

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

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

Docket Nos. ER04-829-000
and ER04-829-001

ORDER ESTABLISHING PJM SOUTH,
SUBJECT TO CONDITIONS

(Issued October 5, 2004)

1. On May 11, 2004, as amended on July 16, 2004, PJM Interconnection, L.L.C. (PJM) and Virginia Electric and Power Company (Dominion) (collectively the Filing Parties) submitted for approval, pursuant to section 205 of the Federal Power Act (FPA),¹ a joint proposal to establish PJM as the Regional Transmission Organization (RTO) for Dominion, pursuant to an expansion arrangement known as “PJM South.”² The Filing Parties state that their submittals are generally modeled after PJM’s prior expansion under the arrangements giving rise to “PJM West.”³

¹ 16 U.S.C. § 824d (2000).

² PJM was previously established as an RTO by the Commission in an order issued December 20, 2002. *See* PJM Interconnection, L.L.C., *et al.*, 101 FERC ¶ 61,345 (2002) (PJM RTO Order).

³ *See* PJM Interconnection, L.L.C. and Allegheny Power, 96 FERC ¶ 61,060 (2001) (PJM West Order). Dominion, in a related market-based rate application, requests that Dominion and its affiliates be authorized to sell energy and capacity at market-based rates within Dominion’s service territory, with such authorization to become effective upon the start-up date of PJM South. In an order issued September 16, 2004, we granted Dominion market-based rate authority. *See* Virginia Electric Power Company, 108 FERC ¶ 61,242 (2004).

2. The Filing Parties note, however, that the instant filing does not contain specific rates. These matters, rather, would be the subject of a second, “Phase II” filing, to be made prior to the effective date of PJM South. In addition, the Filing Parties jointly propose an allocation of their respective section 205 filing rights that would permit Dominion to retain authority over all rate design filings relating to PJM South. For the reasons discussed below, we will accept the Filing Parties’ proposal to establish PJM South, subject to certain conditions described below.

I. Background

A. PJM’s Existing Service Area

3. On January 1, 1998, PJM began operation as the nation’s first independent system operator (ISO), with a service area that included, as of that time, all or parts of the States of Pennsylvania, New Jersey, Maryland, Delaware, and Virginia, and the District of Columbia.⁴ PJM was subsequently accorded RTO status by the Commission in 2002.⁵

4. Since its inception, PJM’s borders have been expanded on several occasions. First, on July 12, 2001, we authorized the expansion of PJM to include “PJM West,” *i.e.*, the service territory owned and operated by Allegheny Power, in the States of Maryland, Ohio, Pennsylvania, Virginia, and West Virginia.⁶ PJM West became fully integrated into PJM in 2002. Then, on April 1, 2003 we authorized the further expansion of PJM to include the transmission facilities owned by the “New PJM Companies,” American Electric Power (AEP), Commonwealth Edison (ComEd), Dayton Power & Light Company (DP&L), and Dominion.⁷ ComEd’s facilities in northern Illinois were fully integrated with PJM on May 1, 2004. AEP, with its facilities in the States of Pennsylvania, Ohio, Michigan, Indiana, Virginia, and Kentucky, and DP&L’s facilities in Ohio, will be fully integrated on October 1, 2004.⁸ Dominion will be the last of the “New PJM Companies” to be fully integrated into PJM.

⁴ See Pennsylvania-New Jersey-Maryland Interconnection, *et al.*, 81 FERC ¶ 61, 257 (1997), *order on reh’g*, 92 FERC ¶ 61, 282 (2000).

⁵ PJM RTO Order, 101 FERC ¶ 61,345 at P 14.

⁶ See *supra* note 3.

⁷ American Electric Power Service Corporation, *et al.*, 103 FERC 61,008 (2003), *reh’g pending*.

⁸ See New PJM Companies, *et al.*, 107 FERC ¶ 61,271 (2004).

5. In addition to these initiatives, we have also required PJM to address the interregional seams that exist between PJM and its neighboring RTO, the Midwest ISO. Pursuant to these directives, PJM and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), on December 31, 2003, filed a Joint Operating Agreement with the Commission. The Joint Operating Agreement will require PJM and the Midwest ISO to share detailed information about each other's operations and to follow established procedures designed to strengthen reliability. Pursuant to the related Order on Going Forward Principles and Procedures,⁹ PJM is also committed to implementing a long-term pricing structure for the combined PJM/Midwest ISO regions by December 1, 2004.

B. Dominion's Existing Service Area and Prior Efforts to Join an RTO

6. Dominion owns, controls, or leases transmission facilities in the States of Virginia and North Carolina, but is not currently a member of either an ISO or an RTO. Dominion's service to Virginia and North Carolina retail customers is accomplished on a system-wide basis, with both sets of customers being served by the same generating plants and, largely, by the same transmission facilities.

7. On June 3, 1999, Dominion and other applicants (collectively, the Alliance Companies) filed an application to create the Alliance RTO.¹⁰ On December 20, 2001, however, we ruled that the Alliance Companies' RTO proposal failed to satisfy the minimum characteristics and functions necessary to establish an RTO, as required by the Commission in its RTO-formation guidelines.¹¹ Accordingly, we encouraged the Alliance Companies to consider joining another RTO. In a follow-up order, issued April 25, 2002, moreover, we directed the Alliance Companies to make a filing with the Commission identifying, on an individual company basis, which RTO they intended to join. On May 28, 2002, Dominion submitted its filing in which it stated its intent to join PJM. That filing was conditionally approved by the Commission on July 31, 2002.¹²

⁹ 106 FERC ¶ 61,262 at P 18.

¹⁰ The original Alliance Companies included Dominion, AEP, Consumers Energy Company, Detroit Edison Company, and FirstEnergy Corporation.

¹¹ See Alliance Companies, *et al.*, 97 FERC ¶ 61,327 (2001) (Alliance Order). In the Alliance Order, we held, specifically, that the Alliance RTO, as proposed, lacked sufficient scope to exist as a stand-alone RTO.

¹² See Alliance Companies, *et al.*, 100 FERC ¶ 61,137 (2002).

