

150 FERC ¶ 61,189
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

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

Docket No. ER15-856-000

ORDER REJECTING FILING

(Issued March 16, 2015)

1. On January 15, 2015, pursuant to section 205 of the Federal Power Act,¹ Virginia Electric and Power Company, operating as Dominion Virginia Power (Dominion), filed revisions to Attachment H-16 of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff), which is Dominion's Formula Rate for Network Integration Transmission Service. Dominion is proposing to implement a January 1, 2012, effective date for the revised transmission depreciation rates and associated transmission facility life input previously accepted by delegated letter order, effective April 1, 2013.² We deny Dominion's request to change its effective date and reject the filing, for the reasons discussed below.

I. Background

2. As Dominion is a transmission owning member of PJM, the annual rates for Network Integration Transmission Service in the Dominion Zone are set forth in

¹ 16 U.S.C. § 824d (2012).

² *Virginia Electric and Power Co.*, Docket No. ER14-1549-000 (April 22, 2014) (delegated letter order) (accepting updated depreciation rates effective April 1, 2013) (April 2014 Letter Order).

Attachment H-16³ and are based on projected costs that are trued-up annually with interest based on actual costs as reflected in its Form No. 1.⁴ Dominion has the right to file changes to its applicable rates and charges unilaterally pursuant to Section 7.1.1 of the PJM Transmission Owners Agreement. Dominion states also that Order No. 618⁵ allows utilities to change their depreciation methodology for accounting purposes without making a formal filing at the Commission; however, Order No. 618 specifies that a utility must make a section 205 filing in order to change its wholesale jurisdictional rate to reflect a depreciation rate change.

3. On March 21, 2014, Dominion sought Commission approval of updated depreciation rates and associated facility life input, which were accepted with modifications by the State Corporation Commission of Virginia (Virginia Commission), in Docket No. ER14-1549-000.⁶ Dominion requested an effective date from the Commission for the updated depreciation rates of April 1, 2013, based on: (1) the implementation date of the updated rates as reflected in Dominion's FERC Form No. 1, and (2) the requirements of Dominion's formula rate and Dominion's interpretations of Commission precedent regarding waiver of the Commission's prior notice requirement. The April 2014 Letter Order accepted the updated depreciation rates and associated facility life input, effective April 1, 2013.

4. Dominion explains that the Virginia Commission ordered Dominion to implement the updated depreciation rates resulting from the 2011 Depreciation Study as of January 1, 2012, stating:

³ 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.

⁴ See, e.g., Attachment 6 – True-up Adjustment for Network Integration Transmission Service, to Attachment H-16A.

⁵ *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,694-95 & n.25 (2000).

⁶ Dominion notes that the Virginia Commission accepted the depreciation rates proposed by Dominion with the exception of four depreciation rates for electric transmission and accepted the depreciation rates recommended by the Staff of the Virginia Commission. *Id.* at n.12.

We find that the new depreciation rates from the 2011 Depreciation Study should be implemented as of the date of such study. Thus, as recommended by [Virginia] Staff, 2012 depreciation expense and accumulated depreciation shall be increased to reflect implementation of Dominion's 2011 Depreciation Study as of January 1, 2012, which is coincident with the date of such study.⁷

5. On July 29, 2014, the Virginia Commission further ordered Dominion to, “expeditiously make appropriate filings at FERC, with [the Virginia Commission] Staff’s assistance, seeking to incorporate the [Virginia] Commission-approved January 1, 2012 implementation date for the new transmission depreciation rates.”⁸ Thus, in compliance with Virginia regulation, Dominion is now requesting to change the April 1, 2013 effective date on its federally-regulated rates, as accepted in the April 2014 Letter Order, to January 1, 2012.

6. Dominion also discusses the accounting entries that it would record on its financial books and records upon Commission approval of a January 1, 2012 implementation date for the updated depreciation rates.⁹ Dominion proposes a one-time cumulative adjustment that would debit Depreciation Expense on its Income Statement and credit Accumulated Depreciation on its Balance Sheet for approximately \$13.6 million.¹⁰ Dominion explains that this amount represents the cumulative impact of recording the additional depreciation expense that would have resulted if the previously accepted transmission depreciation rates had been in effect during the 15-month period of January 1, 2012 through March 31, 2013.¹¹ Dominion notes that, to accommodate the earlier effective date, other rate base adjustments include changes in accumulated deferred income taxes, and a reduced allocation of property insurance expense.¹² Dominion estimates that use of the updated depreciation rates for the additional 15-month

⁷ Ex. DVP-7 at 4 (*Virginia Electric and Power Co.*, Case No. PUE-2013-00020 (November 26, 2013)).

⁸ Ex. DVP-8 at 6; Ex. DVP-6 at 5.

⁹ Transmittal Letter at 7.

