January 30, 2006. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure⁸ prohibits answers to a request for rehearing. Accordingly, the Commission will reject KeySpan's answer.

10. On June 30, 2006, Dominion filed its annual Informational Fuel Report for 2006 (2006 Fuel Report) pursuant to section 11.5 of the TCRA Settlement and section 16.5 of its GT&C detailing Dominion's System Gas Requirements and gas retained or otherwise obtained, and other information required by its originally-effective section 16.5 of the GT&C, but not the additional information required by the Commission's December 21, 2005 Order, for the twelve month period ending March 31, 2006. Public notice of the filing was issued with interventions and protests due as provided in section 154.210 of the Commission's regulations.⁹ Pursuant to Rule 214,¹⁰ all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. On July 11, 2006, KeySpan filed a Protest, arguing that Dominion should be required to include the additional information required by the Commission in its December 21, 2005 Order. Dominion filed an Answer, which we will accept as it may aid in resolution of the issues raised by its filing.

III. The Request for Rehearing

A. Mobile-Sierra and Modification of the Settlements

11. Dominion asserts that the Commission has modified the 2005 Settlement by ordering the additional information requirements to section 16.5 of the GT&C and, as a result, has severely undermined the benefit of the settling parties' bargain in violation of the *Mobile-Sierra* Doctrine.¹¹ Dominion argues that the *Mobile-Sierra* doctrine requires

⁸ 18 C.F.R. § 385.713(d)(1) (2006).

⁹ 18 C.F.R. § 154.210 (2006).

¹⁰ 18 C.F.R. § 385.214 (2006).

¹¹ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

that the Commission review proposed modifications to agreements under a public interest standard in the absence of prescribed contractual language enabling the Commission to employ a just and reasonable standard. Dominion asserts that the December 21, 2005 Order modifies the terms governing the scope of Dominion's Fuel Report requirement, even though the terms of the Settlements clearly specified the scope of the information to be included. Dominion states that section 7.1 of the 2005 Settlement specifies that the settlement is an integrated package with none of the terms agreed to without the others and with no various provisions severable. Further, it states that the 2005 Settlement contained no *Memphis* clause¹² authorizing parties to seek unilateral changes in terms, and that section 4.5 of the 2005 Settlement specifically precludes parties from seeking a result "inconsistent" with any provision established in the Settlements.

12. Dominion contends that the Commission in its December 21, 2005 Order did not even attempt to satisfy the public interest standard required to modify a settlement and that, in fact, the 2003-2004 fuel use data would have no relevance in 2010, the year in which Dominion's fuel retention rates can be adjusted. Dominion also asserts that neither the Commission, nor KeySpan has pointed to any change in circumstance or other extraordinary situation that could satisfy the public interest standard and justify rewriting the Fuel Report provision and upsetting two carefully negotiated settlement agreements. Dominion claims the record in this case lacks evidence on issues of financial distress, excessive burden or undue discrimination that the public interest standard requires. It asserts that most egregious is the idea that in 2010 or later (which, it asserts, the 2005 Settlement establishes as the next possible window for an adjustment to Dominion's fuel retention rate) data regarding 2003 and 2004 fuel use would have any relevance to the parties whatsoever.

13. Dominion points to the Commission practice of supporting the sanctity of settlements and avoiding changes so that parties can rely on the terms and conditions of a settlement until a new rate case can be conducted.¹³ Dominion argues that KeySpan's objections to the terms of the TCRA Settlement should have been articulated when the Settlements first were reviewed. Dominion argues that application of the public interest standard required by the *Mobile-Sierra* doctrine provides settling parties with the contractual and regulatory certainty needed to ensure investment while simultaneously protecting the public from unintended consequences when circumstances surrounding private contracts have changed.

¹² *United Gas Pipeline Co. v. Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958).

¹³ Dominion cites *Brooklyn Union Gas company, d/b/a/ KeySpan Energy Delivery New York, et al. v. FERC*, 409 F.3d 404, 407 (D.C. Cir. 2005).

14. The Commission finds Dominion's arguments unsupported. At the outset, we find that the premise of Dominion's *Mobile-Sierra* line of argument is invalid. The Commission has not modified the terms of the 2005 Settlement by directing changes to section 16.5 of the GT&C to add more information items to the annual Fuel Reports. None of the 16 enumerated informational filing requirements of section 11.6 of the TCRA Settlement, as those requirements were adopted by section 4.3 of the 2005 Settlement and currently reflected in section 16.5 of the GT&C, is modified or eliminated. The Commission has merely directed that the tariff be revised to provide that the information to be submitted to the Commission each June 30 be supplemented to include additional information the Commission finds would be helpful in establishing whether subsidies are occurring under the existing fuel rate structure.

