

147 FERC ¶ 61,254  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

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

Docket No. ER14-1831-000

ORDER ACCEPTING AND SUSPENDING PROPOSED FORMULA RATE  
REVISIONS AND ESTABLISHING HEARING, BUT HOLDING PROCEEDING IN  
ABEYANCE

(Issued June 27, 2014)

1. On April 30, 2014, pursuant to section 205 of the Federal Power Act,<sup>1</sup> Virginia Electric and Power Company (VEPCO) doing business as Dominion Virginia Power (Dominion) filed revisions to Attachment H-16 of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff),<sup>2</sup> which is Dominion's Formula Rate for Network Integration Transmission Service. Dominion is proposing to change the methodology it uses to calculate the accumulated deferred income tax (ADIT)<sup>3</sup>

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> Attachment H-16 includes multiple sub-parts, including Attachment H-16A, the formula for its Annual Transmission Revenue Requirement, and Attachment H-16B, Dominion's Formula Rate Implementation Protocols.

<sup>3</sup> Accumulated deferred income taxes are amounts that reflect the tax reduction (or increase) resulting from differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of accounting (book) income. *See* 18 C.F.R. Part 101, General Instruction 18 (2013). As relevant here, the tax effects of certain differences between the amounts of depreciation on utility plant recorded for book purposes and the accelerated depreciation used for federal income tax purposes is recorded in Account No. 282 (Accumulated deferred income taxes—Other

(continued...)

component of its rate base to bring it into compliance with the depreciation normalization rules of the Internal Revenue Code (Normalization Rules) and thereby continue the availability of accelerated tax depreciation to the benefit of its customers. In this order, the Commission conditionally accepts the proposed revisions and suspends them for a nominal period, to become effective May 1, 2014, subject to refund, and sets them for hearing. The Commission also directs that the proceedings be held in abeyance until Dominion's receives and supplements the record with a private letter ruling from the Internal Revenue Service (IRS).

### **I. Background and Filing**

2. Dominion is a wholly-owned subsidiary of Dominion Resources, Inc., a public utility holding company under the Public Utility Holding Company Act of 2005. Dominion integrated its transmission facilities into PJM wholesale electricity markets on May 1, 2005.<sup>4</sup>

3. In the instant filing, Dominion seeks to modify the methodology that it uses to calculate the rate base reduction that results from its use of accelerated tax depreciation. As background, Dominion explains that accelerated tax depreciation is a source of cost-free capital to Dominion.<sup>5</sup> But, as a condition for being allowed to reduce current federal income tax liability by accelerated tax depreciation, a utility must use a normalization method of accounting as prescribed in the Normalization Rules.<sup>6</sup> If the utility is not fully compliant with the Normalization Rules, it cannot claim accelerated tax depreciation for any of its jurisdictional assets and would forgo the cost-free capital that would result from the use of accelerated depreciation.

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property), *see* 18 C.F.R. Part 101, Account No. 282 (2013), and is used as a reduction to Dominion's rate base.

<sup>4</sup> Transmittal at 2.

<sup>5</sup> Dominion explains that the additional cash resulting from the reduction in current income taxes from claiming accelerated depreciation is retained at the utility level; that is, the utility keeps the loan proceeds and repays the loan when it is due. *Id.* at 4.

<sup>6</sup> *Id.* at 4.

4. Dominion explains that the IRS's Normalization Rules mandate that a very specific proration procedure be used in the measurement of the amount of future test period<sup>7</sup> ADIT that can reduce rate base. Dominion explains that its current Formula Rate uses an average of the beginning and ending ADIT balances of a future test period, which it claims is inconsistent with the Normalization Rules in two respects. First, Dominion maintains that the Normalization Rules require that its ADIT balances be prorated using a specific IRS formula during the future test period (Proration Requirement). Second, once the proration formula is applied, the ADIT balance used to reduce a utility's rate base must be calculated using the same 13-month average that is used in calculating the net plant component of rate base (Consistency Requirement). Dominion proposes revisions to its Formula Rates to comply with its interpretation of the Normalization Rules.<sup>8</sup>

