

122 FERC ¶ 61,112  
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.

PJM Interconnection, L.L.C. and Virginia Electric and Power Company	Docket Nos. ER07-1071-000 ER07-1071-001 ER07-1071-002 ER07-1071-003
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Virginia Electric and Power Company	ER07-1072-000 ER07-1072-001 ER07-1072-002 ER07-1072-003
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ORDER ACCEPTING AND SUSPENDING FILING, SUBJECT TO REFUND,  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES, AND  
HOLDING PROCEDURES IN ABEYANCE

(Issued February 8, 2008)

1. On June 22, 2007, as amended on December 12, 2007, Virginia Electric and Power Company, d/b/a Dominion Virginia Power (Dominion), filed a new Attachment H-16D<sup>1</sup> to the Open Access Transmission Tariff (OATT) administered by PJM Interconnection, L.L.C. (PJM) stating the rate that Dominion will charge Emporia Hydropower Limited Partnership (Emporia Hydro) for its provision of wholesale distribution service (June 22, 2007 Filing). Dominion also filed an executed service agreement (Service Agreement) containing the terms and conditions of wholesale

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<sup>1</sup> Dominion states that in its June 22, 2007 Filing, it proposed to revise Attachment H-16B that set forth the rates for Distribution Service. However, in its October 25, 2007 formula rate filing in Docket No. ER08-92-000 (October 25, 2007 Rate Filing), Dominion moved Attachment H-16B to Attachment H-16D. *See* October 25, 2007 Rate Filing, Transmittal Letter at 5. In order not to create confusion, the attachment stating the rates for Distribution Service will be referred to as “Attachment H-16D.”

distribution service that Dominion will provide to Emporia Hydro. Dominion requested waiver of the Commission's notice of filing requirements.

2. In this order, we accept for filing Dominion's Attachment H-16D to PJM's OATT, and suspend it for a nominal period, to become effective August 21, 2007, subject to refund, to conditions, and to the outcome of a hearing and settlement judge procedures. We deny Dominion's request for a 50 basis point adder, and find that the rate of return will be subject to the outcome of the proceeding in Docket No. ER08-92-000. We also establish hearing and settlement judge procedures and will hold those procedures in abeyance pending the outcome of a proceeding in Docket Nos. ER07-1421-000 and ER07-1422-000. We further deny Dominion's request for waiver of the Commission's notice requirement.

### **I. Background**

3. Dominion is a transmission-owning member of PJM that owns and operates distribution facilities at voltages of 69 kV and lower (Distribution Facilities). PJM does not have operational control over the Distribution Facilities because such facilities are not included in the PJM OATT. Emporia Hydro owns and operates a run-of-the-river generation facility (Generating Facility) that is currently interconnected with certain of Dominion's Distribution Facilities and provides energy to Dominion under preexisting contractual arrangements. Emporia Hydro seeks to terminate those arrangements and begin engaging in wholesale transactions in PJM's organized energy markets.

4. To facilitate these transactions, Emporia Hydro requires: (1) an interconnection agreement to interconnect its 2.5 MW of energy and capacity to Dominion's Distribution Facilities; (2) a service agreement with Dominion for the provision of wholesale distribution service over Dominion's Distribution Facilities to the facilities operated by PJM; and (3) a Wholesale Market Participation Agreement (WMPA) to permit Emporia Hydro to engage in transactions in PJM's energy markets. Emporia Hydro has executed an interconnection agreement with Dominion<sup>2</sup> and the Commission has accepted the WMPA between Emporia Hydro, PJM and Dominion.<sup>3</sup>

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<sup>2</sup>The Interconnection Service Agreement (ISA) between Dominion and Emporia Hydro dated February 16, 2007 provides for interconnection service to interconnect the Generating Facility to Dominion's Distribution Facilities. Dominion states that the ISA is not being filed with the Commission because it involves a non-jurisdictional interconnection (i.e., the interconnection is to a Dominion local distribution facility where no prior interconnection and no prior wholesale transaction over the facility existed). Dominion cites *PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,191 (2006).

<sup>3</sup>The Commission accepted the WMPA in an unpublished letter order on April 30, 2007 in Docket No. ER07-668-000.

5. Dominion states that the instant filing completes the necessary arrangements to facilitate Emporia Hydro's sales into PJM's energy markets.