¹⁰ Supporting calculations are in Ex. No. DVP-5.

¹¹ Specifically, Dominion proposes revisions to Attachments 5, 7, and 9, and the addition of a new Attachment 10, to Attachment H-16-A of the PJM Tariff.

¹² Transmittal Letter at n.20.

period of January 1, 2012 through March 31, 2013 is projected to increase the revenue requirement to be collected from transmission wholesale customers through the 2015 Dominion Formula Rate true-up for NITS by approximately \$11.1 million, or 1.39 percent of the projected 2015 NITS adjusted Annual Transmission Revenue Requirement (ATTR).¹³

7. Dominion requests that the Commission accept the revised tariff sheets to be effective March 16, 2015, which reflects a true-up to reflect the January 1, 2012 effective date for the depreciation rates. Dominion proposes to make a compliance filing following the Commission's acceptance of the revised tariff sheets, so that it may "insert the docket number of this proceeding in the docket number blanks" in its proposed tariff records.¹⁴ Because its proposal would change the depreciation rates retroactively, Dominion respectfully requests waiver of the Commission's prior notice requirements to permit an effective date of January 1, 2012 for the updated depreciation rates and life input. Dominion submits that good cause exists to waive the prior notice requirements to permit this effective date because waiver would allow Dominion to implement the effective date approved by the Virginia Commission.¹⁵

II. Notice of Filing, Interventions, and Protests

8. Notice of Dominion's filing was published in the Federal Register, 80 Fed. Reg. 3230 (2015), with interventions and protests due on or before February 5, 2015. 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 (Virginia Commission Staff) filed a timely motion to intervene with comments. The North Carolina Electric Membership Corporation (NCEMC) filed a timely motion to intervene, protest and motion to reject filing.

9. Virginia Commission Staff states that it supports Dominion's proposed amendments. Virginia Commission Staff reports that the Virginia Commission, in its November 26, 2013 Final Order in Case No. PUE-2013-00020, held that the new depreciation rates from Dominion's 2011 Depreciation Study should be implemented as of the date of such study, January 1, 2012.¹⁶ Virginia Commission Staff argues that this

¹³ *Id.* at 10.

¹⁴ *Id.* at 12.

¹⁵ *Id.* (citing *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992)).

¹⁶ VSCC Staff comments at 3.

finding is consistent with longstanding Virginia Commission precedent, which holds that a “change in costs must be recorded in the appropriate accounting period coincident with the change; this is true for depreciation expense as well as other costs.”¹⁷ Virginia Commission Staff explains that the Virginia Commission has applied this accounting practice in numerous other utilities’ depreciation studies in instances when depreciation rates have increased, as well as when they have decreased.¹⁸ Virginia Commission Staff explains such a standard policy is necessary to avoid the opportunity for utilities to unduly influence the level of accumulated depreciation on the books. Further, Virginia Commission Staff suggests that standardization based on implementing new remaining life depreciation rates coincident with the depreciation study date is consistent with the policy expressly endorsed by the National Association of Regulatory Utility Commissioners.¹⁹

10. NCEMC protests Dominion’s request to extend back to January 1, 2012 the effective date of the transmission depreciation rates. NCEMC complains that Dominion’s filing effectively seeks to retroactively charge increased rates to Dominion’s transmission customers for transmission service purchased during the locked-in period January 1, 2012 through March 31, 2013.²⁰ NCEMC argues that Dominion’s filing is not just and reasonable, and would run afoul of the prohibition against retroactive ratemaking.²¹

11. NCEMC argues that the Commission has found that revising depreciation rates for use in a formula rate true-up that predated the date of the filing did not run afoul of the rule against retroactive ratemaking in only limited circumstances.²² For example, in *SCE&G*, the Commission permitted such a true-up, reasoning that customers had notice that the utility’s formula required a true-up based on the prior year’s FERC Form No. 1 data, and thus the revised depreciation rates were not given retroactive effect, but were “merely used as a component of the calculation of the Annual Update and the resulting

¹⁷ *Id.*

¹⁸ *Id.* (citing Ex. DVP-11 at 3-4).

¹⁹ *Id.* (citing National Association of Regulatory Utility Commissioners, *Public Utility Depreciation Practices* at 24, filed as Ex. VSCC-1).

²⁰ NCEMC protest at 3.