8. In March 1999, the Commonwealth of Virginia enacted the Virginia Electric Utility Restructuring Act, which, among other things, implemented retail open access and required Virginia electric utilities (including Dominion) to join regional transmission entities on or before January 1, 2001.¹³ In April 2003, however, the Virginia General Assembly passed HB 2453, which amended this statute to prohibit Virginia electric utilities from transferring control of their transmission facilities to RTOs until July 1, 2004. The amended Virginia legislation provides that electric utilities (including Dominion) must transfer control of their facilities to RTOs by January 1, 2005, but only after approval by the Virginia State Corporation Commission (Virginia Commission).¹⁴

C. The Filing Parties' Proposal to Establish PJM South

9. The Filing Parties state that their proposal to implement PJM South includes: (i) a PJM South Transmission Owner Agreement to be entered into between PJM and Dominion, (ii) a Reliability Assurance Agreement among Load Serving Entities (LSEs) in the PJM South region, and (iii) revisions to the PJM open access transmission tariff (OATT) and the PJM Operating Agreement. The Filing Parties state that, under their proposal, Dominion would transfer functional control of its transmission facilities operating at 69 kV or above (Dominion Zone) to PJM, with all transmission service over these facilities thereafter to be provided by PJM under the PJM OATT, consistent with the Commission's RTO policies as specified in Order No. 2000.¹⁵

10. In addition to the Filing Parties' joint proposal, Dominion separately states that its agreement to join PJM South is conditioned upon: Dominion retaining a license plate rate structure (based on transmission facilities in its zone) until such time as Dominion under section 205 of the FPA or the Commission under section 206 of the FPA changes that rate structure; the initial rates for transmission and ancillary services to load in its zone shall essentially be the Dominion rates under its transmission tariff in effect on the date of integration into PJM; and Dominion will not participate in any lost revenue rate

¹³ See Va. Code Ann. § 56-576, *et seq.* (Michie 2003).

¹⁴ North Carolina has not implemented a retail open access program. Rather, North Carolina's electric utilities continue to be fully integrated companies serving captive retail customers under monopoly franchises overseen by the North Carolina Utilities Commission. See N.C. Gen. Stat. § 62-2 (Michie 2003).

¹⁵ See Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd*, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

recovery mechanism nor will it, or any load in its zone, be assessed any charge to recover any lost revenues under a Seams Elimination Cost Adjustment (SECA) or other similar rate mechanism.¹⁶

11. Dominion also identifies as a condition acceptance of its market-based rates application in Docket No. ER04-834-000.¹⁷ The Filing Parties request that the filing to implement PJM South be made effective on the later of November 1, 2004 or a date to be determined shortly after the date upon which all approvals required to effect the transaction have been received. As such, the Filing Parties seek waiver of the Commission's prior notice requirement.¹⁸

II. Notice and Responsive Pleadings

12. Notice of the Filing Parties' filing was published in the Federal Register,¹⁹ with interventions and protests due on or before June 1, 2004. Notices of intervention and motions to intervene were timely submitted by the entities listed in the Appendix to this order. In addition, motions to intervene out-of-time were filed by Allegheny Energy Supply Company, LLC (AE Supply), the Virginia Committee for Fair Utility Rates (Virginia Committee), Wisconsin Public Service Corp. and Upper Peninsula Power Co. (WPSC, *et al.*), Consumers Energy Company (Consumers), and the Maryland Public Service Commission (Maryland Commission). Answers and supplemental protests were filed on June 8, 2004 (by Direct Energy Marketing, Inc. and Virginia Municipal Electric Association No. 1), on June 14, 2004 (by the PJM TOs and Dominion), on June 29, 2004 (by Dominion), and on July 2, 2004 and July 23, 2004 (by North Carolina Eastern Municipal Power Agency).

13. On May 28, 2004, Chaparral (Virginia) Inc. (Chaparral) filed a motion to consolidate the instant filing with Dominion's market-based rate application, filed in Docket No. ER04-834-000. In support of its motion, Chaparral asserts that these proceedings share common issues of law and fact.

¹⁶ In this latter regard, though, *see* Midwest Independent Transmission System Operator, Inc., *et al.*, 106 FERC ¶ 61,262 (2004) (providing for a new long-term transmission pricing structure rather than a SECA).

¹⁷ *See supra* note 3 (noting our approval of Dominion's market-based rate application).

¹⁸ 18 C.F.R. § 35.3 (2004).

¹⁹ 69 Fed. Reg. 29,296 (2004).

III. Deficiency Letter and Amended Filing

14. On July 16, 2004, Commission staff issued a deficiency letter requesting the submission of additional information regarding actual interchange, scheduled interchange, and scheduled transmission service for calendar years 2001-03. On July 23, 2004, in Docket No. ER04-829-001, Dominion supplied the requested information in the form of an amended filing. Notice of Dominion's amended filing was published in the *Federal Register*,²⁰ with interventions and protests due on or before August 6, 2004. No responsive pleadings were filed.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²¹ the notices of intervention and the timely, unopposed motions to intervene submitted by the entities noted in the Appendix to this order serve to make these entities parties to the proceedings in which these interventions were filed. In addition, we will grant the unopposed late-filed interventions submitted by AE Supply, Virginia Committee, WPSC, *et al.*, Consumers, and the Maryland Commission. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²² prohibits an answer to a protest and an answer to an answer, unless otherwise permitted by the decisional authority. We will accept the answers to protests and answers to answers noted above, given the complex nature of this proceeding and because these answers have provided information that aided in clarifying certain issues, as discussed below.

16. We will deny Chaparral's motion to consolidate proceedings. As discussed below, we are not establishing an evidentiary hearing in this proceeding or in the market-based rate application proceeding.²³ Finally, we will grant the Filing Parties' requested waiver of our advance notice filing requirement to permit the instant filing to be filed more than 120 days in advance of the requested effective date.

²⁰ *Id.* at 47,137.

²¹ 18 C.F.R. § 385.214 (2004).

²² *Id.* at § 385.213(a)(2).

²³ *See, e.g.*, Entergy Services, Inc., 107 FERC ¶ 61,326 at P 3 (2004).

B. Dominion's Section 205 Filing Rights

17. As noted above, Dominion proposes to use a license plate rate design, based on Dominion's costs, for transmission of power to load within PJM South, an approach consistent with PJM's current rate design. Dominion's proposed rate treatment would also contemplate (in conjunction with its second, Phase II filing) future revisions to the so-called PJM OATT Border Rate, a rate applicable to *any* transaction that goes through or exits the PJM region.²⁴

1. Dominion's Entitlement to Make the Filing At Issue

18. The PJM Transmission Owners challenge Dominion's right to propose any rate treatment or region-wide rate design that would have the effect of revising the PJM OATT or any PJM agreement to which Dominion is not a party. The PJM Transmission Owners note that, under section 5.1.2(a) of the PJM Transmission Owners Agreement and section 9.1 of the PJM OATT, the Transmission Owners, operating as a collective body, have the exclusive right to file proposed changes in the joint transmission rates and rate design applicable to PJM.²⁵ The PJM Transmission Owners add that, by proposing

²⁴ The PJM Border Rate is another name for the PJM Through and Out Rate. *See, e.g.*, PJM Interconnection, L.L.C., *et al.*, 106 FERC ¶ 61,252 at P 4 (2004); American Electric Power Service Corp., *et al.*, 103 FERC ¶ 61,008 at P 4 (2003); *see generally* Midwest Independent Transmission System Operator, Inc., 106 FERC ¶ 61,262 (2004) and cases cited therein. Basically, the PJM Border Rate is a single, joint rate for service through or out of PJM, and is calculated using all of the Transmission Owners' revenue requirements. This rate is currently \$1.57/kW-month. It will, however, be replaced by a new long-term transmission pricing structure effective December 1, 2004. In this regard, and as explained below, one option that might be pursued is a formula rate rather than a stated rate.