5. Dominion recognizes that there can be no retroactive application of the revised methodology, and therefore has requested that the Commission waive its prior notice requirements to permit an effective date of the first day of the first month following submittal of its filing, which is May 1, 2014.<sup>9</sup> Dominion asserts that from May forward, the monthly ADIT balances will be fully compliant with the Normalization Rules. Dominion estimates that the change in the annual transmission revenue requirement would be an increase of approximately \$3.2 million or 0.5 percent.<sup>10</sup> Dominion notes that it is important to bring itself into compliance with the Normalization Rules as expeditiously as possible in order to avoid imposition of the penalties and the loss of its ability to use accelerated depreciation that would result from violating the Normalization Rules.<sup>11</sup>

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<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 5-6.

<sup>9</sup> In the alternative, if the Commission denies waiver of its requirements of section 35.13, Dominion requests an effective date of July 1, 2014, and commits to making a compliance filing to present revised tariff sheets.

<sup>10</sup> Ex. DVP at 1.

<sup>11</sup> Dominion explains that the inconsistency was completely inadvertent – neither the company nor the company's regulators realized that there was an inconsistent procedure in the process. Second, after realizing that there was an inconsistency, the company acted with dispatch to correct the situation. Transmittal at 6-7.

6. Dominion notes that pursuant to an order of the State Corporation Commission of Virginia, it will seek a private letter ruling to determine whether the Proration and Consistency Requirements of the Normalization Rules are required in the case of a rate recovery mechanism, whereby: (1) the cost of service test period includes projected periods, i.e., periods subsequent to the effective date of the rates, and (2) the differences between such projected costs and the utility's actual incurred costs are included as an adjustment to cost-of-service in the next resetting of the rates for the recovery mechanism.<sup>12</sup>

7. Dominion states that it does not anticipate receiving a private letter ruling before 2015 and waiting for the private letter ruling to be issued would not constitute the expeditious action to conform to the Normalization Rules that is a notable feature in private letter rulings where penalties were not imposed on non-compliant utilities. Recognizing that the private letter ruling could possibly conclude that all or portions of the proposed changes to Dominion's Formula Rate are not needed for consistency with the Normalization Rules, Dominion commits that, in the event of such outcome, it will submit a filing to modify the Formula Rate appropriately to comply with the Normalization Rules effective with the same effective date the Commission orders for the Dominion Formula Rate change proposed in this filing.<sup>13</sup>

## **II. Notice of Filing, Interventions, and Protests**

8. Notice of Dominion's filing was published in the Federal Register, 79 Fed. Reg. 26,423 (2014), with interventions and protests due on or before May 21, 2014. PJM Interconnection, LLC, Virginia Municipal Electric Association No. 1, and Old Dominion Electric Cooperative (ODEC) filed timely motions to intervene. The Staff of the Virginia State Corporation Commission (VSCC Staff) filed a timely motion to intervene with comments. The North Carolina Electric Membership Corporation (NCEMC) and ODEC jointly filed a timely motion to intervene, protest, request for suspension and evidentiary hearings/settlement procedures. On June 4, 2014, Dominion filed a motion for leave to answer and answer to the protest of NCEMC and ODEC.

9. The VSCC Staff complains that Dominion's proposal is based solely on an unclear and unresolved tax issue. VSCC Staff notes that in several recent retail rate proceedings it has contested Dominion's interpretation of ADIT requirements that Dominion now presents to FERC.<sup>14</sup> Specifically, VSCC Staff questions whether Dominion's proposed

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<sup>12</sup> *Id.* at 9.

<sup>13</sup> *Id.*

<sup>14</sup> VSCC Staff Comments at 3.

methodology is, as the Company asserts, required for rate mechanisms that provide for a subsequent true-up of projected costs to actual costs.<sup>15</sup> The VSCC Staff advises that it had previously recommended that the Company seek appropriate guidance in the form of a private letter ruling.<sup>16</sup> Specifically, the VSCC Staff believes that customers should not have to pay higher transmission rates if the IRS guidance indicates that Dominion's tax proposal is unnecessary. Therefore, the VSCC Staff supports Dominion's commitment to initiate another rate proceeding seeking to reinstate the current ADIT methodology to undo any rate change approved in this proceeding if the upcoming IRS guidance indicates that it is unnecessary.

