

139 FERC ¶ 61,137  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Old Dominion Electric Cooperative and  
North Carolina Electric Membership Corporation

Docket Nos. EL10-49-000

v.

Virginia Electric and Power Company

PJM Interconnection, L.L.C. and  
Virginia Electric and Power Company

ER12-1035-000

ORDER APPROVING UNCONTESTED SETTLEMENT  
AND ACCEPTING TARIFF REVISIONS

(Issued May 18, 2012)

1. On February 9, 2012, in Docket No. EL10-49-000, Virginia Electric and Power Company, doing business as Dominion Virginia Power (Dominion), submitted an offer of settlement on behalf of itself, Old Dominion Electric Cooperative (ODEC), North Carolina Electric Membership Corporation (NCEMC), Northern Virginia Electric Cooperative, Inc., Central Virginia Electric Cooperative, and Virginia Municipal Electric Association No. 1 (collectively, Parties) resolving issues set for hearing regarding cost allocation for legacy retail delivery tap facilities and six Supplemental Projects<sup>1</sup> (Settlement).<sup>2</sup> On the same day, in Docket No. ER12-1035-000, PJM Interconnection,

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<sup>1</sup> “Supplemental Projects” are defined in section 1.42A.02 of the PJM Operating Agreement as: “Regional Transmission Expansion Plan (RTEP) Project(s) or Subregional RTEP Project(s), which is not required for compliance with the following PJM criteria: System reliability, operational performance or economic criteria, pursuant to a determination by the Office of Interconnection.”

<sup>2</sup> The Settlement resolved all issues in this proceeding except for one issue regarding recovery of costs of undergrounding three projects, as discussed below.

L.L.C. (PJM) submitted on behalf of Dominion a new proposed Attachment H-16AA<sup>3</sup> to the PJM Open Access Transmission Tariff (OATT) to implement the Settlement. In this order, the Commission approves the uncontested Settlement and accepts the proposed tariff revisions for filing, effective the date of this order. The Commission also establishes a briefing schedule for the Parties to address one reserved issue. Initial briefs are due 60 days from the date of this order and reply briefs are due 60 days thereafter.

## **I. Background**

2. On March 17, 2010, ODEC and NCEMC (collectively, Complainants) filed a complaint against Dominion alleging that certain costs were improperly included in Dominion's 2010 Annual Transmission Revenue Requirement (2010 ATRR) (Complaint). Complainants requested that the Commission direct Dominion to remove three categories of costs from its ATRR: (1) the costs for generator interconnection facilities included in Dominion's Bear Garden second 230 kV Line (Project s0167) (Bear Garden),<sup>4</sup> (2) the costs related to legacy retail delivery tap facilities and the six Supplemental Projects,<sup>5</sup> and (3) the incremental costs associated with undergrounding the Pleasant View-Hamilton, Garrisonville, and DuPont Fabros projects, if the Commission did not exclude all costs related to the delivery point facilities for these projects.

3. Complainants argued that second Bear Garden line should not be included in Dominion's transmission rates because its installation was required by the State of Virginia to improve generation reliability, and was not necessary for transmission reliability. With respect to the legacy retail delivery tap facilities and six Supplemental Projects, Complainants argued that these are local delivery facilities that should be directly assigned to Dominion Distribution.<sup>6</sup> Complainants asserted that, by including the costs of these projects in its transmission rates, Dominion has unduly preferred its distribution function by treating the costs of these facilities differently from the costs of comparable facilities requested by third parties, which are directly assigned to

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<sup>3</sup> OATT Attachment H-16AA - Virginia Electric, 0.0.0. A conforming change was made to: PJM OATT Table of Contents, 5.0.0.

<sup>4</sup> The Bear Garden facility is a 580 MW (nominal) combined cycle electric generating facility in Buckingham, County, Virginia.

<sup>5</sup> The six Supplemental Projects were: Reddfield 230 kV DP (Project s0134) (Reddfield); Nokesville 230 kV Delivery (Project s0129) (Nokesville); Ft. Belvoir Expansion (Project s0135) (Ft. Belvoir); Du Pont Fabros 230 kV Line and Substation (Project s0126) (DuPont Fabros); Pleasant View-Hamilton 230 kV Line (Project s0133) (Pleasant View-Hamilton); and Garrisonville 230 kV Underground Line (Project s0124) (Garrisonville).