While PJM has proposed to retain its existing license plate rate design in the short-term (until, for example, the Commission acts under section 206 of the FPA), by order issued September 27, 2004, the Commission has initiated such a proceeding. Midwest Independent Transmission System Operator, Inc., 108 FERC ¶ 61,313 (2004) (Docket No. EL04-135-000).

²⁵ The PJM Transmission Owners note that these provisions were voluntarily proposed by PJM and the PJM Transmission Owners in the form of a settlement submitted in PJM's ISO-formation proceeding in Docket No. OA97-261-004, *et al.*, and that this settlement was subsequently approved by the

(continued ...)

to join PJM and come under the PJM OATT, Dominion must comply with the PJM Filing Rights Settlement procedures and may not seek to impose its will unilaterally on the other PJM Transmission Owners.

19. In its answer to this protest, Dominion asserts that section 205 of the FPA gives Dominion, as a public utility, the right to propose rates, terms and conditions of service concerning its jurisdictional assets and that, absent any agreement to the contrary, each Transmission Owner participant within an RTO retains the fundamental right to control rates, terms and conditions of service over its own facilities within the RTO. Dominion also relies on *Atlantic City Electric Co., et al. v. FERC*²⁶ for the proposition that the fundamental purpose of section 205 is to protect “the ability of the utility owner to ‘set the rates it will charge prospective customers, and change them at will,’ subject to review by the Commission.”²⁷ Finally, Dominion submits that it was not a party to the PJM Filing Rights Settlement and that, as such, it is not bound by the Transmission Owners’ collective action requirements as it relates to Dominion’s proposed start-up rate structure.²⁸

20. Dominion proposes to use a license plate rate design, based on Dominion’s costs, for transmission of power to load within PJM South, an approach consistent with PJM’s current rate design. This aspect of the filing is accepted. As to the additional filing rights Dominion seeks to unilaterally alter the PJM Border Rate, which is a jointly-filed rate with other Transmission Owners, this is rejected. While public utilities under the FPA, including Dominion, have the statutory rights that go along with that status, no public utility under the FPA, including Dominion, has the statutory right to seek to change another public utility’s rates under section 205 of the FPA. Yet that is what Dominion seeks to do. The Border Rate, in particular, is a single rate for transmission service either

Commission, subject to conditions, in Pennsylvania-New Jersey-Maryland Interconnection, *et al.*, 105 FERC ¶ 61,294 (2003) (PJM Filing Rights Settlement Order), *order on reh’g*, 108 FERC ¶ 61,032 (2004).

²⁶ 295 F.3d 1, 9 (D.C. Cir. 2002) (*Atlantic City*).

²⁷ *Id.* at 10 (quoting *City of Cleveland v. FPC*, 525 F.2d 845, 855 (D.C. Cir. 1976)).

²⁸ By contrast, and as discussed more fully below, the Filing Parties (including Dominion) do commit to be bound by the filing rights allocation requirements embodied in the PJM Filing Rights Settlement Order on a going forward basis, subject to Dominion’s proposed reservation of rights concerning Dominion’s rights to seek its own rate design changes.

through (*i.e.*, across) PJM or from inside PJM to outside PJM. It is a rate that applies regardless of whose facilities are used to transmit the energy and the same rate applies to all transmission owners that participate in PJM.

21. Yet our understanding of the proposal is that Dominion seeks to reserve to itself the unilateral right to change this rate under section 205. In this regard, this case is unlike *Atlantic City*, which involved a dispute as to filing rights as between the regional organization operating the facilities and the owners of these same facilities. Here, the owner of one set of transmission facilities is seeking the right to unilaterally change a joint rate affecting a group of different transmission facility owners. In *Atlantic City*, the court overturned the Commission's rejection of a provision of the PJM Transmission Owners' voluntary arrangement in which all the Transmission Owners had "voluntarily proposed a sharing arrangement on changes to rate design that attempted to balance the utility owners' rights and the ISO Board's independence."²⁹

22. As noted, PJM's tariff contains joint rates in which a single rate applies to all transactions. Thus, the single Border Rate is applicable to all transactions no matter where the source and sink of the transaction are located.³⁰ Under section 205 of the FPA, a single utility or a group of utilities is not permitted to file to change a rate applicable to another utility, unless there is an agreement to that effect.

23. As the court found in *Atlantic City*, for an ISO or RTO such as PJM, individual transmission-owning public utilities transfer to the ISO or RTO operational control over their transmission facilities in order to offer pool-wide transmission services. The court stated that "utilities may choose to voluntarily give up, by contract, some of their rate-filing freedom under section 205."³¹ This statement recognizes that a utility does not cede its section 205 filing rights for their facilities to the other utilities, whether acting individually or collectively, absent an agreement to that effect.³² Thus, a utility can make a section 205 filing only with respect to its own rates. Similarly, a collective filing pursuant to a joint filing agreement such as the PJM Transmission Owners Agreement (or PJM West Transmission Owners Agreement) can pertain only to the rates of the constituent members of the filing group and cannot affect the rates of other utilities.

²⁹ 295 F.3d at 9-11.

³⁰ Allowing each utility or group of utilities to file to change the rates of other utilities could well lead to a chaotic and unproductive series of rate filings.

³¹ 295 F.3d at 10.

³² *Id.* at 10-11.

Consequently, a rate revision proposed by Dominion cannot change the rates of the PJM Transmission Owners and *vice versa*. Any filing by one utility to change the rates or rate design of another utility must be filed under section 206, and show that the existing rate of the other utility is unjust, unreasonable or unduly discriminatory or preferential and that the newly proposed rate is just and reasonable and not unduly discriminatory or preferential.

24. Accordingly, the Filing Parties are directed to make a compliance filing to incorporate these determinations in the relevant agreement. To avoid this issue in the future, Dominion and the existing Transmission Owners should consider expressly incorporating into the PJM OATT the existing formula used to develop the Border Rate (that rate has been developed using the aggregate of all companies' revenue requirements and a coincident peak load) and clearly delineate when or how an individual Transmission Owner can include its revenue requirement and coincident peak load in that determination.

