

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Virginia Electric and Power Company

Docket Nos. ER05-94-000
ER05-94-001

ORDER REJECTING PROPOSED AGREEMENT

(Issued March 25, 2005)

1. In this order, we reject a *pro forma* facilities agreement for wholesale electric delivery points (*pro forma* agreement) filed by Virginia Electric and Power Company (Dominion). This order benefits customers by preserving conditions of Commission jurisdictional service that are just and reasonable.

Background

2. On October 28, 2004, Dominion filed with the Commission a *pro forma* agreement to govern Dominion's rate schedules with electric cooperatives and municipalities (TDUs), to be effective upon Dominion's integration into PJM Interconnection, LLC (PJM). Dominion explains that it provides wholesale electricity to five customers: Old Dominion Electric Cooperative (ODEC), North Carolina Electric Membership Corporation (NCEMC), Central Virginia Electric Cooperative (CVEC), Halifax Membership Corporation (Halifax), and the Town of Enfield, North Carolina (Enfield). Dominion further explains that it made this filing anticipating that when it integrates into PJM, its delivery point service to these customers will not be covered by the PJM Tariff.¹

¹ Dominion also included in this filing proposed excess facilities charge provisions. As explained herein, Dominion subsequently withdrew these facility charges.

3. Dominion explains that historically its contracts with the TDUs were bundled arrangements for the purchase of electric power at wholesale, power delivery and interconnection of facilities. For contracts entered into after Order No. 888, contracts for the purchase of wholesale electric power are separate from contracts for power delivery and interconnection of facilities. These two latter types of contracts became integrated into the Agreement for Network Integration Transmission Service (NITSA) and the Network Operating Agreement (NOA).

4. According to Dominion, once it is integrated into PJM, the majority of its transmission activities will be assumed by PJM. For this reason, Dominion will no longer be a party to the NITSA and NOA contracts with the TDUs. However, Dominion identifies two instances where, following Dominion's integration into PJM, Dominion will continue to provide services to TDUs. In these two circumstances, Dominion is proposing to use a new *pro forma* agreement: (1) for operating its and its customer's facilities to transfer wholesale electricity from its facilities to its customer's facilities, and (2) adding, modifying, or removing Dominion's facilities and customer's facilities to accommodate the further transfer of wholesale electricity from Dominion's facilities to customer's facilities.²

5. Dominion also represents that it has sought to negotiate with the TDUs the terms and conditions of the *pro forma* agreement. Specifically, it says that it negotiated directly with ODEC, NCEMC and Enfield, and modified the proposed agreement accordingly. Dominion also states that it agreed to use schedules and appendices to accommodate individual customer needs. Thereafter, Dominion states that it held a meeting attended by representatives of NCEMC, ODEC, CVEC and NCEMPA. Following this meeting, Dominion states that it made substantial revisions to the *pro forma* agreement.

6. The Commission staff issued a deficiency letter on December 1, 2004 directing Dominion to explain why the *pro forma* agreement is necessary. The letter also asked why the PJM Tariff requirements alone are not sufficient for the TDU customers to obtain integrated transmission service, and whether there are circumstances or regional practices that require the TDU customers to be held to requirements not included in the PJM Tariff. Further, the letter asked Dominion for an explanation of the regulatory basis for Dominion's submission of a *pro forma* rate schedule rather than individual service agreements under the PJM OATT for each entity. Finally, the letter requested

² Dominion proposed specific implementation dates for each of its five TDU customers, all of which have since passed. The Commission will assume that Dominion is seeking to implement the agreement immediately.

support, justification and explanation of Dominion's proposed monthly rate for excess facilities.

7. In response to the question as to why the *pro forma* agreement is necessary, Dominion explained that the agreement seeks to set forth the terms and conditions for the mutual joint operation of Dominion's and the TDUs' facilities that are not provided for in PJM's documents, and is intended to coordinate the operation of their respective facilities. The agreement is designed to complement PJM's documents, in the event that a conflict arises between documents, Dominion states that PJM's documents will prevail. Further, Dominion explains that the *pro forma* agreement is necessary to satisfy the requirements of the PJM Transmission Owners Agreement (TOA) requiring the transmission owner and any entity entering into an agreement with the transmission owner who is not a party to the TOA to first enter into an agreement for the safe and reliable operation of each interconnection.

8. Dominion emphasizes that the agreement is intended to have the limited purpose of governing only the operation of its facilities and the customer's facilities, and the addition, modification or removal of Dominion's facilities and the customer's facilities to allow the further transfer of wholesale electricity between the parties.

9. As to why the PJM OATT requirements are not sufficient for the TDUs to obtain network integration service, Dominion replied that the *pro forma* agreement is necessary to provide the TDUs access to the PJM network. The agreement is a "wires to wires" agreement governing the operation of Dominion's and the TDUs' facilities. It explained that the agreement does not affect network integration transmission service.