²¹ *Id.*

²² *Id.* at 5-6 (citing *South Carolina Electric & Gas Co.*, 132 FERC ¶ 61,043, at P 19 (2010) (*SCE&G*)).

transmission rates.”²³ NCEMC explains that, like in *SCE&G*, Dominion in Docket No. ER14-1549-000 sought to implement the updated depreciation rates in its transmission formula rate true-up for a period that predated the date of the filing because the use of the prior period data was consistent with the utility’s formula rate which allowed true-up for prior year costs based on the utility’s prior year FERC Form No. 1, and that FERC Form No. 1 reflected the change in depreciation rates for *accounting purposes*. However, NCEMC complains that in this docket Dominion seeks to apply the revised depreciation rates to a period more than two years before the 2014 true-up period that will be included in Dominion’s next Annual Update.²⁴ NCEMC explains that while the formula allows looking back at the prior calendar year’s actual costs to true-up rates for that year in the pending Annual Update, the formula does not allow Dominion to reach back well before the start of that true-up period.

12. NCEMC argues that courts have been clear that the filed rate doctrine and the rule against retroactive ratemaking “relate to purchasers, their guiding concern is ‘[p]roviding the necessary predictability,’ allowing ‘purchasers ... to know in advance the consequences of the purchasing decisions they make.’”²⁵ NCEMC advises that when a Commission order violates either the filed rate doctrine or the rule against retroactive ratemaking, the court inquires “whether, as a practical matter, the purchasers ... had sufficient notice that the approved rate was subject to change.”²⁶ NCEMC contends, here, Dominion’s transmission customers had no notice that the rates they paid for transmission service during 2012 would be subject to a depreciation filing submitted more than three years later.²⁷ NCEMC submits that Dominion’s additional charge for past transactions that have already been paid constitutes impermissible retroactive ratemaking.²⁸

²³ *Id.* at 5-6 (citing *SCE&G*, at P 19 (2010)).

²⁴ *Id.* at 6.

²⁵ *Id.* at 7 (quoting *Towns of Concord et al. v. FERC*, 955 F.2d 67, 75 (D.C. Cir. 1992) (internal citations omitted)).

²⁶ *Id.* (citing *Public Utilities Comm’n of California v. FERC*, 988 F.2d 154, 164 (D.C. Cir. 1993)).

²⁷ NCEMC Protest at 7.

²⁸ *Id.*

13. NCEMC argues that consistency between state and federal depreciation rates is not required.²⁹ In NCEMC's view, these costs are not "trapped" between state and federal jurisdictions because, first, the Virginia Commission passes through to retail customers in Virginia the transmission rates approved by this Commission for Dominion. Second, the timing of Dominion's filing requesting Commission approval of the updated depreciation rates and related effective date is a decision that lies solely within Dominion's discretion.³⁰

14. NCEMC complains Dominion's late filed request for a January 1, 2012 effective date would unduly prejudice transmission customers and is contrary to Commission policy on timely filings. According to NCEMC, Dominion seeks rate recovery of updated depreciation rates based on a 2011 Depreciation Study completed more than three years ago.³¹ NCEMC argues that Dominion filed with the Virginia Commission for approval of the depreciation rates in March 2013 based on the 2011 Depreciation Study and it then waited two years after that to request a January 1, 2012, effective date from this Commission. Even after the Virginia Commission approved the January 1, 2012, effective date by order dated November 26, 2013, NCEMC notes, Dominion nonetheless waited another 14 months before requesting from this Commission a January 1, 2012, effective date for the updated depreciation rates. NCEMC submits that this delay would unduly prejudice transmission customers by requiring them to pay higher rates for transmission services provided more than three years ago when they have no longer have any ability to respond to such retroactive prices.

15. On February 20, 2015, Dominion filed an answer to NCEMC. Dominion claims that "NCEMC's assertions reflect a misapprehension of the relevant overall timeline."³² Dominion argues that NCEMC's errors directly lead to NCEMC's conclusion that Dominion should have filed in 2012 or 2013 seeking the effective date that Dominion now requests in the present docket. Dominion notes that the depreciation rates at issue were based on a study that was presented to Dominion on March 22, 2013, so "Dominion could not possibly have submitted a filing with the Commission ... in 2012."³³ Furthermore, Dominion argues, it could not possibly have known that the

²⁹ NCEMC Protest 7-9 (citing *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104 at 31,695 & n.25).

³⁰ *Id.* at 10.

³¹ *Id.* at 11.

³² Dominion Answer at 1.

³³ *Id.* at 3.

Virginia Commission would require a January 1, 2012 effective date “until the Virginia Commission issued its Final Order on the 2013 Biennial Review on November 26, 2013.”³⁴ Furthermore, as Dominion explained in its filing in Docket No. ER14-1549-000, “it intended to use *pro forma* adjustments ... to address the timing difference between the January 1, 2012 effective date required by the Virginia Commission and the April 1, 2013 effective date utilized in the Company’s accounting records.”³⁵ Dominion claimed that it had a good-faith belief that the Virginia Commission would welcome Dominion’s federal filing strategy, and it only learned otherwise when “the Virginia Commission issued its Final Order in Case No. PUE-2014-00021 on July 29, 2014.”³⁶ Dominion also claims that NCEMC seems to be asserting that Dominion could reflect a January 1, 2012 effective date without Commission approval, which Dominion notes would be improper. Accordingly, Dominion urges the Commission to accept its filing outright, without hearing or settlement procedures.