2. The Filing Parties' Proposed Allocation of Future Section 205 Filing Rights as Between PJM and Dominion

25. The proposed allocation of future section 205 filing rights between PJM and Dominion is contained in the PJM South Transmission Owner Agreement, which is sponsored by both PJM and Dominion. Section 8.17 of this proposed agreement provides as follows:

The Parties recognize that the [PJM Transmission Owners Agreement] was amended by [the PJM Filing Rights Settlement Order] to reflect the decision of the United States Court of Appeals for the District of Columbia Circuit in [*Atlantic City*], and establish the respective rights of PJM and the PJM Transmission Owners to submit filings to FERC under section 205 of the [FPA]. The parties agree to amend this Agreement [*i.e.*, the PJM South Transmission Owner Agreement] to incorporate the respective individual [FPA] section 205 and section 206 rights of [Dominion] and PJM equivalent to those approved in [the PJM Filing Rights Settlement Order].

This section, however, also enumerates certain retained filing rights applicable to Dominion:

[Dominion] is not required to agree to such procedures or further changes to this Agreement that would result in (i) changes to the license plate rate structure, based on Transmission Facilities in the PJM South Region, for service to loads within the PJM South Region; (ii) [Dominion] not receiving revenue allocations for Schedules 1A, 2, 7, 8 and Attachment H to the PJM [OATT] based on PJM's existing procedures for transactions

that exit PJM's transmission system; or (iii) application of any rate mechanism to [Dominion] or to loads within the PJM South Region designed to recover lost revenues claimed by any other PJM Transmission Owner.³³

26. The PJM Transmission Owners assert that permitting Dominion to protect its rate structure by granting Dominion its requested unilateral filing rights authority over rate design matters cannot be reconciled with PJM's existing arrangements, as embodied in the PJM Transmission Owners Agreement, which require PJM's Transmission Owners to take collective action with respect to all section 205 rate design proposals.³⁴ The PJM

³³ In addition to section 8.17, Dominion's retained rights are also identified at section 2.2.1 of the PJM South Transmission Owner Agreement:

[Dominion] shall have the right at any time unilaterally to file pursuant to section 205 of the [FPA] to change rates and charges for transmission and ancillary services (including, without limitation, incentive rates) for delivery to the [Dominion] zone, schedules for new services solely involving the transmission facilities of [Dominion], and the revenue requirement for [Dominion] for use in developing rates for other transmission services provided by PJM; provided that if the PJM rate design is modified to eliminate zonal rates, [Dominion] shall not be deemed to have waived any of its rights under section 205 with respect to any such modified rate design. [Dominion], however, shall not unilaterally file rates that do not preserve the revenues or payments due to other PJM Transmission Owners, and shall not implement rates that result in a customer paying PJM more than one transmission access charge.

³⁴ See PJM Transmission Owners Agreement at section 6.5.1. That provision provides:

The following actions of the [PJM Transmission Owners] shall require the concurrence of (i) representatives whose combined Individual Votes equal or exceed two-thirds of the total Individual Votes cast at a meeting, and (ii) representatives whose combined Weighted Votes equal or exceed two-thirds of the total Weighted Votes cast at a meeting . . . (e) Approval of changes in or relating to the establishment and recovery of the Transmission Owners' transmission revenue requirements, transmission rate design under the PJM [OATT], or any provisions governing the recovery of transmission-related costs incurred by the Transmission Owners in accordance with Section 5.1.

Transmission Owners further assert that the Filing Parties' proposed grant of filing authority to Dominion would be inconsistent with the long-term transmission pricing structure to be implemented by PJM on a system-wide basis in Docket No. EL02-111-004, *et al.*³⁵

27. Dominion responds in its answer that it was not a party to the settlements approved by the Commission in the PJM Filing Rights Settlement Order or in the Order on Going-Forward Principles and Procedures. Dominion also claims that the overall benefits attributable to its joining PJM require the approval of its rate proposals and the perpetuation of these rate proposals *via* its proposed filing rights authority. Dominion also takes issue with the fundamental basis underlying the PJM Transmission Owners' argument, *i.e.*, the alleged need for a uniform transmission rate structure applicable to all areas of PJM. Dominion asserts that, in fact, it is appropriate for the Commission to recognize a regional difference in the case of PJM South.

28. We agree with the PJM Transmission Owners. PJM is a single integrated transmission system with PJM (and not individual Transmission Owner) rates and, as suggested above and as particularly relevant here, a single PJM rate design. The PJM Transmission Owners recognized this fact in accepting the collective action requirements set forth in the PJM Transmission Owners Agreement. Dominion cannot both join PJM and yet retain its own independent rate design. Indeed, requiring Dominion to be bound by the provisions of section 6.5.1 as a condition to Dominion's joining PJM (in addition to sections 5.1.2 and 5.2.1) recognizes the very nature of PJM, and is necessary to prevent undue discrimination.

29. Specifically, section 6.5.1 will ensure that Dominion has the same filing rights -- no less and, more importantly here, no more -- as PJM's existing Transmission Owners. Moreover, Dominion, as an integral part of PJM, should also be subject to our region-wide initiatives as they relate to PJM's markets as a whole, including those initiatives currently pending in the Going Forward Principles and Procedures proceeding. In other words, we are not persuaded that customers will benefit if we allow Dominion to join PJM conditioned on its right to indefinitely use a different rate design than everyone else in PJM and not have to meet the same obligations as everyone else in PJM. Accordingly,

³⁵ See PJM TOs supplemental protest at 12, *citing* Midwest Independent Transmission System Operator, Inc., *et al.*, 106 FERC ¶ 61,262 at P 1 (2004) (Order on Going Forward Principles and Procedures). Under the Going Forward Principles and Procedures, the PJM Transmission Owners agreed to develop and propose a long-term transmission pricing structure to apply throughout the combined PJM and the Midwest Independent System Operator (Midwest ISO) regions, to be implemented on December 1, 2004.

the Filing Parties are directed to make a compliance filing to incorporate these determinations in the relevant agreements.

3. Compliance Filing

30. Consistent with our rulings, above, we direct the Filing Parties to submit a compliance filing to be made within 30 days of the date of issuance of this order. The Filing Parties and the PJM Transmission Owners may, if they so choose, submit a compliance filing that includes a revised PJM Transmission Owners Agreement reflecting the incorporation of Dominion into PJM as a party subject to the existing section 205 filing rights provisions.³⁶

C. Dominion's Proposals Concerning its Start-Up Rates

31. With respect to PJM South's rate structure, Dominion proposes to implement a license plate rate design for PJM South, recalculate PJM's Border Rate for transactions that exit or enter PJM; and specify that no mechanism be established that would compensate any PJM Transmission Owner (Dominion included) for transmission revenues lost due to Dominion's integration into PJM.³⁷ Given our rulings above, concerning Dominion's rate design proposals (as embodied in the Filing Parties' proposed allocation of their respective section 205 filing rights), we address, below, only those aspects of Dominion's proposal as they relate to Dominion's start-up rate structure, *i.e.*, for the period after Dominion's transfer of functional control on November 1, 2004 (PJM South, Day 1), but before PJM's December 1, 2004 implementation of a regional transmission pricing structure (PJM South Interim Period).

