

125 FERC ¶ 61,391
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. ER08-1540-000

ORDER ACCEPTING PROPOSED TARIFF REVISIONS

(Issued December 31, 2008)

1. On September 12, 2008, Virginia Electric and Power Company, d/b/a Dominion Virginia Power (Dominion), submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),¹ revisions to Attachment H-16 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT), to recover, as a Deferral Recovery Charge, regional transmission organization (RTO) start-up costs incurred from 1998 to 2004 and RTO administrative fees, as deferred since 2005.² For the reasons discussed below, we accept Dominion's filing, to become effective January 1, 2009, as requested.

Background

2. Dominion states that the costs it seeks to recover in its Deferral Recovery Charge consist of RTO start-up costs and PJM administrative fee cost. Dominion states that its RTO start-up costs include projected costs, including carrying charges that have been, or will be, incurred by Dominion through August 31, 2009. Dominion states that these costs were incurred in connection with: (i) the efforts it made to establish the Alliance RTO

¹ 16 U.S.C. § 824d (2006).

² Related orders addressing Dominion's entitlement to defer these costs were issued by the Commission in *PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 109 FERC ¶ 61,012 (2004) (*Dominion Integration Order*), *order on reh'g*, 110 FERC ¶ 61,234 (2005) and *PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 109 FERC ¶ 61,302 (2004) (*Administrative Fees Crediting Order*).

(\$17.8 million);³ and (ii) planning and development activities attributable to Dominion's 2004 application to join the PJM RTO (\$32.9 million). Dominion states that its Deferral Recovery Charge will also collect deferred PJM administrative fee costs, dating from Dominion's entry into the PJM RTO, in 2005, through August 31, 2009 (\$102.5 million).⁴

3. Dominion also proposes to recover carrying charges in its Deferral Recovery Charge. Specifically, Dominion proposes to apply a stated annual rate of 7.91 percent to its after-tax balance of deferred costs for the deferred period, i.e., from July 1, 1999 through August 31, 2009. To recover these costs, Dominion proposes a ten-year amortization period.

4. Dominion states that when it applied to join PJM, in May 2004, it submitted a filing, in Docket No. ER04-829-000, requesting that the Commission affirm its right to recover its RTO start-up costs and PJM administrative fees as deferred costs in a subsequent filing, i.e., by recording these costs as a regulatory asset.⁵ Dominion states that it also requested authorization to calculate carrying costs applicable to these deferred costs.

5. The Commission addressed Dominion's requests in the *Dominion Integration Order*. It found that Dominion may record its RTO start-up costs and RTO administrative fees as regulatory assets, provided that it first determines, based on generally accepted accounting principles, that these costs qualify for such treatment, i.e., provided that Dominion determines that these costs are: (i) unrecoverable in its existing rates; and (ii) will likely be found recoverable in future rates.⁶ The Commission also found, however, that absent a specific section 205 rate request (and supporting

³ See *Alliance Companies*, 97 FERC ¶ 61,327 (2001) (*Alliance RTO Order*) (holding that the proposed Alliance RTO, consisting of Dominion, American Electric Power, Consumers Energy Company, Detroit Edison Company, and FirstEnergy Corporation, lacked sufficient scope to exist as a stand-alone RTO); see also *Alliance Companies*, 99 FERC ¶ 61,105 (2002).

⁴ PJM's administrative fees are assessed by PJM under schedule 9 of the PJM OATT.

⁵ See 18 C.F.R. Subchapter C, Part 101, Balance Sheet Chart of Accounts at § 182.3 (2008).

⁶ *Dominion Integration Order*, 109 FERC ¶ 61,012 at P 53-54.

documentation), the Commission could not determine whether these deferred costs are, in fact, just and reasonable or otherwise recoverable.⁷

6. On October 28, 2004, in Docket No. ER05-87-000, Dominion filed its transmission tariff rates. In that filing, Dominion submitted a crediting mechanism designed to credit back to each retail load-serving entity in the Dominion zone, other than the Dominion load serving entity, an amount equal to the PJM administrative fees paid by such other load-serving entities. As described by Dominion in its filing, this offset was necessary because competitive retail load serving entities in the Dominion zone would have otherwise been required to pay these fees on an ongoing basis while the Dominion load serving entity remained exempt from these charges, at least on an interim basis, by operation of Dominion's cost deferral accounting treatment of its RTO administrative fees.

