

108 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

New PJM Companies	Docket Nos.
American Electric Power Service Corp.	ER03-262-009
Commonwealth Edison Co.	ER03-262-010
Commonwealth Edison Co. of Indiana	ER03-262-013
Virginia Electric and Power Co.	EC98-40-008
The Dayton Power and Light Co.	ER98-2770-009
and	ER98-2786-009
PJM Interconnection, LLC	

ORDER DENYING MOTION TO EXTEND STAY

(Issued September 10, 2004)

1. On September 2, 2004, the Virginia State Corporation Commission (Virginia Commission) filed a motion to continue the temporary stay of the Commission's Opinion No. 472 issued June 17, 2004.¹ The Commission denies the motion, finding that any further stay is unnecessary.

Background

2. In Opinion No. 472, the Commission found, pursuant to section 205(a) of the Public Utility Regulatory Policies Act of 1978 (PURPA),² that the laws, rules or regulations of the Commonwealth of Virginia were preventing or prohibiting American Electric Power Service Corporation (AEP) from integrating certain of its companies into PJM Interconnection, LLC (PJM); therefore, the Commission invoked its authority under PURPA section 205 to exempt AEP from the Virginia laws, rules, or regulations, and permitted AEP to integrate and transfer control of its facilities to PJM by October 1,

¹ *Opinion on Initial Decision and Order on Rehearing*, Opinion No. 472, 107 FERC ¶ 61,271 (2004).

² 16 U.S.C. § 824a-1(a) (2000).

2004.³ In Opinion No. 472, the Commission stated that if the Virginia Commission did not reach a decision in time to bring about such integration by October 1, 2004, or if the Virginia Commission denied AEP's application to integrate into PJM, Opinion No. 472 nevertheless would require the integration of AEP into PJM by that date.⁴

3. On June 29, 2004, the Virginia Commission filed a motion for a temporary stay of Opinion No. 472. On July 15, 2004, the Commission denied that motion, finding that justice did not require granting the stay.⁵

4. On July 29, 2004, the Virginia Commission filed a motion for expedited reconsideration of the Commission's July 15, 2004 order, in order to enable the Virginia Commission to act on a Stipulation (Stipulation or Settlement Agreement) between AEP, PJM, and the Commonwealth of Virginia, submitted to the Virginia Commission on July 27, 2004. The filing included the signed Stipulation. The Virginia Commission states in its motion that approval of the Settlement Agreement by the Virginia Commission would moot the issues addressed in Opinion No. 472 concerning the laws, rules, and regulations of the Commonwealth of Virginia. On August 3, 2004, the Commission granted reconsideration and stayed the effective date of Opinion No. 472 for thirty days, until September 2, 2004.

5. In its September 2, 2004 motion, the Virginia Commission states that AEP, PJM, and the Commonwealth of Virginia have reached a Settlement Agreement. The Settlement grants approval to AEP's integration into PJM and is effective as of August 30, 2004, the date that the Virginia Commission granted approval. Under the terms of the Settlement, approval of the Settlement by this Commission is not required to make the Settlement effective.⁶ Virginia Commission argues that continuation of the stay is required in order to allow sufficient time for the Virginia Commission to prepare and submit the appropriate documents for resolution of this proceeding and for the Commission to act on such submittal.⁷

³ Opinion No. 472 at P 4.

⁴ *Id.* P 74.

⁵ *See* Administrative Procedure Act, 5 U.S.C. § 705 (2000).

⁶ The Stipulation, at paragraph 16, reads: "The signatories *recommend* that the [V]irginia Commission, upon approval of the Stipulation, file with the FERC in Docket No. ER03-262-009" (emphasis added). The Stipulation was filed with this Commission on July 29, 2004, in Docket No. ER03-262-009, *et al.*

⁷ *See* September 2, 2004 motion at 3.

6. On September 8, 2004, Edison Mission Energy, Edison Mission Marketing & Trading, Inc., and Midwest Generation EME, LLC (EME) filed a timely answer to the Virginia Commission's September 2 motion. Although EME contends that no adequate grounds exist to grant the extraordinary relief requested by the Virginia Commission, nonetheless EME does not oppose the motion for reasons of comity.

Discussion

7. The Commission commends the Virginia Commission, and all the parties, for the time and effort they have expended and is pleased that they have reached a settlement. The Commission granted the stay on August 3 in order to ensure that the Virginia Commission had time to act on the Stipulation. The Commission sees no further need for an extension of the stay in this matter because the Settlement is in place, which by its own terms does not require Commission action, and the Virginia Commission has not explained why it believes further filings are required to resolve this proceeding. The Virginia Commission can file any appropriate materials, and we will act on such matters expeditiously, but the Virginia Commission has not shown that an extension of the stay is necessary to permit such filings. Therefore, the Commission will deny the motion for an extension of the stay.

The Commission orders:

The motion to extend the temporary stay of Opinion No. 472 is denied.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.