³⁶ Whichever option the Filing Parties choose, they should also undertake to revise whatever agreements (such as the PJM Transmission Owners Agreement) that may need to be revised to reflect that Dominion will now be a member of PJM.

³⁷ As noted above, however, Dominion's rate proposals do not include specific rates for transmission and ancillary services in the Dominion Zone once PJM South becomes operational. Instead, Dominion states that its proposal contemplates a Phase II filing prior to full integration of Dominion into PJM, which would set forth the proposed rates under the PJM OATT to cover transactions either: (i) sinking in PJM South; or (ii) exiting out of PJM.

1. Dominion's Proposed License Plate Rate Design

32. Dominion proposes that a license plate rate structure be approved for PJM South, as currently utilized by PJM. The PJM Transmission Owners object to this proposal to the extent that Dominion's license plate rate design would interfere with PJM's commitment to a long-term solution to the elimination of the interregional seams between PJM and the Midwest ISO. In addition, the Virginia Commission asserts that Dominion's requested rate allowance could be read to exempt Dominion from the requirement to "harmonize" its base rate with a new facilities charge subject to PJM Schedules 12 and 12A under PJM's Going Forward Principles and Procedures. The Virginia Commission submits that allowing Dominion to collect the incremental costs of new transmission investment on top of its existing embedded cost revenue requirement (which has been designed to recover the costs of new investment required to support load growth), would lead to cost over-recovery.³⁸

33. We will accept Dominion's existing license plate rates for the PJM South Interim Period, consistent with the current PJM system-wide rate design. Upon the effective date of a new regional rate design, Dominion will be required to conform to that design, as discussed earlier in this order. We also note Dominion's commitment to include in its Phase II filing a proposal to harmonize its dual rates, as requested by the Virginia Commission.

2. Dominion's Proposal to Recalculate PJM's Region-Wide Border Rate

34. Dominion proposes to recalculate PJM's Border Rate. Specifically, Dominion proposes to incorporate Dominion's revenue requirements into the corresponding PJM weighted average rates, based on PJM's existing cost allocation mechanism.³⁹

35. Intervenors point out that PJM's existing Border Rate (\$1.57/per kW-month) was established in the Going Forward Principles and Procedures proceeding as a settlement rate through December 1, 2004 and that this rate should not be recalculated on a region-wide basis simply to accommodate Dominion. In addition, Southeastern Federal Power Customers, Inc. (SEFPC) argues that its members, who purchase capacity and energy

³⁸ In response to the Virginia Commission, Dominion states that it intends to include with its Phase II rate filing in this proceeding provisions to avoid double recovery of the costs of new transmission.

³⁹ The recalculated rates would be set forth at Schedules 1A, 2, 7, 8, and Attachment H of the PJM OATT.

from the Southeastern Power Administration (which, in turn, is a customer of Dominion), will experience unwarranted rate increases if Dominion's proposal is implemented.⁴⁰ Similarly, Coral Power seeks clarification that Dominion's proposal, if implemented, would not be permitted to perpetuate rate pancaking.

36. We will reject Dominion's proposal to recalculate PJM's Border Rate. PJM's Border Rate is a system-wide transmission rate for delivery to the PJM border and is set forth in the relevant rate schedules in the PJM OATT. PJM's Border Rate has been the subject of the Commission's orders in the Going Forward Principles and Procedures proceeding, where we approved a rate freeze applicable to PJM's Border Rate to December 1, 2004. As such, we find that PJM's Border Rate should be retained to December 1, 2004.

37. We will reject SEFPC's request that it be granted a preferential rate for its transactions that exit PJM. SEFPC will not pay rates unique to its customers, but rather, a regional rate that is applicable to all services exiting in the RTO region, which has already been accepted by this Commission. For this fee, SEFPC will obtain use of the entire PJM region, not just the Dominion control area, as before. Under these circumstances, we find that SEFPC has not demonstrated that the Border Rates at issue will be discriminatory or unjust, in consideration of the increased access it will have under the PJM rate.

38. We will grant the clarification sought by Coral Power, applicable to the prospective period in which Dominion's RTO rates would apply, and not simply to the PJM South Interim Rate period. The Commission has found that certain Border Rates violate the Order No. 2000 fundamental requirement that RTOs eliminate rate pancaking over a region of appropriate scope and configuration. In Order No. 2000, we found that an RTO tariff must not result in transmission customers paying multiple access charges to

⁴⁰ SEFPC notes that, while its members currently pay pancaked rates for deliveries they receive in the Carolina Power & Light Company (CP&L) control area and the Dominion control area, these pancaked charges will increase to an unreasonable level if they are required to be delivered by way of PJM South (through paying the increased PJM Border Rate of \$1.57/kW-month or any recalculated amount, as requested by Dominion). SEFPC states that, in addition, the PJM South Border Rates for deliveries to the CP&L control area would be higher than what SEFPC's customers currently pay (\$1.06608/kW-month), without any corresponding benefits for SEFPC's members. SEFPC requests that the Commission freeze the existing transmission service rates its members are required to pay, or in the alternative, order a hearing to determine if the imposition of a Border Rate on the services its members receive is just and reasonable.

recover costs.⁴¹ We found that this duplication of costs restricts the geographic area in which a customer may secure generation.

3. Dominion's Proposal Regarding Recovery of Lost Revenues

39. Dominion proposes that “lost revenues” of any kind not be recovered in this proceeding in connection with the establishment of PJM South to compensate Dominion for lost transmission revenue it could incur due to its integration into PJM; in turn, Dominion proposes that no such mechanism apply to Dominion (or any other load serving entity providing service to loads within the Dominion Zone) to compensate any other Transmission Owner.⁴² In support of its proposal, Dominion argues that in Order No. 2000, the Commission specified January 1, 2005 as the end date for such rate transitional mechanisms, which were originally designed to encourage companies to join or form RTOs.⁴³

40. The PJM Transmission Owners point out that under Dominion’s proposal, the Dominion Zone would be exempt from Schedules 11 and 13 of the PJM OATT, the revenues from which are designed to recover, in part, lost revenues resulting, respectively, from the integration of Allegheny Power (Schedule 11) and the New PJM Companies (Schedule 13) into PJM. The PJM Transmission Owners further note that both mechanisms are subject to revision in the Going Forward Principles and Procedures proceeding. The PJM Transmission Owners conclude that while further revisions to these mechanisms may be appropriate to consider issues relating to Dominion’s integration, these issues should be taken up by PJM as a whole in Docket No. EL02-111-004, *et al.*

41. In addition, Wisconsin Electric Power Company (Wisconsin Electric) argues that while it may be appropriate to exempt any new PJM entrant, such as Dominion, from the requirement that it pay PJM’s Transitional Market Expansion Charge, it would not be appropriate to both grant this exemption to Dominion but then apply the charge elsewhere in PJM, *i.e.*, to new border zones or to transmission customers who may

⁴¹ *Id.* at 31,174.