7. The Commission accepted Dominion's proposed crediting mechanism in the *Administrative Fees Crediting Order*, holding that Dominion's offset allowance was simply a tracking mechanism resulting from the regulatory asset treatment Dominion elected to use.⁸ The Commission noted that to recover these costs, Dominion would be required to make a section 205 filing.⁹

8. Dominion states that the Commission has repeatedly permitted deferral and recovery of costs in response to state-imposed regulatory action.¹⁰ Dominion maintains that the Commission's policy for recovery of RTO start-up costs permits the deferral of such costs until the utility has joined an RTO. Dominion adds that the Commission has allowed recovery in past cases of exactly the kind of costs that Dominion seeks to recover

⁷ *Id.* P 52. On rehearing, the Commission clarified that the guidance it had provided in the *Dominion Integration Order* was procedural in nature and thus without prejudice to any party seeking to challenge the subsequent recoverability of Dominion's costs in a future section 205 filing. The Commission otherwise reaffirmed its decision to permit Dominion to book its RTO start-up costs and RTO administrative fees as regulatory assets. See *Dominion Integration Rehearing Order*, 110 FERC ¶ 61,234 at P 38-39.

⁸ *Administrative Fees Crediting Order*, 109 FERC ¶ 61,302 at P 24.

⁹ *Id.* On this issue, then, the *Administrative Fees Crediting Order* reaffirmed the Commission's holding in the *Dominion Integration Order*. See *Dominion Integration Order*, 109 FERC ¶ 61,012 at P 54.

¹⁰ Dominion filing at 8, citing *El Paso Elec. Co.*, 98 FERC ¶ 61,153 (2002) and *Detroit Edison Co.*, 96 FERC ¶ 61,284 (2001).

here. First, Dominion relies on a Midwest ISO case authorizing the deferral of monthly capital and operating expenses (including amortized start-up costs) for a 6-year transition period in a case in which these costs exceeded the Midwest ISO's Schedule 10 charge cap.¹¹ Dominion also relies on the Commission's 1998 New York Power Pool ruling, granting approval to defer the costs incurred to establish the New York Independent System Operator, Inc.¹² In addition, Dominion relies on the *Alliance RTO Order*, noting that the Commission intended to allow recovery of the costs of establishing the Alliance RTO for all participants that went on to join another RTO.¹³

9. In addition, Dominion asserts that at the time it deferred recovery of its RTO administrative fees, it had a rational basis to conclude that its administrative fees could be recovered later, based on the Commission's ruling in *California Independent System Operator Corp.*¹⁴ Dominion asserts that, in *CAISO*, the Commission approved a Pacific Gas & Electric Company (PG&E) tariff provision permitting PG&E to pass through to its wholesale customers its RTO administrative costs. Dominion states that the Commission, in that case, found that because the RTO administrative fees were for entirely new services, it was appropriate to assess them to existing wholesale customers without regard to the costs of service reflected in these parties' existing contracts.

10. Dominion requests that its filing be made effective January 1, 2009. In addition, Dominion requests waivers of the Commission's regulations regarding the submission of cost of service information.¹⁵ Dominion explains that this waiver is appropriate because Dominion, in its filing, provided testimony and other exhibits adequately detailing the accounting treatment accorded to its deferred costs.

¹¹ Transmittal Letter at 10, citing *Midwest Independent Transmission System Operator, Inc.*, 97 FERC ¶ 61,033 (2001), *order on reh'g*, 98 FERC ¶ 61,141 (2002).

¹² *Id.*, citing *New York Power Pool*, Letter Order, Docket No. AC98-10-000 (January 30, 1998) and *New York Independent System Operator, Inc.* 92 FERC ¶ 61,180 (2000) (approving an uncontested settlement accepting applicant's supplemental rate filing to recover \$54.9 million in New York ISO start-up costs, as amortized over a five-year period).

¹³ *Id.*, citing *Alliance RTO Order*, 97 FERC ¶ 61,327 at p. 61,442.