10. Dominion replied to the staff's question regarding whether there were any circumstances or regional practices that require the TDUs to be held to requirements not specified in the PJM OATT by explaining that there were no such circumstances or regional practices.

11. As to the regulatory basis for why it submitted the agreement as a *pro forma* rate schedule rather than as individual service agreements for each affected entity, Dominion explained that the agreement does not provide for services to be taken under an OATT or other tariff, and that there is no regulatory mechanism under which it could make the *pro forma* agreement effective.

12. With respect to support for its proposed monthly rate for excess facilities, Dominion explained that the proposed excess facilities charge is intended to provide a mechanism for instances when the customer can request and pay for facilities that Dominion ordinarily would not install. Dominion further explained that it was

modifying the proposed *pro forma* agreement to remove the rate component, and to establish rates for the excess facilities on a case by case basis with each TDU.

Notices of Filings and Pleadings

13. Notice of Dominion's October 28, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 65,167 (2004), with interventions and protests due on or before November 18, 2004. ODEC filed a timely motion to intervene, protest and motion to reject. NCEMC filed a timely motion to intervene, protest and request for extension of time to submit comments. On December 2, 2004, NCEMC filed a supplemental protest.

14. Notice of Dominion's January 28, 2005 filing responding to the Commission's deficiency letter was published in the *Federal Register*, 70 Fed. Reg. 6855, with interventions and protests due on or before February 18, 2005. ODEC and NCEMC filed timely protests. On March 7, 2005, Dominion filed a motion for leave to respond to the protests of ODEC and NCEMC, and a response to the protests and motions to reject filed by ODEC and NCEMC.

15. ODEC asks that the Commission reject Dominion's filing for failure to show that the existing terms and provisions in the NOA and NITSA between it and ODEC are unjust and unreasonable, and for failure to explain how the particular terms and provisions of the *pro forma* agreement are either consistent with or superior to the related provisions in the PJM OATT and Dominion's *pro forma* NOA and NITSA. It contends that ODEC has not explained why the *pro forma* agreement is necessary. It maintains that Dominion's response to the staff's deficiency letter also failed to answer the question as to why the *pro forma* agreement is necessary, and further notes that Dominion's response to the staff contains misrepresentations and unsupported assertions. ODEC contends that certain provisions of the *pro forma* agreement add new requirements that are not provided for by Rural Utility Service (RUS) standards. ODEC requests that the Commission reject the agreement or refer the matter to the Commission's Dispute Resolution Service.

16. While ODEC acknowledges that the NOA and NITSA, by their terms, terminate upon Dominion's integration into a regional transmission organization, ODEC argues that this does not change the fact that the existing NOA and NITSA provisions for wholesale distribution service and delivery points from Dominion to ODEC have been determined just and reasonable by the Commission, and that a showing that the terms and provisions of the existing NOA and NITSA are no longer just and reasonable is a legal predicate for the Commission beginning consideration of whether the terms and provisions for wholesale distribution service and delivery points

under the proposal are just and reasonable.

17. ODEC states that Dominion distorts the historical background leading up to Dominion's unilateral decision to file this *pro forma* agreement. ODEC states that it did not suggest that Dominion substitute individual agreements for the proposed *pro forma* agreement. To the contrary, ODEC insists that its proposed revisions to an earlier draft of the agreement were summarily dismissed by Dominion's representatives.

18. ODEC argues that Dominion has failed to show why such terms and provisions in the existing NOA and NITSA should not be continued in a reformed agreement following Dominion's integration into PJM, that Dominion has failed to offer a comparison of the proposed *pro forma* agreement to the existing NOA and NITSA, and that Dominion has also failed to explain how such terms and provisions in the existing NOA and NITSA are no longer just and reasonable, in the circumstance of Dominion joining PJM. ODEC argues that if it is truly a *pro forma* approach that drives Dominion here, all PJM Member Companies should strive for that end, by proposing a standardized or uniform interconnection agreement, for application PJM-wide.

19. ODEC argues that if the Commission were to accept the *pro forma* agreement and accept the termination of the NOA and NITSA, ODEC would have no means by which it could determine the distribution service charge it is to pay Dominion.

20. ODEC alleges that the proposed *pro forma* agreement terms and conditions depart from the existing NOA and NITSA between ODEC and Dominion, the PJM OATT and the Commission's Standard Large Generator Interconnection Agreement as adopted by Order No. 2003.³ ODEC states that Dominion's filing is devoid of any discussion of (1) the merits of its terms and provisions, (2) how such compare to the NOA and NITSA, (3) how such comply with the PJM OATT, (4) how such compare or contrast to the practices of other PJM Member Companies, and (5) how such terms and provisions are either (a) consistent with or superior to the PJM OATT or (b) represent regional practices. Old Dominion also finds certain conditions of the *pro*

³ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats & Regs. ¶ 31,171 (2004), *reh'g pending*; see also *Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

forma agreement patently unacceptable, for example: (1) the *pro forma* agreement references Old Dominion's ownership and operation of facilities but as an aggregation cooperative, Old Dominion does not own or operate facilities and that Dominion seeks to impose wholly new standards.