⁴² Dominion states that, as such, it would be exempt from paying any charges under the Transitional Market Expansion Charge (*See* PJM OATT at Schedule 11, regarding Allegheny Power’s integration into PJM), or any similar lost revenues rate mechanism which may be approved in the future.

⁴³ Filing Parties transmittal letter at 13, *citing* Order No. 2000 at 31,196.

become PJM transmission customers solely as a result of the expansion. Wisconsin Electric further asserts that it is unclear why Dominion would need a special exemption from any Seams Elimination Cost Adjustment charge, arguing that Dominion should not be granted a blanket waiver from these charges in this proceeding, given the possibility that others in an RTO could become subject to these charges at a later date.

42. We will reject Dominion's proposed exemption from PJM's lost revenue charges, without prejudice. The elimination of PJM's Border Rates is currently at issue in the Going Forward Principles and Procedures proceeding. Granting Dominion's request would amount to a decision in that proceeding while it is still ongoing and, in fact, before the filing or filings expected to be made on or before October 1, 2004.⁴⁴ Dominion's integration into PJM must be subject to the resolution of these issues in the Going Forward Principles and Procedures proceedings, just as the rest of PJM will be. Dominion, if it so chooses, may make or participate in a filing in the context of that proceeding.

4. Dominion's Use of an Annual Coincident-Peak Load Divisor

43. Dominion proposes to utilize a rate design based on an annual coincident-peak load (1 CP) divisor and test-year load data, in place of its historic use of the average of the twelve monthly coincident-peak loads (12 CP) and test-year load data. Dominion notes that its OATT unit rate for firm transmission service would be reduced as a result of this conversion.

44. Old Dominion Electric Cooperative (ODEC) argues that, while Dominion has projected a reduction in its OATT unit rate for firm transmission service, there are no revenue impact analyses accompanying Dominion's proposal. ODEC states that, in fact, a hold harmless mechanism may be appropriate if the rate impact associated with this conversion is significant, consistent with the similar directive approved by the Commission when it established PJM West.

45. Dominion asserts, in response, that ODEC's reliance on the PJM West Order for its requested hold harmless allowance is unjustified because in that order the Commission ordered Allegheny to hold network customers harmless as a result of the switch from a rolling load ratio share rate to a stated rate. Dominion notes that, by contrast, it already has a stated network service rate in its currently effective OATT, and also will not be changing the test period as it converts from a 12 CP rate to a 1 CP rate.

⁴⁴ Order on Going Forward Principles and Procedures, 106 FERC ¶ 61,262 at PP 6-7.

46. We will accept Dominion's proposed utilization of a 1 CP divisor and test year load data upon its integration into PJM South, consistent with Commission precedent.⁴⁵ We will also reject ODEC's protest regarding the possible rate impact associated with this conversion. In fact, Dominion is proposing to retain the majority of its existing billing determinants upon its integration into PJM and projects that its network rate will actually decrease as a result. ODEC has not demonstrated otherwise.

D. Dominion's Request for Regulatory Asset Treatment For RTO Start-Up Costs, Alliance RTO Costs, and Projected PJM Operational Expenses

47. Dominion seeks Commission approval to recognize as a regulatory asset certain costs related to the establishment and operation of PJM South, as well as the costs previously incurred by Dominion regarding its participation in the proposed Alliance RTO.⁴⁶ However, Dominion proposes to defer recovery of these costs until Virginia's retail rate cap expires in December 2010, at which time Dominion states that it would make a section 205 filing with the Commission. In support of its request for regulatory asset treatment, Dominion asserts that the regulatory asset treatment it is seeking is consistent with the accounting treatment approved by the Commission for other Transmission Owners joining an RTO or ISO.⁴⁷

⁴⁵ See PJM West Order, 96 FERC ¶ 61,060.

⁴⁶ See *supra* P 9. Dominion identifies the following estimated costs: (i) \$24 million, plus carrying charges, attributable to the start-up of PJM South; (ii) \$14.4 million, plus carrying charges, attributable to costs incurred by Dominion and its affiliate, Dominion Alliance Holdings, LLC, between June 1998 and May 2003 in connection with Dominion's prior consideration of the Alliance RTO; and (iii) \$241 million, plus carrying charges, for administrative fees associated with Dominion's Virginia retail customers, to be incurred between 2005 and 2010.

⁴⁷ Filing Parties' transmittal letter at 20, *citing* Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,193 (2003); Northeast Independent Transmission Company, LLC, Docket No. AC01-43-000 (Aug 14, 2001) (unpublished letter order); Duke Energy Corp., 94 FERC ¶ 61,080 (2001); Florida Power Corp., Docket No. AC01-10-000 (Dec. 14, 2000) (unpublished letter order); and Tampa Electric Co., Docket No. AC01-21-000 (Jan. 29, 2000) (unpublished letter order); American Electric Power Service Corp., 104 FERC ¶ 61,013 (2003).

48. Intervenors object to Dominion's request on a number of grounds. First, Intervenors argue that Dominion has failed to satisfy the standards for regulatory asset treatment because it has not demonstrated that the costs at issue cannot be recovered within the parameters of the current retail rate structures effective in effect in Virginia.⁴⁸ In addition, intervenors submit that Dominion has failed to demonstrate that it is probable that these costs would be recoverable in future rates. The Virginia Committee asserts that Dominion's request for regulatory asset treatment conflicts with the deferral and amortization of similar costs approved for AEP, because, in the case of AEP, the amortization period was tied to its RTO integration date. Finally, intervenors assert that any regulatory asset authorization approved in this proceeding should be for accounting purposes only and should therefore have no ratemaking implications.

49. Dominion responds, in its answer, that in the case of the Midwest ISO, the Commission has recognized that the existence of state-imposed retail rate caps during periods when transmission providers are incurring RTO start-up costs can cause these costs to be "trapped" and that deferral of such costs is therefore appropriate. Dominion also responds to the Virginia Commission's argument that Dominion's prudently-incurred RTO-related costs could be recovered in Dominion's existing rates. Dominion asserts that, in fact, its retail rates under the Virginia Electric Utility Restructuring Act may not be adjusted up or down, regardless of the cost levels experienced by Dominion.

