

125 FERC ¶ 61,386  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Virginia Electric and Power Company

Docket No. ER09-204-000

ORDER ACCEPTING REVISED TARIFF SHEETS

(Issued December 30, 2008)

1. On October 31, 2008, Virginia Electric and Power Company (VEPCO) filed, pursuant to Section 205 of the Federal Power Act (FPA) and Part 35 of the Commission's regulations, revised tariff sheets to Schedule 12-Appendix of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT). In this order, we accept VEPCO's revisions to Schedule 12-Appendix of the PJM OATT.

**I. Background**

2. On October 25, 2007, VEPCO sought Commission approval, in Docket No. ER08-92-000, to implement a cost-of-service formula rate (October 25, 2007 Filing). Among other things, the October 25, 2007 Filing included procedures for VEPCO to post on PJM's website by September 15 its proposed Annual Update, which will reflect the projected costs to be used to determine the rates for the subsequent calendar year. As part of its proposal, VEPCO committed to file with the Commission, in an informational filing, its proposed Annual Update by December 15 of each year.<sup>1</sup> The Commission accepted VEPCO's formula rate, subject to modification.<sup>2</sup>

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<sup>1</sup> In a compliance filing submitted on May 29, 2008, VEPCO revised Attachment H-16 to state that its Annual Update filing would be made no later than January 15. This filing was accepted by the Commission. *Virginia Electric and Power Co.*, Unpublished Letter Order, Docket Nos. ER08-92-004 and ER08-92-005 (Dec. 15, 2008).

<sup>2</sup> *Virginia Electric and Power Co.*, 123 FERC ¶ 61,098 (2008) (Formula Rate Order).

## II. VEPCO's Proposal

3. As part of the formula rate accepted by the Commission in Docket No. ER08-92-000, VEPCO added language in certain "Annual Revenue Requirement" cells in Section 20 of Schedule 12-Appendix referring to the derivation of VEPCO's annual revenue requirements for its Regional Transmission Expansion Plan (RTEP) projects.<sup>3</sup> Specifically, VEPCO added the following language to the "Annual Revenue Requirement" cells associated with VEPCO RTEP project numbers b0217, b0222, b0223, b0224, b0225, b0226, b0341 and b0403:

As specified in Attachment 7 to Appendix A of Attachment H-16A and under the procedures detailed in Attachment H-16B.

The quoted language was added because those projects are scheduled to be in service by December 31, 2008. Under its formula rate, each time VEPCO places an RTEP project in service prior to the end of the upcoming calendar year, VEPCO must list such projects in the Annual Update. Additionally, VEPCO must submit a Section 205 filing to add the above referenced language to the "Annual Revenue Requirement" cells in Schedule 12-Appendix associated with all such VEPCO RTEP projects.

4. To avoid the need for numerous Section 205 filings in accordance with the existing paradigm, VEPCO proposes to revise Section 20 of the Schedule 12-Appendix by: (1) deleting the above quoted language in the relevant cells; and (2) adding three asterisks after the title "Annual Revenue Requirement" with the following language in a footnote at the bottom of the first page of Section 20:

The Annual Revenue Requirement for all Virginia Electric and Power Company Projects in this Section 20 shall be as specified in Attachment 7 to Appendix A of Attachment H-16A and under the procedures detailed in Attachment H-16B.

Thus, the purpose of VEPCO's proposed revisions is to eliminate the need to make a Section 205 filing to state the source of the annual revenue requirements each time it adds new RTEP projects to Schedule 12-Appendix. VEPCO asserts that this information, pursuant to the Commission-accepted formula, will still be listed in VEPCO's informational Annual Update filings.

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<sup>3</sup> PJM conducts the RTEP process, under which it identifies and designates upgrades to the systems of its Transmission Owners that are required to be constructed to maintain reliability and enhance competition.

### **III. Notice, Interventions and Protests**

5. Notice of VEPCO's filing was published in the *Federal Register*, 73 Fed. Reg. 67,496 (2008), with interventions and protests due on or before November 21, 2008.

#### **A. Protest**

6. The North Carolina Electric Membership Corporation (NCEMC) and Old Dominion Electric Cooperative (ODEC) (collectively, the Intervenors), filed a timely intervention and protest. Intervenors contend that by eliminating the requirement that VEPCO make a Section 205 filing to reflect the annual revenue requirements associated with new RTEP projects, VEPCO would sidestep the Commission's authority to require a demonstration that the proposed changes in its revenue requirement are just and reasonable. Moreover, if the Commission were to accept VEPCO's filing, Intervenors assert that it is not clear under what procedures transmission customers could protest VEPCO's attempt to recover revenues associated with these projects.

7. Further, the Intervenors request that if the Commission approves VEPCO's filing in this proceeding, the Commission should provide clarity on four points: (1) the proposed revision to the language in Schedule 12-Appendix does not eliminate any rights transmission customers have to challenge the reasonableness of costs reflected in the annual requirements for RTEP projects; (2) such costs may be challenged under the terms of the existing protocol in Attachment H-16B of the PJM Tariff; (3) such challenges may include the reasonableness of the level of those costs; and (4) VEPCO bears the burden to prove the justness and reasonableness of the changes in rates. Finally, failure to grant such clarification, claim the Intervenors, would effectively render such costs immune to challenges to the justness and reasonableness of the level of those costs in derogation of Section 205 of the FPA and contrary to Commission precedent.