¹⁴ 103 FERC ¶ 61,114 at P 46 (2003) (*California ISO*), *order on reh'g*, 106 FERC ¶ 61,032 (2004) (*CAISO*).

¹⁵ 18 C.F.R. §§ 35.13(d)(1)-(2), 35.13(d)(5)-(6), 35.13(e)(1), & 35.13(h) (2008).

Notice of Filing, Protests and Comments

11. Notice of Dominion's filing was published in the *Federal Register*, 73 Fed. Reg. 41,924 (2008), with protests and interventions due on or before October 17, 2008. Motions to intervene and notices of intervention were timely filed by PJM, MeadWestvaco Corporation (MeadWestvaco), the Attorney General of Virginia (Virginia AG), the Virginia State Corporation Commission (Virginia Commission), the Virginia Committee for Fair Utility Rates (Virginia Committee), the North Carolina Electric Membership Corporation (North Carolina Coop), and Old Dominion Electric Cooperative (ODEC). Protests were filed by MeadWestvaco, the Virginia AG, the Virginia Commission, and the Virginia Committee.

12. MeadWestvaco challenges Dominion's assertion that the Commission, in the *Dominion Integration Order*, accepted Dominion's regulatory asset treatment for its RTO start-up costs and RTO administrative fee costs. MeadWestvaco argues that the Commission, in that order, issued no such authorization. MeadWestvaco asserts that, instead, the Commission left for the instant filing the issue of whether Dominion's unilaterally-selected accounting treatment meets the criteria for the creation and recovery of a regulatory asset.¹⁶

13. MeadWestvaco, the Virginia Commission, the Virginia Committee and the Virginia AG assert that Dominion's filing fails to satisfy this criterion. The Virginia AG points out, for example, that Dominion's filing presents no new facts not before the Commission when it issued the *Dominion Integration Order*. The Virginia AG concludes that, as such, the Commission is no more able now than it was before to make the determination sought by Dominion.

14. Intervenors assert that, in fact, the rates Dominion seeks to collect as deferred costs were not unrecoverable previously and thus do not satisfy the first prong of the Commission's regulatory assets test. The Virginia Commission relies on three arguments in support of this conclusion. First, the Virginia Commission argues that the Commission could have authorized the prior recovery of the costs underlying Dominion's proposed charge herein, given the Commission's exclusive jurisdiction over wholesale and unbundled retail transmission service.¹⁷ The Virginia Commission notes, in this regard,

¹⁶ For this same reason, MeadWestvaco also challenges Dominion's apparent assumption that the Commission, in the *Administrative Fees Crediting Order* (in accepting Dominion's proposed credit mechanism for tracking its RTO administrative fees), also accepted the propriety of Dominion's deferred cost accounting treatment.

¹⁷ See also Virginia Committee protest at 16 ("If [Dominion] believes that state law or regulation unlawfully 'traps' RTO-Related Costs, [Dominion's] next recourse is
(continued...)

that Dominion's services have been unbundled since 2001. Second, the Virginia Commission argues that the Virginia restructuring act authorized the Virginia Commission to adjust Dominion's retail rate cap in response to "any financial distress of the utility beyond its control."¹⁸ Third, the Virginia Commission argues that Virginia law permits Dominion's capped retail rates, upon application, to be adjusted for recovery of "new services."¹⁹

15. The Virginia Commission and the Virginia Committee also challenge Dominion's assertion that the instant case and *The Midwest ISO Regulatory Assets Order* are somehow distinguishable. Intervenors assert that, in fact, the Commission's basis for denying regulatory asset treatment in the Midwest ISO case, i.e., because the utility, in that case, had voluntarily agreed to the rate levels at issue, fully applies here. Specifically, the Virginia Commission asserts that Dominion agreed in 1998, before the enactment of Virginia's restructuring act, to freeze its rates for the five-year period ending February 28, 2002 and to make rate refunds, rate reductions and to write off existing regulatory assets and not create new ones.²⁰ The Virginia Commission argues that this voluntary rate freeze was recognized and maintained by the Virginia General Assembly when it enacted the Virginia restructuring act in 1999. The Virginia Committee adds that in 2001, Dominion, as part of its state-approved unbundling agreement, agreed to implement a mechanism that would adjust Dominion's retail wires charges to offset charges in its Commission-approved rates. The Virginia Committee argues that, under this stipulation, Dominion voluntarily agreed, in effect, that it would absorb any Commission-approved transmission rate increases.