15. Further, we find that Dominion's claim that any addition to the settlements' informational filing requirements "severely undermined the benefit of the settling parties' bargain" is unsupported. The bargain struck by the settling parties relates to the rates, including specific fuel percentages and fuel methodology established by the settlements. Requiring additional information to be submitted does not, in and of itself, change those settled rates. The purpose and intent in requiring information to be filed before Dominion files a general section 4 rate case, which it has no obligation to do, was to provide a minimum set of information to be used to determine whether section 5 action adjusting the settled fuel retention percentages would be appropriate; not to *preclude* other information from ever being required for that same purpose. The purpose clearly was not to blind the Commission to additional information if such information were deemed important to fulfill the Commission's oversight responsibilities under the NGA. The December 21, 2005 Order does not modify that settled list of information; it will still be filed. Rather, the Commission's order simply adds to it. Rather than directing this information be reported on an ad hoc basis in a filing separate from the settlement's informational reports, as a matter of efficient administration, the order requires the memorialization of the additional information requirements in the tariff and requires their inclusion in the same report in which the other settled information items are reported. Thus, we believe the Commission's action is consistent with the intent of the TCRA Settlement's informational filing requirement and also with the intent of the subsequent 2005 Settlement which includes the informational reporting requirements of the TCRA Settlement. Section 11.6 of the TCRA Settlement provided:

11.6 In the event [Dominion] has not made a general NGA section 4 filing by June 30, 2003, then [Dominion] shall be required to make an informational filing on that date that contains supporting information and workpapers for the annual period ending March 31, 2003, as described in the proposed GT&C section 16.5 attached on Appendix B. [Dominion] shall make a similar filing each June 30 that sets forth the same information for subsequent years until it makes its next general NGA section 4 rate case filing.

In Joint Initial Comments of East Coast Distributors Group on the TCRA settlement, the commenters explained the purpose of the informational reporting requirement:

To assist the customers and the Commission in monitoring the appropriateness of the fixed fuel percentages, [Dominion] has committed to providing, initially on an interim, summary report basis (Article XI, section 11.5) and beginning in 2003 on a more extensive basis (Article XI, section 11.6), detailed information regarding its system fuel requirements, fuel retained, NPS balance, activities such as Rate Schedule MCS parks and loans that could have an effect on system gas requirements, and other relevant information to assess the continued appropriateness of both the fixed percentages and the mechanism itself. Either side - pipeline or customer - has the ability to seek a change in percentages to become effective following Commission determination, and both pipeline and non-pipeline applicant would bear the same burden of proof in asserting the need for such a change. Article XI, section 11.7. (Comment at 10-11).

16. Article IV, section 4.3 of the 2005 Settlement provides: “[Dominion] shall continue to make the informational filings required pursuant to section 11.6 of the TCRA Settlement each June 30 until it makes its next NGA section 4 general rate case filing.” Further, consistent with the TCRA Settlement, section 4.6 of the 2005 Settlement provides: “This Article IV shall not purport to preclude the Commission from initiating an NGA section 5 proceeding on its own volition.” Accordingly, consistent with the comments filed in support of the informational reporting requirements of the underlying TCRA Settlement, and the specific provisions of the 2005 Settlement, the additional reporting requirement is to provide information the Commission could use to modify the fuel retention rates in a section 5 proceeding, not just in a rate case initiated by Dominion under section 4, which it has no obligation to file. This appears to be the purpose of the existing informational requirements. Moreover, the Commission has not modified any of the rates, or terms and conditions of service approved by the settlements. All that the Commission has directed is that the information the settlements require Dominion to submit to the Commission for the purpose of potentially being used in either a future section 4 or 5 proceeding regarding the fuel percentages be increased to include additional information the Commission finds would increase transparency and could be helpful in establishing whether cost-shifting or subsidies are occurring under the existing fuel rate structure. Therefore, we do not believe that the Commission’s action was inconsistent with the underlying settlements; thus, the Commission’s policy of preserving settlements is not implicated here.