<sup>6</sup> Dominion's electric distribution function.

transmission customers. Complainants contended that the incremental costs of undergrounding the Pleasant View-Hamilton, Garrisonville, and DuPont Fabros projects should be excluded from Dominion's transmission rates because Dominion either decided by itself to underground these projects or was directed to do so by state legislators or regulators.

4. Finally, Complainants requested that the Commission: (1) determine that costs related to specific projects that Dominion included in its 2010 ATRR were unjust, unreasonable, and unduly discriminatory or preferential; (2) direct Dominion to remove the subject costs from its 2010 ATRR and all future Annual Updates of its ATRR; and (3) to the extent necessary, establish hearing procedures to determine the precise amount of costs that should be excluded from Dominion's transmission rates.

5. The Commission issued an order on the Complaint on October 4, 2010.<sup>7</sup> The Commission dismissed the portion of the Complaint concerning the Bear Garden line, finding that the costs of the Bear Garden line could not be assigned to Dominion because they were not included in the Interconnection Service Agreement. The Commission set the portion of the Complaint concerning cost allocation for the legacy retail delivery tap facilities and six Supplemental Projects for hearing and settlement judge procedures. The Commission found that the issue of whether to exclude the incremental costs of undergrounding the Garrisonville, Pleasant View-Hamilton, and DuPont Fabros projects could not be resolved based on the record, but was an issue that did not raise material issues of disputed fact. Accordingly, the Commission reserved the issue for Commission determination in the event that the parties were unable to settle the proceeding. The Commission stated that, if the parties were unable to settle the proceeding, they should brief the undergrounding issue in their Briefs on and Opposing Exceptions. Finally, the Commission set the refund effective date at March 17, 2010, the date of the filing of the Complaint.

## **II. The Settlement**

### **A. Procedural Matters**

6. Dominion filed the Settlement with the Commission pursuant to Rule 602 of the Commission's Rules of Practice and Procedure.<sup>8</sup> Pursuant to Rules 602(d)(2) and 602(f),<sup>9</sup> initial comments were due on or before February 29, 2012, and reply comments were due on or before March 9, 2012.

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<sup>7</sup> *Old Dominion Elec. Cooperative and N.C. Elec. Membership Corp. v. Va. Elec. and Power Co.*, 133 FERC ¶ 61,009 (2010) (Complaint Order).

<sup>8</sup> 18 C.F.R. § 385.602 (2011).

<sup>9</sup> 18 C.F.R. §§ 385.602(d)(2) and 385.602(f) (2011).

7. On February 29, 2012, Commission Trial Staff filed initial comments. No reply comments were filed. On March 12, 2012, the settlement judge certified the Settlement to the Commission as uncontested.<sup>10</sup>

### **B. The Terms of the Settlement**

8. The Settlement establishes the rate treatment for four separate categories of projects: (1) “Dominion Legacy Projects,” which are Dominion’s transmission facilities placed in service as of May 1, 2005; (2) “Reference Period Projects,” which are the six specific projects challenged in the Complaint (excluding the incremental cost of undergrounding for the Garrisonville, Pleasant View-Hamilton, and DuPont Fabros projects), plus any other Dominion facilities placed in service or expected to be placed in service during the period of May 1, 2005 through December 31, 2011; (3) “Future Projects,” which are Dominion facilities placed in service after December 31, 2011, exclusive of any that are listed in Appendix A of the Settlement;<sup>11</sup> and (4) “Customer Projects,” which are transmission facilities owned by wholesale transmission customers that are not within the Dominion corporate structure.

9. The Settlement also establishes guidelines for the briefing procedures regarding the issue of rate treatment for the incremental costs of undergrounding the Garrisonville, Pleasant View-Hamilton and DuPont Fabros projects, establishes transmission planning procedures to augment the existing PJM transmission planning process for projects that meet the definition of Supplemental Projects in the PJM Operating Agreement, provides for the payment of settlement credits<sup>12</sup> to the Parties, and requires Parties to withdraw all pending requests for clarification and/or rehearing regarding the Complaint Order.