16. The Virginia Committee further argues that in a section 205 rate filing to recover a regulatory asset the applicant bears the burden regarding the issue of whether its claimed

the courts, if not [Dominion's] state regulator[.]").

¹⁸ Virginia Commission protest at 16, *citing* Va Code, § 56-582.B.

¹⁹ *Id.*, *citing* Va Code, § 56-582.A.3 ("capped rates shall also include rates for new services where, subsequent to January 1, 2001, rate applications for any such rates are filed by [the incumbent utility] with the [Virginia] Commission and are thereafter approved by the [Virginia] Commission.") MeadWestvaco points out that Dominion, in its filing (at p.8), appears to concede that the costs at issue here are "incremental costs for entirely new areas of service and did not replace any existing Dominion costs." *See also* Virginia AG protest at 11 (arguing that because of Dominion's entitlement to recover costs for new services, nothing has trapped Dominion's claimed RTO start-up costs and RTO administrative fee costs from being recovered).

²⁰ *See also* Virginia Committee protest at 7.

costs could have been recovered previously. MeadWestvaco adds that this showing must be made relative to the time Dominion made its initial determination, for each accounting period thereafter, and for the current period. Intervenors assert that, here, Dominion has failed to carry this burden. In particular, intervenors assert that Dominion has failed to address: (i) whether the retail rates in place over the relevant deferral/rate freeze period were, in fact, insufficient to recover some or all of Dominion's claimed RTO-related costs; (ii) whether Dominion's new revenues, including its financial transmission right (FTR) revenues should be recognized as a "regulatory liability," i.e., as an offset applicable to Dominion's claimed "regulatory assets;"²¹ (iii) whether Virginia law would have permitted Dominion to recover its RTO-related costs;²² (iv) whether a Commission order granting Dominion the rate recovery it now seeks could have been passed through in its retail rates; and (v) whether Dominion voluntarily agreed to be bound by the rate caps at issue.

17. The Virginia AG also challenges Dominion's reliance on *CAISO*. The Virginia AG argues that in *CAISO* the issue before the Commission was whether RTO costs could be passed through to customers that had existing contracts with a transmission-owning RTO member. The Virginia AG adds that, in addressing this issue, the Commission found that because these RTO costs were for new services not covered under the existing contract, the *Mobile-Sierra* public interest standard of review need not be applied. The Virginia AG argues that here, by contrast, the issue does not turn on the recovery of current-period costs.

A. Dominion's Answer

18. On October 31, 2008, Dominion filed an answer responding to intervenors' protests. First, Dominion responds to the Virginia Commission's argument that in Dominion's 1998 retail rate case settlement, Dominion voluntarily agreed to the rate cap at issue here. Dominion responds that the rate cap to which it agreed in its 1998 retail rate settlement expired February 2002 and thus was not an agreement to a state-imposed,

²¹ See Virginia AG protest at 9 ("[D]uring the 25-month period for which net FTR revenue information is available, the Virginia jurisdictional amount of these RTO revenues more than doubled the deferred RTO costs incurred during the same period.").

²² The Virginia Committee notes, in particular, that Dominion, in accordance with its 1998 retail rate case settlement, initially expensed all of its Alliance RTO start-up costs, allowing these costs to be recovered under Dominion's frozen retail rates through February 2002 (these entries were subsequently reversed by Dominion and recorded as regulatory assets).

legislative rate cap term that, under the Virginia Restructuring Act, does not expire until December 31, 2008.