17. Second, even if it were held that the Commission’s action modified the 2005 Settlement, the standard the 2005 Settlement applies to Commission-directed changes is the “just and reasonable” standard under NGA section 5, not the *Mobile-Sierra* “public interest” standard as Dominion claims. As noted above, section 4.6 of the 2005

Settlement provides: “This Article IV shall not purport to preclude the Commission from initiating an NGA section 5 proceeding on its own volition.” By referring only to proceedings initiated under “NGA section 5,” we interpret section 4.6 of the 2005 Settlement to apply the “just and reasonable” standard of review set forth in NGA section 5 to the Commission. As discussed later herein, we believe we have met the requirements of section 5 to modify section 16.5 of the GT&C of the tariff as directed. Thus, the Commission not only may use the information already required to be provided by the settlements to modify the settled fuel retention percentages under the just and reasonable standard of section 5 -- changes which are not proposed or at issue here -- it may also modify other features of the tariff established by the settlements pursuant to section 5, such as the informational filing requirements required in section 16.5 of the GT&C of the tariff under the just and reasonable standard as provided in the settlement.

B. Section 5 Burden of Proof for Revising Dominion’s Tariff

18. Dominion argues that where the Commission is proposing a change in a tariff provision, under NGA section 5, the Commission bears the burden of adducing substantial evidence to prove that (1) the existing practice is unjust and unreasonable and (2) the practice determined by the Commission is just and reasonable. Dominion asserts that the December 21, 2005 Order fails to provide any evidence on the record to determine whether the current Fuel Report requirements are unjust and unreasonable. Instead, Dominion asserts, the Commission made a conclusory finding that more detailed information in the Fuel Reports would enhance the transparency of Dominion’s transactions and would assure all parties and the Commission that there is no cost-shifting or subsidization.

19. Dominion adds that the Commission failed to respond to the concerns raised by Dominion that (1) the annual informational fuel filing requirements are a negotiated term that is part of a larger rate settlement that should not be disturbed, and (2) that subsidization concerns are eliminated because Dominion’s fuel retention percentages are fixed and subject to a five-year moratorium and because, under the Commission’s negotiated rate policy, Dominion bears the risk of underrecovery of its fuel costs.

20. Dominion contends the Commission also failed to provide any explanation that would support, as just and reasonable, the specific requirement that Dominion report the quantity of fuel waived by Dominion in the relevant annual period. Dominion asserts that it waives a customer’s fuel retainage requirement, not a physical quantity of fuel as the Commission’s requirement implies. If the Commission denies rehearing on this issue, Dominion asserts that the Commission should correct the first reporting requirement to provide that Dominion report “the fuel retainage waived in the relevant annual period by function.”

21. The Commission denies rehearing on this issue. The Commission made the requisite section 5 findings (that the existing tariff is unjust and unreasonable and the replacement tariff provision with the additional reporting requirements is just and reasonable) based on the Commission's finding that the additional information is no less important than the information already provided and would be important to enhance transparency and assure all parties that there is no cost-shifting or subsidization on Dominion's system in a subsequent fuel retention proceeding. The Commission is not required to prove through record evidence that information might be of value in a future proceeding. The Commission may use its own expertise in determining what information it requires in fulfilling its statutory mandate to ensure just and reasonable rates and is granted express authority under section 10 of the NGA to require reports. In addition, upon further consideration of the fact that Dominion has no obligation to file a new general section 4 rate case even after the 2005 Settlement's rate filing moratorium expires, we believe that both the existing informational requirement and the increased requirement of the Commission's December 21, 2005 Order are important to possible future section 5 action by the Commission in fulfilling the Commission's statutory role to monitor the justness and reasonableness of Dominion's fuel percentages. And, as noted earlier, it is merely a change in informational filing obligations; not a change in the settled rates or terms and conditions of service at this time. We, therefore, believe that all of this information, both the information required by existing section 16.5 as well as the additional information being required, has value now in that it provides the Commission with the ability to oversee Dominion's fuel retention rates and potentially take section 5 action without having to wait for a future section 4 rate case by Dominion, the earliest of which could not occur until 2010. Finally, Dominion never claims that the requirement to file the additional information is unduly burdensome.

22. The Commission also will not alter informational requirement No. 1 of the December 21, 2005 Order to require section 16.5 of the GT&C of Dominion's tariff be revised to require "the fuel retainage waived in the relevant annual period by function" be included in each Informational Fuel Report to be filed each June 30. Dominion's justification, that it does not waive a physical quantity of fuel but rather waives the fuel retainage requirement, misconstrues the effect of its waiver and the purpose of the Commission's informational requirement. The purpose is to obtain information regarding the quantities of gas that, in the absence of waiver of the fuel retention percentage, would have been extracted from volumes to be delivered to the shippers who receive the waivers. That volume amount can be readily calculated by multiplying the volumes tendered to Dominion by the shipper for transportation by the applicable fuel retention percentage. These volumes that otherwise would be extracted and burned as fuel to transport that shipper's gas are potentially subsidized by other shippers through the settled fuel retention percentage. An unjust and unreasonable subsidy, therefore, could potentially exist even though the settled fuel percentage cannot change until at least 2010. Simply identifying which shippers receive a waiver, as Dominion proposes, would

not aid in determining the relative impact of the waivers on the volumes used in a calculation of a just and reasonable fuel retention percentage. Accordingly, rehearing of this issue is denied.