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,³⁷ 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 or to an answer unless otherwise ordered by the decisional authority.³⁸ We will accept Dominion’s answer because it aided us in our decision-making.

³⁴ *Id.*

³⁵ *Id.* at 4.

³⁶ *Id.* at 5.

³⁷ 18 C.F.R. § 385.214 (2013).

³⁸ 18 C.F.R. § 385.213(a)(2) (2011).

B. Commission Determination

18. In this filing, Dominion seeks to change the effective date of previously approved Formula Rate inputs, from April 1, 2013 to January 1, 2012. We reject the filing because the requested retroactive effective date would be a violation of the filed rate doctrine and the rule against retroactive ratemaking, as well as a violation of Dominion's portion of the PJM Tariff.

19. As explained in this proceeding, Dominion engaged a consultant to prepare a depreciation study based on 2011 data, as part of Dominion's biennial review of base rates. The completed depreciation study was delivered to Dominion on March 22, 2013. Following Dominion's receipt of the depreciation study, it implemented the updated depreciation rates for accounting purposes, and included the updated depreciation rates in its FERC Form No. 1, effective April 1, 2013. After the Virginia Commission accepted the depreciation study, with certain modifications, Dominion sought Commission approval of the updated depreciation rates in Docket No. ER14-1549-000. The updated depreciation rates were accepted in the April 2014 Letter Order, effective April 1, 2013. Subsequently, the Virginia Commission found that Dominion should make a filing at the Commission, seeking a January 1, 2012 implementation date for the updated depreciation rates.

20. The proposed filing to increase Dominion's transmission rates does not give customers the necessary prior notice of the change in the transmission rates; on January 15, 2015, Dominion asked to increase the rate that was applicable years earlier (from January 1, 2012 through March 31, 2013).³⁹ In addition, the filed rate and retroactive ratemaking doctrines both bar a public utility from charging a rate other than the rate properly filed with the Commission, and similarly bar the retroactive imposition of an increased rate for service already provided.⁴⁰ However, this is precisely what Dominion proposes to do in the instant filing, notwithstanding the Commission's previous acceptance of a rate to be effective from April 1, 2013, by now proposing to charge customers an additional \$11.1 million from January 1, 2012 through March 31, 2013.

³⁹ 16 U.S.C. § 824d(d) (2012); 18 C.F.R. § 35.3(a) (2014). "It is well established that predictability is an underlying purpose of both the filed rate doctrine and the rule against retroactive ratemaking. These doctrines are designed to allow parties to know the consequences of the purchasing decisions they make." *San Diego Gas & Elec. Co.*, 127 FERC ¶ 61,191, at 61,870 (2009).

⁴⁰ *E.g.*, *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 579 (1981).

21. Moreover, we find that Dominion's proposal violates Attachment H-16 of the PJM OATT, which provides that:

Beginning with 2009, and no later than June 15 of each year Dominion is required to recalculate an adjusted Annual Transmission Revenue Requirement (ATRR) for the previous calendar year based on its actual costs as reflected in the FERC Form No. 1 and its books and records for that calendar year, consistent with FERC accounting policies.⁴¹

22. Dominion would not merely be updating its rates to reflect costs already set forth on its FERC Form No. 1; rather, it would be restating the amounts in depreciation expense and the associated accumulated provision for depreciation amounts that were filed in the 2012 and 2013 FERC Form No. 1s and calculating interest on the difference in revenue requirements through to when the amounts are recognized on its books and records in 2015.⁴²

23. Finally, we recognize the Virginia Commission Staff's concerns, and we are not suggesting that a January 1, 2012 effective date would be inappropriate for retail rates, which is within the purview of the states. In this case, however, Dominion will receive all of its transmission operations and maintenance expenses through its formula rate and its allowed rate of return and associated income taxes on all unrecovered plant balances. Furthermore, the Commission has previously accepted rates that reflect regulatory differences from what this Commission requires for accounting purposes and what state commissions require for state rate purposes.⁴³

⁴¹ PJM Tariff, Virginia Electric Power Company, Attachment H-16A, Attachment 6, True-up Adjustment for Network Integration Service.

⁴² *See, e.g.*, Attachment H-16A, Attachment 10 - Adjustment for Depreciation Implementation; Ex. DEP-5; and Ex. DEP-6 at 4-5.

⁴³ *See Ohio Edison Co.*, 84 FERC ¶ 61,157, at 61,861 (1998).

The Commission orders:

For the reasons discussed above, Dominion's filing is hereby rejected.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.