

156 FERC ¶ 61,072
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Virginia Electric and Power Company

Docket Nos. ER06-554-000
EL16-89-000

ORDER ACCEPTING INFORMATIONAL FILING, INSTITUTING SECTION 206
PROCEEDING, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued July 28, 2016)

1. On August 12, 2015, in Docket No. ER06-554-000, Dominion Resources Services, Inc. (Dominion) submitted, on behalf of Virginia Electric and Power Company, an informational filing related to its revenue requirement for Reactive Supply and Voltage Control From Generation Sources Service (Reactive Service) pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff), regarding the anticipated expiration of power purchase agreements Dominion entered into with non-utility generators (Informational Filing). In this order, the Commission accepts the filing for informational purposes only. In addition, we institute a proceeding pursuant to section 206 of the Federal Power Act (FPA)¹ regarding the justness and reasonableness of Dominion's Reactive Service rates, and establish a refund effective date and hearing and settlement judge procedures.

I. Background

2. Schedule 2 of the PJM Tariff, which covers Reactive Service, provides that PJM will compensate owners of generation and non-generation resources for maintaining the capability to provide reactive power to PJM. Specifically, Schedule 2 states that, for each month of Reactive Service provided by generation and non-generation resources in the PJM region, PJM shall pay each resource owner an amount equal to the resource owner's

¹ 16 U.S.C. § 824e (2012).

monthly revenue requirement, as accepted or approved by the Commission.² Schedule 2 requires that at least 90 days before deactivating or transferring a resource receiving compensation for Reactive Service, the resource owner either: (1) submit a filing to either terminate or adjust its cost-based rate schedule to account for the deactivated or transferred unit; or (2) submit an informational filing explaining the basis for the decision by the Reactive Service supplier not to terminate or revise its cost-based rate schedule.³

3. On August 12, 2015, Dominion submitted the Informational Filing pursuant to Schedule 2 of the PJM Tariff. In the Informational Filing, Dominion states that its existing revenue requirement for Reactive Service was established through a settlement agreement accepted by the Commission in 2007.⁴ Dominion states that it has provided, as part of its Informational Filing, a spreadsheet listing: (1) all of the resources covered by the reactive power tariff from the date the revenue requirement was first established until the date of the informational filing; (2) the primary fuel type and prime mover of each resource; (3) the actual (site-rated) megavolt-ampere reactive (MVAR) capability, megavolt-ampere (MVA) capability, and megawatt (MW) capability of each resource, as supported by test data; (4) the nameplate MVAR rating, nameplate MVA rating, nameplate MW rating, and nameplate power factor for each resource; and (5) the acquisition date, deactivation date, and transfer date of each resource, as applicable.⁵

4. Dominion explains that Exhibit A demonstrates that, since 2006, the company has retired 11 generation units and 5 power purchase agreements have expired. Dominion states that it has also added 9 newly constructed generation units, resulting in a net increase of approximately 237 Max MVAR, and a net increase of approximately -553 Min MVAR. Dominion asserts that the newly constructed generation facilities can demonstrate much higher costs to provide reactive power service than the cost of the older facilities that have retired or have expired PPAs. Dominion further asserts that the Informational Filing demonstrates that its reactive power capability has increased since the Commission last reviewed and approved the Company's reactive

² PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0) (Schedule 2).

³ *Id.*

⁴ Informational Filing at 4 (citing *Virginia Elec. & Power Co.*, 119 FERC ¶ 61,004 (2007)).

⁵ *Id.* at 5.

power tariff, and that its revenue requirement for Reactive Service does not require modification.⁶

II. Notice and Responsive Pleadings

5. Notice of Dominion's August 12, 2015 filing was published in the *Federal Register*, 81 Fed. Reg. 40,297 (2016), with interventions and protests due on or before July 6, 2016.

6. On July 6, 2016, North Carolina Electric Membership Corporation (NCEMC) filed a limited protest urging the Commission to examine whether Dominion's Reactive Service rates remain just and reasonable.⁷ NCEMC states the information contained in Dominion's August 12, 2015 filing has become "stale" and that, in any case, even that information has not been evaluated in light of the Commission's recent decisions involving Reactive Service, which are discussed in greater detail below. NCEMC suggests that the Commission should require Dominion to file cost information for the equipment used to supply Reactive Service.