## **II. Notice of Filings and Responsive Pleadings**

6. Notice of Dominion's June 22, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 36,446 (2007), with comments, interventions, and protests due on or before July 13, 2007. On July 13, 2007, Industrial Power Generating Company, LLC (INGENCO) filed a motion to intervene and motion to strike, to which Dominion filed an answer on July 26, 2007.

7. On August 20, 2007, Commission Staff sent Dominion a deficiency letter (Deficiency Letter) asking for additional information. Dominion moved for a 60 day extension of time to respond to the Commission's August 20, 2007 deficiency letter, from September 19, 2007 until November 19, 2007, which the Commission granted. On November 19, 2007, Dominion amended its initial filing with responses to the Commission's August 20, 2007 Deficiency Letter and an amendment updating Attachment H-16D and providing an amended unexecuted service agreement containing the terms and conditions of wholesale distribution service that Dominion will provide to Emporia Hydro (Amended Service Agreement). On December 12, 2007, Dominion filed the executed version of the Amended Service Agreement. Notice of the amendment was published in the *Federal Register*, 73 Fed. Reg. 2468 (2008), with interventions, comments, and protests due on or before January 2, 2007. INGENCO and WM Renewable Energy, LLC (WMRE) filed protests.

## **III. Filings, Protests, and Answers**

### **A. Dominion's June 22, 2007 Filing**

8. On December 12, 2007, Dominion filed the executed version of the Amended Service Agreement. Notice of the amendment was published in the *Federal Register*, 73 Fed. Reg. 2468 (2008), with interventions, comments and protests due on or before January 2, 2007. INGENCO and WMRE timely filed protests.

9. Dominion states that the rate for its provision of wholesale distribution service to Emporia Hydro is being filed in Attachment H-16D under the PJM OATT despite the fact that PJM does not have operational control over the distribution system since such a filing is consistent with Commission precedent.

10. Dominion states that, in addition to stating the rate for distribution service, proposed Attachment H-16D sets forth the PJM service agreement number, the customer's name and the proposed effective date for the agreement.

11. Dominion contends that under the Service Agreement: (1) service is to commence as of February 28, 2007, to coincide with the effective date of the WMPA; (2) Dominion will provide and Emporia Hydro will take and pay for distribution service to deliver electric energy from a 12.5 kV bus located in the Emporia Hydro substation across a 12.5 kV path over Dominion's Distribution Facilities to the high side of a Dominion transformer connected to Dominion's 115 kV transmission system operated by PJM; (3) the specific Distribution Facilities utilized to provide distribution service are described; (4) the rate for distribution service shall be set forth in Attachment H-16D to the PJM OATT; (5) billing and payment shall be performed in accordance with section 7 of the PJM OATT; and (6) changes to the rates, terms and conditions of service shall be subject to the "public interest" standard of review.

12. The rate that Emporia Hydro shall pay Dominion for distribution service over Dominion's Distribution Facilities is the higher of: (a) the product of the energy produced in kilowatt hours (kWh) from the Generating Facility multiplied by \$0.0014/kWh; or (b) a minimum monthly charge of \$728.70.

13. Dominion claims that its implementation of this rate is consistent with the previously accepted pricing of wholesale distribution service Dominion provides to other customers. More specifically, Dominion claims that it implements the same rate design in several revised Generator Interconnection and Operating Agreements (GIOAs) as part of its settlement agreement with INGENCO (Settlement Agreement).<sup>4</sup> The revised GIOAs were submitted on April 28, 2005 in Docket No. ER05-885-000 and accepted by the Commission on June 21, 2005.

14. Dominion requests waiver of the Commission's notice requirements to permit the Service Agreement and Attachment H-16D to become effective as of February 28, 2007. Dominion claims that waiver is appropriate in this instance because the Commission has accepted the WMPA to become effective as of February 28, 2007. Dominion asserts that Emporia Hydro's consent to the February 28, 2007 effective date is evidenced through its execution of the Service Agreement, and that Dominion is authorized to state that Emporia Hydro supports the requested February 28, 2007 effective date.

#### **B. INGENCO's Motion to Strike**

15. INGENCO moves to strike certain portions of a transmittal letter and Prepared Direct Testimony submitted by Dominion which INGENCO claims explicitly attempt to cite the Settlement Agreement as precedent in direct violation of its terms. According to INGENCO, the Settlement Agreement was strictly a bottom-line, black-box settlement agreement. The Settlement Agreement provided that "[n]othing in this Settlement

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<sup>4</sup>See Settlement Agreement between INGENCO and Dominion filed in Docket No. ER04-1023-001.