19. Dominion also responds to the Virginia Committee's argument that Dominion's claimed costs cannot be recovered as a regulatory asset because these costs were previously eligible for recovery by operation of: (i) the Commission's jurisdictional authority to approve a transmission rate increase; and (ii) federal preemption law. Dominion argues that while the costs at issue were, and are, subject to the Commission's jurisdiction, a federal court would have had little precedent to guide its resolution of any claim that might have been raised challenging Dominion's entitlement to recover these costs under a federal preemption claim.²³

20. Dominion also responds to intervenors' argument that Dominion fails to satisfy the first prong of the Commission's regulatory asset test because, as intervenors claim, Dominion could have recovered its RTO start-up costs and RTO administrative fee costs under the "new services" provision of the Virginia retail rate cap law. Dominion responds that the costs at issue here are not costs for new services provided by Dominion to its retail customers, i.e., a new retail service; rather, they are costs for wholesale services provided by PJM to Dominion.

21. Dominion responds to intervenors' argument that Dominion fails to satisfy the first prong of the Commission's regulatory asset test because, as intervenors claim, Dominion could have recovered its RTO start-up costs and RTO administrative fee costs under the "financial distress" provision of the Virginia retail rate cap law. Dominion responds that it could not have relied on this provision to recover the costs at issue because, in fact, Dominion has not experienced financial distress during the period at issue and no evidence has been introduced to suggest otherwise.

22. Dominion also responds to intervenors' suggestion that establishing a regulatory asset in the face of a retail rate cap effectively requires a full cost of service analysis of the effective retail rates and consideration of off-setting cost savings. Dominion responds that the Commission need not, and should not, undertake the time-consuming process of requiring such an analysis, here, because the relevant consideration is whether the costs at issue are, or are not, recovered in the capped rates. Dominion argues that its RTO start-up costs and RTO administrative fee costs were not recovered in these capped rates.

²³ Dominion's answer at 8, n.15, citing *Pacific Gas & Elec. Co. v. Lynch*, 216 F. Supp. 2d 1016 (N.D. Cal. 2002) (holding that the state was not obligated, during a period of capped rates, to provide a concurrent opportunity for the utility to recover its Commission-approved rates through retail rates, so long as this right was available to the utility, at the retail level, over time).

Dominion also challenges intervenors' assertion that recovery of Dominion's RTO costs will constitute an unwarranted double-recovery, or an over-earnings of costs, not contemplated by, or allowed under, Dominion's retail statutory rate cap. Dominion argues, to the contrary, that its capped rates were expressly designed without regard to specific earnings levels in order to incent Dominion to lower its costs and thus be in a position to recover the difference.

23. Finally, Dominion responds to intervenors' argument that Dominion should not be permitted to recover its deferred RTO start-up costs and RTO administrative fee costs because, as intervenors claim, Dominion has failed to off-set these costs with FTR revenues it received during the same period. Dominion responds that intervenors' claim misconstrues the role and purpose of FTRs. Dominion argues that PJM allocates auction revenue rights (ARRs), and hence FTRs, to load serving entities, such as the Dominion load serving entity, that are paying (and that historically have paid) the embedded fixed costs for the transmission grid. Dominion adds that the allocation of these costs is based on requests made by the load serving entities and is subject to transmission system capability. Dominion argues that there are risks associated with FTRs, i.e., that FTRs are not guaranteed to cover all of the congestion charges incurred by the Dominion load serving entity and that the FTR obligation can result in either revenues or charges, depending on the applicable market clearing price differentials.

B. Answers Responding to Dominion's Answer

24. On November 6, 2008, the Virginia AG filed an answer responding to Dominion's answer. The answer largely reiterates arguments made by the Virginia AG in its protest, or by other intervenors in their protests. For example, the Virginia AG renews its argument that Dominion's proposed rates, to be supported, require either: (i) a full cost-of-service study showing whether Dominion's retail rates were and continue to be sufficient to recover its costs; or (ii) an abbreviated cost-of-service study that includes evidence of both new incremental RTO costs and new incremental RTO revenues. The Virginia AG argues that Dominion has failed to make either showing.

25. The Virginia AG also reiterates its prior argument that Dominion's rate request asks the Commission, in effect, to ignore more than \$103 million of net jurisdictional FTR revenues retained by Dominion during the rate cap period. The Virginia AG asserts that if the Commission is required to look back, as its regulatory asset accounting standard requires, it cannot do so selectively and arbitrarily. The Virginia AG argues that, here, FTRs not only can result in revenues but have, in fact, resulted in such revenues.