10. The Settlement further provides that Dominion will review with the Parties any proposed changes to Dominion’s local planning criteria and provide an opportunity for their input on such changes, and among other things requires Dominion to provide certain

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<sup>10</sup>*Old Dominion Elec. Cooperative and N.C. Elec. Membership Corp. v. Va. Elec. and Power Co.*, 138 FERC ¶ 63,014 (2012).

<sup>11</sup> Based on the Parties’ interpretation of Opinion No. 454, *Mansfield Electric Department and North Attleborough Electric Department v. New England Power Co.*, Opinion No. 454, 97 FERC ¶ 61,134 (2001), *reh’g denied*, Opinion No. 454-A, 98 FERC ¶ 61,115 (2002).

<sup>12</sup> The Attachment H-16AA amendment to the PJM OATT describes the settlement credit as the amount to be credited monthly to the entities listed in the attachment, and reflects the additional charge for transmission service that recovers the costs incurred by Dominion to resolve the allocation of the costs of transmission facilities as provided in the Settlement Agreement.

information to each Party at the time it makes available its Annual Update to its formula rate.

11. The Settlement specifies that the standard of review for any modification to the Settlement requested by Parties that is not agreed to by all of the Parties shall be the “public interest” standard,<sup>13</sup> with the exception that the standard of review for any modification to the Settlement requested by a non-party to the Settlement or the Commission will be the ordinary just and reasonable standard.

### **C. Commission Determination**

12. The Settlement appears to be fair and reasonable and in the public interest and is hereby approved. The Commission’s approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

13. Because the Parties did not settle the issue concerning the costs of undergrounding the Garrisonville, Pleasant View-Hamilton, and DuPont Fabros projects, the Commission has established a briefing schedule for the Parties to address this issue. Specifically, initial briefs are due 60 days from the date of this order and reply briefs are due 60 days thereafter.

## **III. Tariff Filing**

### **A. Details of the Filing**

14. On February 9, 2012, in Docket No. ER12-1035-000, PJM submitted on behalf of Dominion proposed Attachment H-16AA to implement the Settlement. Proposed Attachment H-16AA to the PJM OATT provides for a settlement credit, as specified in Article Five of the Settlement, to be paid by Dominion to the Parties over a period of ten years commencing upon the effective date of the Settlement. Dominion requests that the proposed tariff sheets become effective on the Agreement Effective Date, which is the date of the Commission’s order approving the Settlement without modification or omission, or such other date established by the Commission upon acting on the Settlement.

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<sup>13</sup> According to the Parties, this is the standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 128 S. Ct. 2733 (2008) and refined in *NRG Power Marketing v. Maine Public Utility Commission*, 130 S. Ct. 693, 700 (2010).

15. Dominion states in the filing that the annual sum of the settlement credit is \$250,000.08 (the sum of the monthly amounts in Attachment H-16AA, multiplied by 12 months), which will be distributed to the Parties as provided in Attachment H-16AA. Dominion also states that under no circumstances will any wholesale customers in the Dominion Zone be charged any portion of the \$250,000.08 in annual credits paid under Attachment H-16AA.

**B. Procedural Matters**

16. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 9,915 (2012), with interventions and protests due on or before March 1, 2012. On April 25, 2012, NCEMC filed a motion to intervene out-of-time. No comments were filed.

**C. Commission Determination**

17. We will grant NCEMC's motion to intervene out-of-time given their interests in the proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

18. Proposed Attachment H-16AA implements the settlement credit established in Article Five. We find the proposed attachment to be just and reasonable, and accordingly accept them for filing, effective the date of this order.

The Commission orders:

(A) The Settlement is hereby approved, as discussed in the body of this order.

(B) The proposed attachment is hereby accepted for filing, effective the date of this order, as discussed in the body of this order.

(C) The Parties are to file briefs, as discussed in this order, within 60 days of the date of this order, with reply briefs due 60 days thereafter.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.