Agreement shall . . . establish any precedent,”<sup>5</sup> and that “this Settlement Agreement shall not be cited as precedent.”<sup>6</sup> INGENCO states that Dominion proposes to implement “the same rate design [sic] in several [interconnection agreements] *as part of its settlement agreement* with [INGENCO].”<sup>7</sup> Additionally, INGENCO points out that Donald C. Tomczak, Jr., in his Prepared Direct Testimony included with the Dominion filing, states that, “I developed the rate design [sic] for Distribution Service rates that was accepted by the Commission *as part of a settlement agreement* with” INGENCO, and that “[t]he rate design [sic] I describe in this testimony is the same rate design [sic] that was accepted by the Commission in the aforementioned proceeding.” INGENCO asserts that Dominion is clearly attempting to cite its Settlement Agreement with INGENCO as “a basis for determining” the rates in these proceedings.<sup>8</sup>

16. INGENCO argues that if Dominion is allowed to use the Settlement Agreement as precedent to set the rates it charges Emporia Hydro, Dominion would very likely attempt to aggressively use that result in future cases concerning INGENCO’s distribution-level wheeling rates. Additionally, INGENCO argues that if the Commission allows parties to settlements to renege on their agreements, future litigants will be less likely to settle and the Commission’s policy of encouraging settlement will be vitiated. INGENCO argues that striking the offending testimony would send a clear signal to Dominion and other utilities and customers that settlements must be honored.

17. INGENCO contends that, in the event the Commission denies INGENCO’s motion to strike, the Commission should take note of the fact that its letter order accepting the INGENCO-Dominion interconnection agreements for filing stated that such acceptance for filing “does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents.”<sup>9</sup>

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<sup>5</sup>INGENCO cites to the Settlement Agreement at P 11.

<sup>6</sup>INGENCO cites to the Settlement Agreement at P 12.

<sup>7</sup>INGENCO cites the Dominion Transmittal Letter at 4 (emphasis added by INGENCO).

<sup>8</sup>INGENCO Motion to Strike at 7.

<sup>9</sup>INGENCO cites *Virginia Electric and Power Company*, unpublished letter order in Docket No. ER05-885-000 (June 21, 2005).

**C. Dominion's Answer**

18. Dominion, in its answer, contends that there is no basis for INGENCO's motion to strike and that the Commission should deny it. Dominion asserts that INGENCO's motion to strike is limited to asserting that Dominion violated the Settlement Agreement based solely on INGENCO's mischaracterization that Dominion referred to the Settlement Agreement as "precedent." Dominion states that INGENCO is not a party to the wholesale distribution agreement that is the subject of this proceeding and does not raise any substantive objection to the filing. Dominion claims that its references to the Settlement Agreement in its June 22, 2007 Filing are solely for informational purposes and do not violate the Settlement Agreement, i.e., the references show that the rates for wholesale distribution service set forth in the June 22, 2007 Filing were developed consistent with the rates applicable to other Dominion wholesale distribution customers. Dominion asserts that it never suggests that the Settlement Agreement is precedent, nor does it request that the Commission consider the Settlement Agreement as precedent.

19. Finally, Dominion argues that INGENCO's claim of potential harm should be rejected because it is misplaced in this proceeding. Dominion asserts that INGENCO makes the unsupported statement that if Dominion is allowed to use the Settlement Agreement as precedent, Dominion will use that result in future cases involving INGENCO. Dominion further asserts that any concern INGENCO may have regarding its current rates or any future rates should be addressed in proceedings concerning those rates and not in this proceeding.

**D. Deficiency Letter and Response**

20. The Deficiency Letter, issued by the Commission on August 20, 2007, requested further information and support for Dominion's proposal, including, among other things: (1) the definition of "reproduction costs,"; (2) whether Dominion proposes to provide wholesale distribution service to Emporia Hydro using existing facilities; (3) whether the Component #1 and Component #2 of Exhibit No. DVP-2 is (i) existing equipment already in service prior to Emporia Hydro's interconnection with Dominion or (ii) new equipment placed in service in order to provide wholesale distribution service to Emporia Hydro; (4) whether the Component #1 and Component #2 equipment is existing equipment or new equipment, the gross original plant cost of each and the net plant cost of each, the date Dominion placed any new equipment in service; and (5) the appropriateness of deriving rates to be applied in 2007 based on a fixed charge rate calculated based on the data from the year 1991.