Procedural Matters

26. 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 and notices of

intervention serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept Dominion's and the Virginia AG's answers because they have provided information that assisted us in our decision-making process.

Discussion

27. We accept Dominion's proposed Deferral Recovery Charge to become effective January 1, 2008, as requested. The costs Dominion seeks to recover under Attachment H-16 of the PJM OATT are wholesale costs subject to our jurisdiction. These costs are also fundamentally related to Dominion's efforts to join and participate in an RTO. In Order No. 2000, the Commission set forth its policies regarding the promotion of RTOs.²⁴ Recognizing the role that RTOs can play in facilitating the development of fully competitive electricity markets, the Commission established a collaborative process for utilities to encourage RTO formation.²⁵ Because efforts to create RTOs are in furtherance of the Commission's policies, we permit transmission owners to recover through special surcharges their costs in seeking to form and join an RTO as well as their ongoing administrative fee costs related to their participation in the RTO.²⁶ In the case of the Alliance RTO, we specifically found that the costs incurred in attempting to form this RTO, while eligible for recovery, would not be recoverable until the transmission owners that had incurred these costs became members of a Commission-approved RTO.²⁷

²⁴ 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 sub nom.*, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

²⁵ *Id.* at 30,993.

²⁶ See *Idaho Power Co.*, 123 FERC ¶ 61,104, at P 10 (2008) (*Idaho Power*) (and cases cited therein).

²⁷ *Alliance RTO Order*, 99 FERC ¶ 61,105 at 61,442 (noting the Commission's intent to allow recovery of all costs prudently incurred in connection with the proposed establishment of the Alliance RTO once the transmission owners that had incurred these costs become a member of an RTO). More recently, the Commission has permitted utilities to recover such costs, even where RTO membership has not been achieved. *Idaho Power*, 123 FERC ¶ 61,104 at P 10.

28. The costs Dominion proposes to recover here, including its ongoing administrative fee costs, are related to its initially-failed but ultimately successful effort to join an RTO. These costs are fully itemized by Dominion, in its filing, in the form of prepared testimony, exhibits, and supporting work papers.²⁸ Collectively, this testimony and supporting documents makes clear that Dominion's efforts to join and participate in an RTO have been complex and resource-intensive. We find that Dominion has sufficiently demonstrated both the nature of these costs and how they were incurred in furtherance of its RTO commitments. We further note that the prudence of Dominion's costs has not been challenged.²⁹ Hence, we find that Dominion's costs are recoverable through the surcharge proposed by Dominion.

29. We reject intervenors' argument that Dominion's costs must be denied given Dominion's asserted failure to comply with the Commission's regulatory assets accounting rules. Intervenors do not contest that these costs are related to RTO participation; they contend only that the Commission could have authorized earlier recovery of these costs, given the date of Dominion's entry into the PJM RTO. Intervenors conclude that this asserted timing mismatch warrants the rejection of Dominion's costs in their entirety.

30. We disagree, based on our finding, above, that Dominion's costs were prudently incurred. We also agree with Dominion that recovery of these costs on the amortized basis proposed here is appropriate. As discussed above, Commission policy at the time that Dominion incurred its Alliance RTO formation costs, and at the time that Dominion joined PJM, required deferral of RTO formation costs until such time as the company joined an RTO. However, the Commission has not required that such an entity file to recover its RTO formation costs at any particular time thereafter. In *Idaho Power*, for example, the Commission permitted the company to defer the collection of its RTO formation costs incurred from 2000 to 2008, and to recover these costs through a formula rate over a five-year amortization period.³⁰ The Commission has similarly permitted utilities, in other cases, to defer recovery of RTO costs past the date at which they have joined the RTO.³¹ Here, intervenors have not argued that the delay in cost recovery at the

²⁸ See Maxwell R. Schools, Jr. Testimony, DVP-1 and James Daniel Jackson, Jr. Testimony, DVP-5.

²⁹ *New England Power Co.*, Opinion No. 231, 31 FERC ¶ 61,047, at 61,082 (1985) (there is a presumption of prudence absent a showing of inefficiency or improvidence).

³⁰ *Idaho Power*, 123 FERC ¶ 61,104 at P 10.