III. Discussion

7. We accept the Informational Filing for informational purposes only.⁸ It appears, based on the Informational Filing, that Dominion's rate for reactive service may be unjust, unreasonable, or unduly discriminatory or preferential. Dominion's Informational Filing raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in hearing and settlement judge procedures. Accordingly, we institute a proceeding under section 206 of the FPA in Docket No. EL16-89-000, to determine whether Dominion's rates for Reactive Service are just and reasonable. We further establish a refund effective date and hearing and settlement judge procedures.

⁶ *Id.* at 5-7.

⁷ NCEMC July 6, 2016 Comments at 2.

⁸ This acceptance for filing shall not be construed as constituting approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service contained in the Informational Filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Dominion.

8. Although we are setting for hearing Dominion's rate for Reactive Service in its entirety, we note that the capability of Dominion's fleet to provide Reactive Service appears to have degraded since the revenue requirement was established.⁹

9. Furthermore, given that Dominion may have continued to receive payments for deactivated units, we have referred such concern to the Commission's Office of Enforcement for further examination and inquiry as may be appropriate.¹⁰

10. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than five months after the publication date.¹¹ In such cases, in order to give maximum protection to customers, and consistent with our precedent, we have historically tended to establish the section 206 refund effective date at the earliest date allowed by section 206, and we do so here as

⁹ The filing made by Virginia Electric and Power Company establishing the revenue requirement for Reactive Service appears to have been based on the fleet's nameplate reactive power capability. See Virginia Electric and Power Company January 27, 2006 Filing, Ex. DVP-2 at 10-11; Virginia Electric and Power Company January 27, 2006 Filing, Ex. DVP-4, Schedule 4 at 1. In its Informational Filing, Dominion states that the total nameplate reactive power capability of the pre-2006 fleet was 10,148.6 MVARs. Informational Filing, Ex. A. Dominion also states that the total actual reactive power capability of its fleet as of August 2015 was 4,896.9 MVARs. Therefore, despite Dominion's claim that the net Reactive Service capability of its fleet has increased, it appears that the actual capability of its fleet has degraded since the revenue requirement was established. We note that the Commission recently provided guidance on establishing or revising rates for Reactive Service. *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at PP 24-29 (2016); *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016).

¹⁰ See *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,132 at P 10; *Duke Energy Conesville, LLC*, 150 FERC ¶ 61,229, at P 8 (2015) (referring to the Commission's Office of Enforcement the matter of the resource owner possibly receiving payments for Reactive Power Service after its units had deactivated and thus were no longer capable of providing that service); *Desoto Cty. Generating Co., LLC*, 151 FERC ¶ 61,009, at P 14 (2015) (referring to the Commission's Office of Enforcement the matter of the resource owner possibly receiving payments for Reactive Power Service while its facility was incapable of providing that service).

¹¹ 16 U.S.C. § 824e(b) (2012).

well.¹² That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-89-000 in the *Federal Register*.

11. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. As we are setting the section 206 proceeding in Docket No. EL16-89-000 for hearing and settlement judge procedures, we expect that, if the proceeding does not settle, we would be able to render a decision within eight months of the date of filing of briefs opposing exceptions to the Initial Decision. Thus, if the Presiding Judge were to issue an Initial Decision by March 31, 2017, we expect that, if the proceeding does not settle, we would be able to render a decision by January 31, 2018.

12. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.¹⁴ The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability. The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

¹² See, e.g., *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

¹³ 18 C.F.R. § 385.603 (2015).

¹⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

The Commission orders:

(A) Dominion's Informational Filing is hereby accepted for informational purposes only, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL16-89-000, concerning the justness and reasonableness of Dominion's rate for Reactive Service, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the participants decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the participants with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the participants' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a 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.

(F) Any interested person desiring to be heard in Docket No. EL16-89-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2015)) within 21 days of the date of issuance of this order.

(G) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL16-89-000.

(H) The refund effective date in Docket No. EL16-89-000 established pursuant to section 206 of the FPA shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (G) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.