50. We will approve Dominion's request, subject to the discussion below. As we have noted before in other proceedings, the development of new businesses allows the potential for commercial benefits. However, the initial development and determination of how the businesses will operate usually requires considerable costs that must be incurred before actual business operations commence. Similarly, before receiving the commercial benefits of being integrated with an RTO, start-up costs must be incurred by the RTO-member applicants (in this case Dominion).⁴⁹ We have explained that when such costs are incurred in periods apart from the anticipated benefit period, the costs should be allocated to the periods when the related benefits are expected to be realized.⁵⁰

⁴⁸ The Virginia Commission notes, for example, that the rate cap to which Dominion is subject under the Virginia Electric Utility Restructuring Act contemplates that some of Dominion's costs may increase during the rate cap period and recognizes those cost increases.

⁴⁹ American Electric Power Service Corp., 104 FERC ¶ 61,013 at P 23 (2003) (*AEP Cost Deferral Order*), *order on reh'g*, 105 FERC ¶ 61,081 (2004).

⁵⁰ This conclusion is based on the matching principle, which assigns costs to the periods in which the related benefits are expected to be realized rather than a recognition that the costs would otherwise be "trapped" under retail rate caps.

(continued ...)

To accomplish this objective, the costs must be recorded initially as an asset, deferred, and then amortized to expense over the anticipated benefit period.⁵¹

51. Dominion's deferral of its PJM South start-up costs is consistent with this principle. However, these deferred costs must begin to be amortized to expense on the date that Dominion integrates its transmission assets into PJM South. In addition, this same accounting treatment must be applied to Dominion's Alliance RTO start-up costs. This treatment is consistent with our findings in the *AEP Cost Deferral Order*. In that order, we determined that the integration date into an RTO represents the date at which the benefits of the deferred costs will begin to be realized. As such, we approved AEP's request to defer PJM integration costs in Account 186, Miscellaneous Deferred Debits, provided that amortization of the deferred costs to expense begins on the date that AEP integrates into PJM. Additionally, we concluded that AEP's Alliance RTO start-up costs should not be treated differently from the PJM integration costs and required these costs also be amortized as of the RTO integration date.⁵²

52. PJM's administrative fees are billings from PJM for the ongoing operating costs associated with the provision of administrative services. These services benefit the period in which the services are provided and therefore the related costs should be charged to expense in these periods.

53. Notwithstanding the general accounting requirements for RTO related costs, the Commission's Uniform System of Accounts also provides that a regulatory asset is to be recognized when amounts otherwise chargeable to expense in the current period are to be recovered in rates in a future period.⁵³ To qualify as a regulatory asset, there must be a showing both (i) that the costs at issue are unrecoverable in existing rates and (ii) that it is probable that such costs will be determined to be recoverable in future rates.⁵⁴ Here, Dominion proposes to record costs associated with the start-up of PJM South, the start-up of the Alliance RTO, and certain administrative fees as a regulatory asset in Account 182.3. The Virginia Commission has raised questions as to whether the costs Dominion proposes to defer as a regulatory asset are actually unrecoverable in Dominion's current

⁵¹ *Id.* at P 24.

⁵² *Id.* at P 25-26.

⁵³ See 18 CFR Part 101, at Definition No. 30 (2004); See also FERC Stats. & Regs, Reg. Preambles, Jan. 1991–June 1996 ¶ 30,967 at 30,826 (1993).

⁵⁴ Midwest Independent Transmission System Operator, Inc., 103 FERC ¶ 61,205 at P 22 (2003).

rates and whether the costs will be recovered in the future. In turn, Dominion makes counter-arguments that the costs are indeed unrecoverable in its current rates but are likely to be recovered in its future rates.

54. At this time, we cannot determine with certainty that all of the costs at issue are, in fact, unrecoverable in Dominion's current retail and wholesale rates or whether all such costs, if deferred, will ultimately be found, in a section 205 proceeding, to be recoverable in future rates. Therefore, Dominion must assess all available evidence bearing on the likelihood of rate recovery of these costs in periods other than the period they would otherwise be charged to expense under the general accounting requirements for costs, as discussed above. If based on such assessment, Dominion determines that it is probable that these costs will be recovered in rates in future periods, it should record a regulatory asset for such amounts.

E. Pre-Order No. 888 Agreements

55. Dominion requests that each of its six currently-effective pre-Order No. 888 wholesale bundled contracts, *i.e.*, its agreements which include a transmission component as well as an energy component (and which Dominion lists in its submittals by party name and rate schedule), be treated as grandfathered agreements under the arrangements giving rise to PJM South, consistent with their current grandfathered status under Dominion's OATT.

56. Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC (PSEG Companies) object to this proposed blanket exemption, absent an identification and review of Dominion's termination rights under the agreements at issue. In response, Dominion and North Carolina Eastern Municipal Power Agency (NCEMPA) assert that the Commission lacks authority or justification to require any party to such an agreement to take actions that are, under the terms of the filed agreement, committed to that party's discretion. NCEMPA adds that an order requiring Dominion to exercise its otherwise optional termination rights would constitute a *de facto* abrogation of that class of contracts, a course of action which the Commission has repeatedly declined to adopt as a condition to RTO membership.

57. We will accept Dominion's proposal to maintain the grandfathered status for its existing wholesale bundled contracts upon the establishment of PJM South. We agree that the Commission's policies would not be served by terminating the parties' rights and obligations under these agreements under the facts and circumstances presented here. These agreements, which in the aggregate, comprise only a small portion of Dominion's overall load (less than three percent of its August 2002 load), will not impede the efficient operation of PJM's markets, the implementation of PJM's congestion management procedures, or otherwise cause undue discrimination or preference towards any other market participant or class of market participants.

F. Reliability Coordination

58. PSEG Companies seeks clarification regarding the operation and effect of section 11.3.2(d) of the PJM South Operating Agreement.⁵⁵ Specifically, PSEG Companies seeks clarification that this provision will not require the existing PJM regions to comply with a Virginia – Carolinas Area Reliability Council (VACAR) requirement. Instead, PSEG Companies states that each control area in the respective North American Electric Reliability Council (NERC) region should be required to comply with its respective regional requirements and all NERC requirements. We will grant PSEG Companies' requested clarification and will direct the Filing Parties, in their compliance filing, to revise the PJM South Operating Agreement accordingly. As revised, section 11.3.2(d) must delete "Member's," as that term modifies the term "Applicable Regional Reliability Councils." Thus, each PJM Member will be required to "[c]ooperate with the members of the Applicable Regional Reliability Councils."

G. Utilization of PJM's Rules and Procedures Relating To Transmission Pricing

59. The Virginia Commission requests that PJM's locational marginal pricing (LMP) model not be implemented in the Dominion Zone until it can be demonstrated that the LMP rate will be just and reasonable for Virginia ratepayers. The Virginia Commission notes, in this regard, that Dominion's service territory is virtually an electrical island, with significant transmission constraints between Dominion's control area and neighboring control areas, including PJM, and that Dominion controls approximately 88 percent of the generation in its own service territory. The Virginia Commission states that Dominion stands to gain substantial profits from the implementation of LMP as a result and thus will have little incentive to construct upgrades to relieve congestion. The Virginia Commission further states while Financial Transmission Rights (FTRs) would provide a critical hedge against congestion costs, many Load Serving Entities in the Dominion service territory would be new to the process, and may therefore lack the expertise necessary to evaluate which and how many FTRs they will need.