10. NCEMC and ODEC raise four areas of concern with Dominion's filing that should be scrutinized: (1) Dominion's claim that the Proration Rule requires proration of ADIT amounts for both the projected and historic true-up periods; (2) Dominion's implementation of the Proration Rule; (3) Dominion's claim that the Consistency Rule requires Dominion to use the same method for calculating ADIT and all other components of rate base; and (4) Dominion's failure to provide supporting documentation for the calculated rate effects of the proposed revisions to the Formula Rate.

11. While NCEMC and ODEC agree with Dominion that the Normalization Rules mandate that the projections of ADIT in a formula that contains a "future" or "projected" test period must be based on the specific proration procedure set out in the IRS rules, they believe that contrary to Dominion's interpretation, those rules do not require application of the Proration Rule for "historical" test periods like those subject to the true-up calculation included in the Dominion Formula Rate.<sup>17</sup> They assert that the true-up calculation populates the Dominion formula with actual known historical costs and investment and calculates the actual transmission revenue requirement for a historical calendar year once that data is available, i.e., after the Form 1 is available for that calendar year.<sup>18</sup> Therefore, NCEMC and ODEC assert, Dominion's interpretation and proposed implementation of the Proration Rule is inconsistent with the language of the

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 5.

<sup>17</sup> NCEMC and ODEC note that there are two distinct periods that are calculated under the Formula Rate – a "projected" future year period, and an "actual" historical period based on costs that actually known and incurred for the prior calendar year.

<sup>18</sup> NCEMC and ODEC Protest at 9-10.

IRS regulations<sup>19</sup> and the treatment accorded by the IRS in multiple private letter rulings relied on by Dominion's witness.<sup>20</sup>

12. With respect to Dominion's interpretation of the Consistency Rule, NCEMC and ODEC assert that section 35.13(h)(6) of the Commission's regulations allows for the ADIT balances to be calculated based on the average of the beginning and ending year balances of ADIT regardless of whether that method is also used to calculate other components of rate base such as plant in service.<sup>21</sup> NCEMC and ODEC question why, if Dominion's assertions about the Consistency Rule are correct, other utilities with Formula Rates have not filed to revise their formulas. They assert that the Commission should set this matter for careful investigation and thorough hearing in order to ensure it has a complete record on which to make a decision.<sup>22</sup>

13. NCEMC and ODEC also assert that Dominion has not provided essential information required by section 35 of the Commission's regulations to support its rate increase, most importantly how it calculated the rate effects of the proposed changes.<sup>23</sup> NCEMC and ODEC therefore request that Commission: (1) direct Dominion to provide work papers and other necessary documentation to provide parties the opportunity to verify the accuracy of Dominion's calculations; (2) suspend the proposed Tariff sheets for a nominal period and allow rates to go into effect subject to refund; and (3) set the issues they raised by the filing for evidentiary hearing in order to fully investigate the basis for Dominion's projections.<sup>24</sup>

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<sup>19</sup> NCEMC and ODEC explain that the purpose of the Normalization Rules was to preserve for the regulated utilities the benefit of accelerated depreciation as a source of cost-free capital, and that with respect to the portion of the rates based on the projected period that goes into effect after the effective date of the rates, if the ADIT adjustment is not prorated, "the utility is denied a current return for an accelerated depreciation benefit it is only projected to have." *Id.* at 11.

<sup>20</sup> NCEMC and ODEC also object to the number of days used in Dominion's proposed proration of ADIT for 2014 as being inconsistent with the IRS regulations. *Id.* at 15.

<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.* at 19-20.

<sup>23</sup> *Id.* at 20.

<sup>24</sup> *Id.* at 20.