21. ODEC observes that Dominion does not even apply the terms and provisions of its *pro forma* agreement to its own unbundled retail load in mainland Virginia. ODEC observes that Dominion offers no explanation as to why it even needs a *pro forma* agreement template, given that (1) there are only five customers affected by it, and (2) Dominion recognizes that individual, particularized agreements will have to be negotiated with each of the five customers in any event.

22. NCEMC protests that Dominion's proposed *pro forma* agreement differs significantly from the NITSA and NOA, and that Dominion has not made the requisite showing that its proposed agreement is consistent with, or superior to, the Order No. 888 open access transmission tariff. Further, NCEMC argues that in accordance with Order No. 888, Dominion must show that its proposal will treat its customers in the same manner as it treats itself. NCEMC also argues that the proposal is inconsistent with a 1997 Settlement Agreement between Dominion and a number of its customers, two of whom, NCEMC and ODEC, would be affected by Dominion's proposal. Finally, NCEMC reiterates its concern that the proposed *pro forma* agreement needs to be supplemented by an appendix specific to NCEMC to accommodate NCEMC's specific legal requirements arising out of both its status as a RUS borrower, and as an entity bound to North Carolina law.

23. In its supplemental protest, NCEMC, reiterates its arguments, emphasizing that its primary concern is that this proposal will result in a lack of comparable treatment between Dominion and its customers, and offers additional specific examples of unequal treatment. NCEMC argues that the proposed *pro forma* agreement would increase costs and other burdens associated with developing and administering transmission arrangements necessary for Dominion to join PJM, and may increase the opportunity for discrimination. It contends that the more than 50 pages of new obligations and conditions contained in Dominion's proposal must be justified by Dominion as being just and reasonable. NCEMC again requests that the Commission reject Dominion's proposed *pro forma* agreement or, alternatively, set the matter for evidentiary hearing, but hold it in abeyance pending settlement discussion supervised by a settlement judge.

Discussion

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214 (2004), the timely unopposed motions to intervene serve to make the entities that filed them parties to the proceedings

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to protests unless otherwise ordered by the decisional authority. We will accept Dominion's answer to the protests because it has provided information that assisted us in our decision-making process.

26. We will reject Dominion's *pro forma* agreement. Although the Commission usually encourages the use of *pro forma* agreements when the terms and conditions of the agreements reduce or eliminate the need to negotiate individual agreements, ensure customers that they are receiving non-discriminatory service, and create a transparency for all parties to see that every request for service is being treated on a consistent and fair basis, (*See, e.g., American Electric Power Service Corporation*, 110 FERC ¶ 61,187 (2005), here, Dominion has not shown that its proposed *pro forma* agreement will reduce or eliminate the need to negotiate individual agreements with each of its five TDUs. Dominion also recognizes that each agreement will need to include references to local conditions unique to each customer, such as any specific legitimate legal requirements of a customer.⁴ Dominion also acknowledges that individual rates for any excess facilities will have to be developed and justified on a case-by-case basis.⁵ Considering the limited number of entities that Dominion proposes to be affected by the *pro forma* agreement, that certain terms and conditions will have to be negotiated individually, that certain rates will have to be developed on a case-by-case basis, and that the protestors oppose the *pro forma* agreement as not being appropriate for their particular circumstances as a cooperative or municipality, we find that Dominion's proposed *pro forma* agreement is not warranted in this case. Instead, and as necessary, Dominion should file individual mutual operating agreements with each of the five TDU's that provide for the operation of the delivery point facilities in a safe and reliable manner.

27. In this regard, as we found in *Delmarva Power & Light Co.*, 110 FERC ¶ 61,186 (2005) (*Delmarva*), such operating agreements are required by section 4.7 of the PJM TOA when a transmission owner connects to an entity that is not a party to the TOA. We also determined in *Delmarva* that in order to promote "one-stop shopping" for customers in the PJM footprint, to enhance the transparency of the PJM

⁴ Dominion's Motion for Leave to Respond and Response to Protests and Motion to Reject Filing at 9.

⁵ Dominion's Response to Deficiency Letter at 11.

Transmission Owners' operations, to make it easier to locate these agreements for anyone that wishes to do so, and as the Commission moves toward electronic filing, it is important that all agreements relating to an RTO's operations be designated as related to that RTO's OATT.

29. The Commission has established in *Delmarva* a proceeding to determine the appropriate designation under the PJM OATT for these types of mutual operating agreements. Any mutual operating agreements between Dominion and the cooperatives/municipalities that are subsequently filed with the Commission should conform to the designation requirements that result from that proceeding.

The Commission orders:

The *pro forma* agreement submitted by Dominion is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.