⁵⁵ Section 11.3.2 (Facilities Planning and Operation) provides, at subsection (d), that each PJM Member shall "[c]ooperate with the members of the Member's Applicable Regional Reliability Councils to augment the reliability of the bulk power supply facilities of the region and comply with Applicable Regional Reliability Councils and NERC operating and planning standards, principles and guidelines and the PJM Manuals implementing such standards, principles and guidelines."

60. We will deny the Virginia Commission's requests concerning utilization of an alternative pricing model for PJM South. The Economic Planning Process, currently under development in PJM, was established to address increasing transmission congestion costs that were not able to be hedged under PJM's FTR allocation process.⁵⁶ This planning process, we believe, will fully address the concerns raised by the Virginia Commission. Moreover, the Virginia Commission's assertion that new customers may lack the expertise necessary to understand PJM's FTR allocation process is unfounded. In fact, PJM offers extensive training materials and guides along with historical data, for any interested party; the extent of the training and attention to new users is apparent when accessing PJM's training calendar for Dominion participants. PJM also held a Webex conference call and training meeting on May 19, 2004, specifically to introduce the FTR allocation process in the Dominion region. In addition, PJM offers an FTR hotline available to answer all questions on eFTRs and the FTR Allocation Process.

61. The Virginia Commission also misunderstands the FTR Allocation timetable, and the remedies available to parties who may not have acquired the necessary FTRs to hedge their congestion costs. First, the Virginia Commission references only Stage 1 (July 26 through July 29, 2004) in a two Stage FTR Allocation Process that runs from July 26, 2004, through August 26, 2004. Second, in *PJM Interconnection, LLC*,⁵⁷ we required extensive mitigation measures for such customers, including the requirement that PJM, prior to the initial allocation of FTRs in new regions, make a section 205 filing with the Commission with the proposed allocations, justifying why the resulting allocations are reasonable, and why other proposed mitigation measures need not be adopted. Our objective in requiring this mitigation was to ensure that customers holding firm reservations would receive FTRs for a comparable level and term. PJM will be required to provide such mitigation in this proceeding as well. Finally, we will make Dominion's FTR allocation process subject to the findings in the Commission's investigation into PJM's FTR Allocation Process in Docket No. EL04-105-000.

H. State Transmission Siting Considerations

62. The North Carolina Commission and North Carolina Attorney General question whether North Carolina's jurisdictional authority over the siting of transmission facilities within its borders will be preserved under the arrangements giving rise to PJM South, given the role that would be played by PJM in selecting and planning transmission

⁵⁶ See *PJM Interconnection, LLC, et al.*, 104 FERC ¶ 61,124, *order on reh'g*, 105 FERC ¶ 61,123 (2003).

⁵⁷ 107 FERC ¶ 61,223 (2004).

projects within the Dominion Zone. We clarify that PJM's authority, in this instance, will be expressly conditioned on the receipt of any requisite state siting authority.⁵⁸

I. Coordination Between PJM and PJM South

63. We recognize that the proposed agreements giving rise to PJM South (the PJM South Transmission Owner Agreement and the PJM South Reliability Assurance Agreement) are generally modeled after the corresponding agreements giving rise to PJM West, as previously accepted by the Commission. Although we are accepting herein, subject to revision, the establishment of PJM South, we are not convinced that separate agreements for PJM South are either necessary or appropriate. Specifically, we are concerned that the proliferation of these agreements (now and in the future) could result in confusion and/or an inefficient use of resources on the part of both the market participants and the Commission, as the interplay between these agreements may become an issue in a given case. Accordingly, we encourage the Filing Parties to coordinate with the PJM Transmission Owners with the objective of incorporating the provisions of the PJM South Transmission Owner Agreement and the PJM South Reliability Agreement into PJM's existing agreements.⁵⁹ The Filing Parties are hereby directed to update the Commission regarding their efforts, in this regard, in their compliance filing.

The Commission orders:

(A) The Filing Parties' proposal is hereby accepted for filing, subject to conditions, to become effective on the later of November 1, 2004, or the date to be determined shortly after the date upon which all approvals required to effect the transaction have been received.

(B) As discussed in the body of this order, the Filing Parties are hereby directed to make a compliance filing within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁵⁸ See, e.g., PJM OATT at section 36.8.5.

⁵⁹ The same applies equally with respect to PJM West.

Appendix

Docket No. ER04-829-000

Intervenors

Allegheny Energy Supply Company, LLC *
American Electric Power Service Corporation and
Dayton Power and Light Company
Baltimore Gas and Electric Company
Carolina Power & Light Company
Chaparral (Virginia) Inc.
Cities and Towns of Hagerstown, Thurmont, and Williamsport Maryland, and Town of
Front Royal, Virginia
Consolidated Edison Company of New York, Inc.
Constellation Power Source, Inc.
Consumers Energy Company *
Coral Power, L.L.C.
Dayton Power & Light
Delaware Municipal Electric Corporation, Inc.
Direct Energy Marketing, Inc.
Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC
Duke Power
Exelon Corporation
Jersey Central Power & Light Company,
Metropolitan Edison Company and
Pennsylvania Electric Company
Maryland Public Service Commission *
MeadWestvaco Corp.
North Carolina Eastern Municipal Power Agency
North Carolina Electric Membership Corporation
North Carolina Utilities Commission and Attorney
General of the State of North Carolina
NRG Companies
Old Dominion Electric Cooperative
Pennsylvania Public Utilities Commission
PEPCO Holdings, Inc.
PJM Industrial Customer Coalition
PJM Transmission Owners

PJM Transmission Owners Agreement Administrative
Committee and PJM West Transmission Owners Agreement
Administrative Committee
PPL Electric Utilities Corporation
Public Service Electric and Gas Company and
PSEG Energy Resources & Trade LLC
Public Staff- North Carolina Utilities Commission and the Attorney General of the State
of North Carolina
Rockland Electric Company
Southeastern Federal Power Customers, Inc.
Southeastern Power Administration
Strategic Energy, L.L.C.
Tenaska Power Services Company
UGI Utilities, Inc.
Virginia Attorney General
Virginia Committee for Fair Utility Rates *
Virginia Municipal Electric Association No. 1
Virginia State Corporation Commission
Wisconsin Electric Power Company
Wisconsin Public Service Corp. and
Upper Peninsula Power Co. *

* Interventions filed out of time