#### **B. VEPCO's Response**

8. On December 2, 2008, VEPCO filed a motion for leave to answer and answer to the Intervenors' protest, asserting that its filing is just and reasonable because it eliminates the administrative burden of filing the same reference language each time a RTEP project's annual revenue requirement is established.

9. VEPCO disagrees with the Intervenors' assertion that the October 31, 2007 Filing eliminates their right to protest the justness and reasonableness of the annual revenue requirements for an RTEP Project rate. VEPCO contends the Intervenors base their assertion on the incorrect premise that its filing of the Attachment H-16 reference for a new RTEP project gives the Intervenors the right to challenge the level of new RTEP project costs. In contrast, VEPCO states that Attachment H-16A is where the annual revenue requirement for the RTEP project is established and Attachment H-16B sets out

the implementation protocols for challenging the just and reasonableness of the projects. It further states that the general applicability of the Attachment H-16 reference is simply to direct the reader of Schedule 12-Appendix to those attachments.

10. VEPCO contends that to the extent Intervenors are seeking to turn VEPCO's filing into an opportunity to obtain greater rights than are provided in Attachments H-16A and H-16B, the Intervenors' protest should be rejected as a collateral attack on the Formula Rate Order.

#### **IV. Discussion**

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

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene are hereby granted.

12. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) prohibits an answer to an answer or a protest unless otherwise authorized by the decisional authority. In this case, we find that VEPCO's December 2, 2008 answer has assisted the Commission in its decision-making process. Therefore, we will accept it.

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

13. We accept VEPCO's proposed revisions to Schedule 12-Appendix. The proposed revisions enhance administrative efficiency by eliminating the need for VEPCO to make a section 205 filing each time a RTEP project is placed in service. As VEPCO notes, this is consistent with the practices of other PJM transmission owners that have adopted formula rates.<sup>4</sup>

14. Intervenors fail to show any reason why VEPCO's RTEP projects should not be treated the same as any other non-RTEP, cost-of-service item included in VEPCO's

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<sup>4</sup> PPL Electric Utilities Corporation, Potomac Electric Power Company, Atlantic City Electric Company, Delmarva Power & Light Company and Baltimore Gas and Electric Company all reference their formula rates in a footnote instead of in each cell that references an RTEP project.

formula rate.<sup>5</sup> While the Intervenor contend that the instant filing eliminates VEPCO's existing obligation to make a Section 205 filing to reflect the annual revenue requirements associated with new RTEP projects, the Formula Rate Order never placed such an obligation on VEPCO. In fact, the Commission specifically denied requests that VEPCO be required to file a limited section 205 filing each year, containing its Annual Update. The Commission reasoned that such a section 205 filing was not necessary because "the data contained in these processes is not the rate; it is merely an input into the formula, which is the rate."<sup>6</sup>

15. We note that the concerns raised by the Intervenor regarding clarity, customer protections and the ability to challenge VEPCO's annual transmission rates, including the annual revenue requirement for new projects, were fully addressed by the Commission in the Formula Rate Order. Pursuant to the tariff provisions accepted in that order, Attachment H-16B establishes that VEPCO will post its Annual Update on the PJM website by September 15 of each year, and by September 30, hold a public meeting to explain the projected costs and respond to questions from customers. VEPCO will submit the Annual Update to the Commission, as an information filing, by January 15 of each year. In the Formula Rate Order, the Commission found that "this process provides sufficient opportunity for customers to review VEPCO's projected costs, discuss those costs with VEPCO, and challenge them before the Commission if the explanations offered by VEPCO are not sufficient."<sup>7</sup> Accordingly, the Intervenor, and other customers, may challenge the reasonableness of costs reflected in the annual revenue requirement under the terms of Attachment H-16B. The Formula Rate Order further states that such challenge "would not require the complainant to meet the section 206 burden of proof. VEPCO continues to bear the burden of demonstrating the justness and reasonableness of the rate resulting from its application of the formula."<sup>8</sup> Therefore, Intervenor's concerns here regarding whether VEPCO would continue bearing the burden of proof are moot.

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<sup>5</sup> The Commission notes that unlike non-RTEP cost-of-service projects, RTEP projects are vetted through PJM's RTEP process, whereby PJM determines if the "project is considered required for compliance with PJM criteria: system reliability, operational performance, or economic efficiency pursuant to a determination by PJM." *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,163, at P 127 (2008) (citations omitted).

<sup>6</sup> Formula Rate Order, 123 FERC ¶ 61,098 at P 31.

<sup>7</sup> *Id.* P 30.

<sup>8</sup> *Id.* P 47.

The Commission orders:

VEPCO's revised tariff sheets to the PJM OATT are accepted for filing, effective January 1, 2009, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.