C. Legal Authority to Retroactively Change Dominion's Informational Fuel Report Requirements.

23. Dominion contends that even assuming, *arguendo*, that the Commission met its section 5 burden of proof in issuing the December 21, 2005 Order, the Commission lacks the legal authority to retroactively apply the revised terms of section 16.5 of Dominion's GT&C governing Informational Fuel Reports. Dominion argues that section 5 remedies can have prospective effect only and that this limitation applies equally to a pipeline's rates as well as to the classifications, practices, rules, and regulations affecting such rates that constitute the pipeline's FERC Gas Tariff.¹⁴ Dominion contends that when the Commission, pursuant to its section 5 authority, ordered the refiling of Dominion's 2004 and 2005 Fuel Reports to comply with the tariff change, it ran afoul of this prohibition.

24. Upon further consideration we agree that the required change to Dominion's tariff can only be implemented prospectively¹⁵ and, further, conclude that the additional informational requirement relative to the 2004 and 2005 Fuel Reports will be of limited use at this juncture. Thus, we grant rehearing to the limited extent that we accept Dominion's 2004 and 2005 Fuel Reports without condition but require the 2006 Fuel Report and all future Fuel Reports to include the additional information as directed. As discussed below, we also accept Dominion's revised Sheet No. 1120 reflecting revised informational requirements in section 16.5 of the GT&C of its tariff to be effective February 3, 2006, as proposed.

D. Clarification of 2004 and 2005 Fuel Report Compliance Obligation

25. Dominion states that the December 21, 2005 Order did not set a deadline for refiling the June 30, 2004 and June 30, 2005 Fuel Reports and, because this filing requirement is the subject of the instant rehearing request, Dominion has not yet refiled the 2004 and 2005 Fuel Reports. It asserts that filing prior to a decision on the rehearing request would deny Dominion the benefit of the remedies sought in this rehearing. Dominion asserts that it is appropriate to postpone refiling until the Commission takes

¹⁴ Dominion cites 15 U.S.C. § 717d(a); *Office of Consumers' Council (Ohio) v. FERC*, 826 F.2d 1136, 1138 (D.C. Cir. 1987); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 628 (1944); *Associated Gas Distributors v. FERC*, 898 F.2d 809, 810 (D.C. Cir. 1990)(Williams, J. concurring in denial of rehearing).

¹⁵ See *Office of Consumers' Council (Ohio) v. FERC*, 826 F.2d 1136, 1138 (D.C. Cir. 1987).

final action on the merits of this Request for Rehearing. Dominion asserts that no party will be harmed by this approach since neither the Commission nor any other party would have any need for the additional fuel information until a fuel proceeding is initiated, which will not occur until 2010.

26. Although filing a request for rehearing does not stay any compliance obligation,¹⁶ and, therefore, Dominion should have complied with the Commission's directive in its January 5, 2006 compliance filing, in light of our ruling above that Dominion is not required to refile its 2004 and 2005 Fuel Reports, the issue of the timing of that compliance obligation is moot.

IV. The January 5, 2006 Compliance Filing

27. As noted above, on January 5, 2006, Dominion filed a revised tariff sheet¹⁷ reflecting a revised section 16.5 of the GT&C of its tariff containing the additional information items required to comply with the December 21, 2005 Order. Dominion proposed a February 3, 2006 effective date for the revised tariff sheet. KeySpan filed what it styled as a Request for Summary Rejection of Dominion's January 5, 2006 Compliance Filing, arguing that the filing failed to comply with the December 21, 2005 Order in that it did not include revised fuel reports for 2004 and 2005. Dominion filed an answer to KeySpan's Request for Rejection, arguing that it was in full compliance because the Commission had set no deadline on filing the revised 2004 and 2005 fuel reports and immediate filing would deprive Dominion of the benefits sought in its rehearing request.

28. The Commission finds that Dominion complied with the Commission's tariff filing requirement and, as discussed above, the matter of the compliance obligation to refile the 2004 and 2005 Fuel Reports is moot. The tariff sheet in the January 5, 2006 filing is accepted, effective February 3, 2006, as proposed.

