

147 FERC ¶ 61,207
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 17, 2014

In Reply Refer To:
Old Dominion Electric Cooperative and
North Carolina Electric Membership
Corporation v. Virginia Electric and
Power Company
Docket No. EL10-49-004

McCarter & English, LLP
Attn: Denise C. Goulet
1015 Fifteenth Street, NW
Twelfth Floor
Washington, DC 20005

Dear Ms. Goulet:

1. On May 16, 2014, you filed, on behalf of North Carolina Electric Membership Corporation (NCEMC), a request for expedited action with respect to NCEMC's request for clarification, or in the alternative, rehearing, of the Commission's March 20, 2014 order¹ in this proceeding. The Commission denies the request for expedited action, as discussed below.
2. On March 17, 2010, Old Dominion Electric Cooperative (ODEC) and NCEMC (collectively, Complainants) filed a complaint against Virginia Electric and Power Company (Dominion), alleging that certain costs were improperly included in Dominion's 2010 Annual Transmission Revenue Requirement (2010 ATRR) (Complaint). The Commission's October 4, 2010 Complaint Order reserved for Commission resolution the issue of whether Dominion should exclude from its 2010 ATRR the incremental costs of undergrounding the Garrisonville, Pleasant View-

¹ *Old Dominion Elec. Cooperative and N.C. Elec. Membership Corp. v. Va. Elec. and Power Co.*, 146 FERC ¶ 61,200 (2014) (March 20, 2014 Order).

Hamilton, and DuPont Fabros transmission line projects (collectively, Projects) in the event that the parties were unable to settle.²

3. In the March 20, 2014 Order on the reserved issue, the Commission granted the reserved portion of the Complaint in part, finding that Complainants had shown that it was not just and reasonable for wholesale transmission customers outside the Commonwealth of Virginia to be allocated the incremental costs of undergrounding the Projects.³ The Commission set for hearing the determination of the appropriate amount of undergrounding costs to be allocated to each Network Integration Transmission Service customer for their Virginia loads in the Dominion Zone.⁴

4. On April 21, 2014, NCEMC filed a request for clarification, or in the alternative, rehearing, of the March 20, 2014 Order. Specifically, NCEMC requested that the Commission clarify that: (1) Dominion has an obligation to make a compliance filing quantifying the incremental costs of undergrounding the Projects, (2) Dominion has an obligation to amend the tariff to exclude customers outside of Virginia from being charged the costs of undergrounding the Projects, and (3) Dominion has an obligation to provide refunds to non-Virginia customers in accordance with Dominion's Formula Rate Implementation Protocols. Northern Virginia Electric Cooperative (NOVEC) and ODEC and Virginia Municipal Electric Association No. 1 also submitted requests for rehearing of the March 20, 2014 Order.

5. On May 16, 2014, NCEMC filed a request for expedited action on its request for clarification, or in the alternative, rehearing, arguing that the Commission should direct Dominion to make a compliance filing and any tariff changes needed to effectuate the March 20, 2014 Order by no later than July 17, 2014, so that NCEMC will cease paying for the undergrounding costs of the Projects by no later than January 1, 2015. NCEMC states that, if the compliance filing is not submitted sufficiently in advance of Dominion's 2015 Annual Update, NCEMC will continue to pay the undergrounding costs in the 2015 ATRR. NCEMC requests Commission action on its request for clarification by June 17, 2014.

6. On May 23, 2014, Dominion submitted an answer to NCEMC's motion. In its answer, Dominion argues, *inter alia*, that requiring a compliance filing at this stage in the proceeding would be premature, duplicative, and inconsistent with the Commission's March 20, 2014 Order. Dominion states that the parties are currently in settlement negotiations, and requiring a compliance filing now would inevitably result in protests to

² *Old Dominion Elec. Cooperative and N.C. Elec. Membership Corp. v. Va. Elec. and Power Co.*, 133 FERC ¶ 61,009, at P 35 (2010) (Complaint Order).

³ March 20, 2014 Order, 146 FERC ¶ 61,200 at P 50.

⁴ *Id.* P 56.

the filing and an order setting the matter for hearing and settlement proceedings. Dominion argues that additional litigation could also result if settlement negotiations produce different allocations than proposed in the compliance filing. Furthermore, Dominion explains that NCEMC's goal of removing the undergrounding costs from rates by January 2015 can be accomplished without expedited action because calendar 2015 billing can reflect adjustments resulting from negotiations as late as December 18, 2014.

7. On May 30, 2014, ODEC submitted an answer to NCEMC's request for expedited action in which it argues that the resolution of the hearing and settlement proceedings will directly impact the three items that NCEMC has raised in its request for rehearing, and therefore, the Commission should not direct Dominion to take the actions NCEMC requests until after such resolution. If the Commission were to grant NCEMC's request for rehearing, then ODEC requests that the Commission direct Dominion to not make any of the requested filings until the earlier of a Commission order approving a settlement or an order on initial decision.

8. We deny NCEMC's request for expedited action. The determination of the appropriate amount of undergrounding costs to be allocated to each customer was a matter set for hearing in the March 20, 2014 Order. We find it premature to order Dominion to submit a compliance filing setting forth the costs to be allocated to each customer before the hearing on this issue has concluded. Similarly, it would be premature to order Dominion to make tariff changes and propose refunds that may be determined by the outcome of the hearing. Accordingly, we will deny the request for expedited action and will consider NCEMC's request for clarification, and in the alternative, rehearing, after the hearing process ordered by the Commission in the March 20, 2014 Order has completed or a settlement offer has been submitted to the Commission. At the hearing, the Administrative Law Judge and the parties must consider the need for tariff revisions and the amount of any refunds.

By direction of the Commission.

Kimberly D. Bose,
Secretary.