³¹ See *Northeast Utils. Serv. Co.*, 121 FERC ¶ 61,308 (2007) (permitting deferred recovery of RTO costs subject only to an analysis of whether delay in recovery would

(continued...)

wholesale level causes harm to wholesale customers; for example, intervenors do not challenge the carrying charges proposed by Dominion, nor do intervenors object to the length of the proposed amortization period (a 10-year period that is double the amortization period proposed in *Idaho Power*).³²

31. Regardless of these timing considerations, accounting treatment is not controlling for ratemaking purposes.³³ As the Commission has stated in its prior orders, the determination of whether costs are appropriately recoverable is made in a section 205 proceeding in which an applicant seeks to recover those costs, not by the accounting treatment these costs may have been given. The issue, in this regard, is not whether Dominion could or should have chosen a different account in which to book the costs at issue, but whether these costs are properly recoverable as wholesale costs under the FPA. As discussed above, we find that recovery of these costs through a surcharge is consistent with Commission policy. Second, we cannot find that the inclusion of these costs as regulatory assets was unreasonable because, in fact, Dominion had a reasonable belief that such costs would be recoverable.³⁴ Thus, the accumulation of these costs in a

result in rate impact to wholesale customers), 124 FERC ¶ 61,098 (2008) (accepting compliance filing showing no rate impact from delay); *Central Maine Power Company*, 116 FERC ¶ 61,129 (2006) (accepting Central Maine's proposal for rate recovery of deferred RTO formation costs).

³² Intervenors' assertion that Dominion's filing should have been made when it joined PJM, i.e., in 2005, would effectively allow Dominion to partially recover its accrued Alliance RTO and PJM RTO formation costs, i.e., by denying the amortized amount only for the period between 2005 and 2008, while allowing recover thereafter. However, we see no reason to deny recovery based on this asserted accounting differential.

³³ *Consolidated Gas Supply Corporation*, 14 FERC ¶ 61,029 (1981) (accounting practices are not controlling for ratemaking purposes); *Williston Basin Interstate Pipeline Co.*, 56 FERC ¶ 61,104 (1991) (Commission is not bound by accounting principles in determining whether proposed rates are just and reasonable); *Virginia State Corp. Comm'n v. FERC*, 468 F.3d 845, 847 (D.C. Cir. 2006) (accounting practices are not controlling for ratemaking purposes).

³⁴ See *Central Maine Power Company*, 116 FERC ¶ 61,129 (2006) (finding it proper under the Commission's accounting rules to include deferred RTO formation costs, inclusive of carrying costs, in regulatory asset Account 182.3). As discussed above, Commission policy at the time of the efforts to develop the Alliance RTO and Dominion's decision to join PJM required a deferral of these costs until a utility joins an RTO.

regulatory asset account was, at the time these costs were incurred, and was thereafter a reasonable accounting treatment.

32. Intervenors raise a number of other arguments regarding Virginia statutory law, orders issued by the Virginia Commission, and Dominion's 1998 retail rate case settlement. Intervenors argue, for example, that the Dominion load serving entity is precluded from passing through the wholesale costs at issue here due to the operation of Virginia's retail rate freeze. However, we need not address these issues here. We emphasize that our findings, above, make no determination as to the effect of a retail rate freeze on recovery of the previously-incurred wholesale costs. We determine here only that Dominion's costs, as filed, are properly recoverable wholesale costs. We leave for the Virginia Commission, or the State of Virginia, the issue of whether, or under what circumstances, these costs may be recovered in retail rates by the Dominion load serving entity.³⁵

The Commission orders:

Dominion's proposed Deferral Recovery Charge is hereby accepted, to become effective January 1, 2009, as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁵ See *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1372 (D.C. Cir. 2004) (the ability to recover federal costs under a rate freeze is between "state regulators and contractual partners armed with principles of federal preemption and the Supremacy Clause"); *PG&E v. Lynch*, 216 F. Supp. 2d 1016 (N.D. Cal. 2002) (examining state recovery of federally imposed costs during a rate freeze). Moreover, the existence of a rate freeze is not necessarily determinative of recovery even if Dominion had not sought regulatory asset treatment for these costs. *Id.*