V. The 2006 Fuel Report

29. As noted above, on June 30, 2006, Dominion filed its Fuel Report for 2006 providing information required by its existing section 16.5 of the GT&C for the twelve month period ending March 31, 2006. On July 11, 2006, KeySpan filed a Protest, arguing that Dominion should be required to include the additional information required by the Commission in its December 21, 2005 Order. KeySpan cites the Commission's

¹⁶ 18 C.F.R. § 385.713(e) (2006).

¹⁷ Third Revised Sheet No. 1120, to Dominion's FERC Gas Tariff, Third Revised Volume No. 1.

directive that Dominion was to include the additional information in its future Fuel Reports. KeySpan notes that a request for rehearing does not stay the underlying Commission order.

30. In its Answer, Dominion agrees that its rehearing request does not stay the Commission's order. However, Dominion asserts that it is its understanding of the Commission's Rules that a compliance filing is not effective until acted upon by the Commission and does not become effective by operation of law.¹⁸ Therefore, it asserts, it would be inappropriate for Dominion to presume or take action as if a pending compliance filing is effective absent a Commission order accepting the compliance filing. Dominion states that, to avoid potential future confusion over this issue, Dominion requests that the Commission affirm that a proposed tariff provision filed to comply with a Commission order is not effective until the Commission takes action on the compliance filing.

31. We concur that a revised tariff provision filed to comply with a Commission order must be accepted by the Commission for it to become effective. However, the *date* of effect of a compliance tariff sheet can in fact be a date earlier than the date of the Commission order accepting the sheet.¹⁹ As discussed above, we have accepted the compliance tariff sheet to be effective February 3, 2006, as proposed. Thus, we do not agree with Dominion that the proposed compliance tariff sheet included in its January 5, 2006 compliance filing could only be accepted to be effective prospectively from the date of issuance of this order. The effective date of such a compliance tariff filing can be as early as the filing date of the compliance filing itself or a proposed effective date, and in the instant case Dominion itself proposed a February 3, 2006 effective date. The effective date may be earlier than the date the Commission acts on the compliance filing because public notice of the exact tariff requirement was issued by the Commission's December 21, 2005 Order establishing the exact informational filing obligation. Further,

¹⁸ Citing *LFC Gas Co. v. Northwest Pipeline Co.*, 68 FERC ¶ 61,024 at p. 61,087 (1994); *PJM Interconnection, L.L.C.*, 85 FERC ¶ 61,111 at p. 61,413 (1998); 18 C.F.R. § 154.3(a) (2006) (defining an effective tariff as one that has been permitted by the Commission to become effective).

¹⁹ See, e.g., *CNG Transmission Corp.*, Docket No. RP97-406-013 (Commission Letter Order issued June 1, 1998, accepting, effective January 5, 1998, compliance tariff sheets filed by Dominion's predecessor, CNG Transmission Corporation, on March 30, 1998, in compliance with a Commission suspension order issued March 13, 1998.) Docket No. RP97-406 was one of four earlier settled cases where the settlement provisions continued, as modified, under the 2005 Settlement.

the Company is expected to comply with any directives of the Commission notwithstanding the pendency of action on the compliance tariff filing lest the Company prolong unlawful conduct by merely failing to file a tariff sheet that fully complies.

32. Given that we have accepted the compliance tariff sheet implementing the additional information requirements effective February 3, 2006, as Dominion itself proposed, and Dominion was on notice that its 2006 Fuel Report was required to include the additional information,²⁰ Dominion should have included the required additional information in its 2006 Fuel Report. Accordingly, Dominion's 2006 Fuel Report is accepted subject to the condition that Dominion refile its 2006 Fuel Report within 30 days of this order to include the additional information required to comply with the December 21, 2005 Order for that reporting period. Dominion is reminded that it must comply with this order and the revised informational requirements of section 16.5 in its future informational reports even if rehearing of this order is pending.

The Commission orders:

(A) The request for rehearing is granted in part and denied in part as discussed above.

(B) Dominion's 2004 and 2005 Informational Fuel Reports are accepted as filed in Docket Nos. RP00-632-013 and RP00-632-017 without condition.

(C) Dominion's 2006 Informational Fuel Report as filed in Docket No. RP00-632-021 is accepted subject to the condition discussed in the body of this order.

(D) Third Revised Sheet No. 1120 to Dominion's FERC Gas Tariff, Third Revised Volume No. 1, in the January 5, 2006 compliance filing in Docket No. RP00-632-019, is accepted, to be effective February 3, 2006, as proposed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²⁰ See 113 FERC ¶ 61,302 at P14.