14. In its answer, Dominion asserts that NCEMC and ODEC misinterpret the terms “test period” and the “effective date of the rate” for that test period, and contrary to NCEMC and ODEC’s assertion, there is no portion of the test period that is historical.<sup>25</sup> Dominion also explains that it is not seeking an in-period adjustment to reflect the changed methodology, as its application of the proposed changes for calendar year 2014 rates will occur through the true-up procedures required by the Formula Rate.<sup>26</sup>

15. Dominion submits that the Commission should accept the proposed revisions to its Formula Rate and suspend them for a nominal period to be effective May 1, 2014, as requested, subject to refund and hold the proceedings in abeyance pending Dominion’s receipt of a private letter ruling from the IRS. Dominion asserts that the correct interpretation and implementation of the Normalization Rules in the context of its Formula Rates are questions best answered by the IRS.<sup>27</sup> Until the IRS issues a private letter ruling directed to Dominion, the Commission will not have confirmation from the administering federal agency that Dominion’s proposal correctly interprets and implements the Normalization Rules, and will not have the associated guidance regarding the ramifications that interpretation may have on the rest of the industry. Dominion asserts that it would be administratively inefficient to undertake hearing and settlement judge procedures prior to receipt of a private letter ruling from the IRS, as without further IRS guidance ODEC, NCEMC, and Dominion Virginia Power are unlikely to reach settlement on the issues raised by this filing. Further, Dominion contends that a Commission hearing without the benefit of a private letter ruling may lead to an outcome that is inconsistent with the private letter ruling that is eventually issued, while accepting and suspending the proposed revisions effective May 1, 2014, subject to refund and the outcome of Dominion’s request for a private letter ruling, would protect Dominion Virginia Power’s customers in the event the IRS disagrees with Dominion. If the private letter ruling confirms that its proposal properly interpreted the IRS requirements, Dominion states that the Commission should accept as final its proposed changes to its Formula Rate. If it does not, Dominion commits to make a filing to reverse its proposed ADIT adjustments to conform to IRS regulations and to notify the Commission.

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<sup>25</sup> Dominion Answer at 3-4.

<sup>26</sup> *Id.* at 6.

<sup>27</sup> *Id.* at 7.

### **III. Discussion**

#### **A. Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>28</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.<sup>29</sup> We will accept Dominion's June 4, 2014 answer because it has provided information that assisted us in our decision-making process.

#### **B. Commission Determination**

18. In this filing Dominion seeks to have the Commission accept revisions to its Formula Rate to reflect its new interpretation of how long-standing IRS regulations should be applied in the context of its Formula Rate. Protestors disagree with Dominion's interpretation and how Dominion intends to apply its interpretation of the Normalization Rules to its Formula Rate. The Commission finds that it cannot, based on the current record in this proceeding, make a determination on the propriety of Dominion's proposal. Because this is a case of first impression before this Commission, and because a decision on the issue would greatly benefit from a private letter ruling from the IRS on the specific matters of tax law raised in this proceeding, we believe that it is necessary to obtain the IRS's interpretation of how its Normalization Rules apply in the context of Dominion's Formula Rates. Therefore the Commission will accept the proposed tariff revisions to Dominion's Formula Rate, suspend them for a nominal period to be effective May 1, 2014, as requested, subject to refund, and set them for hearing.

19. Based on a review of the filing, the Commission finds that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission accepts and suspends the proposed tariff records for a nominal period, to become effective May 1, 2014, as requested, subject to refund, and sets them for hearing. The Commission will also hold the proceedings in abeyance until Dominion receives and supplements the record with a private letter ruling from the IRS.

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<sup>28</sup> 18 C.F.R. § 385.214 (2013).

<sup>29</sup> 18 C.F.R. § 385.213(a)(2) (2013).

The Commission orders:

(A) Dominion's proposed tariff records are hereby accepted for filing and suspended for a nominal period, to become effective May 1, 2014, subject to refund and hearing, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Dominion's proposed tariff records. However, the hearing shall be held in abeyance until Dominion receives and supplements the record with a private letter ruling from the IRS addressing the applicability of the Normalization Rules to Dominion's Formula Rate.

(C) A presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date Dominion supplements the record with a private letter ruling from the IRS, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.