21. Dominion notes that concurrent with the November 19, 2007 filing of its response to the Deficiency Letter, it is amending the June 22, 2007 Filing by updating the rate that Dominion will charge Emporia Hydro for its provision of distribution service. The updated rate replaces the previously filed rate and reflects a new fixed rate charge based

upon updated values and a new depreciated calculation of the original cost of the wholesale distribution facilities. Dominion states that, given these updates and revisions, the basis for many of the Deficiency Letter's requests has now changed and its response only addresses those requests whose basis has not changed. Specifically, Dominion addresses requests #2, 3, and 4. Dominion states that it will be providing distribution service over existing facilities to facilitate Emporia Hydro's participation in the PJM energy markets and that no new distribution facilities are required in order for the provision of such distribution service. Dominion states that all of the Component #1 and Component #2 equipment is existing equipment and that Emporia Hydro was interconnected with Dominion prior to Dominion providing distribution service. Dominion states that the gross original cost of Component #1 is \$148,548 and Component #2 is \$10,510. The depreciated original cost, i.e., net plant cost, for Component #1 is \$119,981 and for Component #2 is \$9,376.

22. In support of its updated Attachment H-16D, Dominion submits new testimony and exhibits which replace the testimony and exhibits that were included with the June 22, 2007 Filing. Specifically, Dominion has: (1) revised and lowered the fixed rate charge from 20.794 percent to 17.386 percent based in part on the updated capital structure and rate of return contained in Dominion's October 25, 2007 rate filing;<sup>10</sup> (2) updated its Operation and Maintenance (O&M) expenses, Administrative and General (A&G) expense, insurance, materials and supplies based on Dominion's 2006 FERC Form 1 and property and federal income taxes based on the most recent property and income tax filings; and (3) used the depreciated original cost of Component #1 and Component #2 instead of reproduction costs.

23. In its November 19, 2007 filing, Dominion uses updated capital structure and rate of return data, from its October 25, 2007 filing in Docket No. ER08-92-000, to include a 50 basis point adder to determine Dominion's new fixed charge rate for Emporia Hydro.

24. Dominion states that the updated and revised rate that Emporia Hydro is to pay Dominion for distribution service is significantly less than the rate proposed in the June 22, 2007 Filing. Emporia Hydro will now pay the higher of: (a) the product of the energy produced in kWh from the Facility multiplied by \$0.00015/kWh; or (b) a minimum monthly charge of \$78.08. According to Dominion, its fixed charge rate of 17.386 percent used to calculate the per kWh distribution service rate was developed using updated values from its October 25, 2007 transmission formula rate filing for capital cost structure and rate of return in Docket No. ER08-92-000, O&M expenses, property and federal income taxes, A&G expense, insurance, materials, and supplies, and depreciated original costs of Components #1 and #2.

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<sup>10</sup>See Docket No. ER08-92-000.

25. Under the Amended Service Agreement, Dominion will provide and Emporia Hydro will take and pay for, distribution service to deliver electric energy from a 12.5 kV bus located in the Emporia Hydro substation to the high side of a Dominion transformer connected to Dominion's 115 kV transmission system operated by PJM. The rate for distribution service shall be set forth in Attachment H-16D to the PJM OATT and billing and payment shall be performed in accordance with Section 7 of the PJM OATT. The Amended Service Agreement no longer includes the "public interest" standard of review of rates, terms and conditions of service which was in the service agreement included in the June 22, 2007 Filing. Dominion requests waiver of the Commission's notice of filing requirements to allow the updated Attachment H-16D and the Amended Service Agreement to be effective February 28, 2007, consistent with the requested effective date in the June 22 Filing.

**E. Protests to Dominion's Deficiency Letter Response**

26. In their protests, INGenco and WMRE (the Protestors) express concern that Dominion will use the same rate methodology it has proposed in the instant case in other cases being actively litigated in Docket Nos. ER07-1421 and ER07-1422 (the Brunswick proceeding) and in Docket No. ER07-1205 (the Bethel proceeding).<sup>11</sup> The Protestors claim that in the Brunswick proceeding, Dominion filed proposed rates, terms, and conditions for distribution-level delivery services for INGenco's 11-MW Brunswick distributed generating facility, using the same methodology to derive the proposed rates that it has used in the present case. The Protestors filed protests and other pleadings in the Brunswick proceeding explaining what they assert to be fundamental flaws in Dominion's proposed direct assignment methodology. WMRE asserts that in the Bethel proceeding, WMRE is developing the Bethel Landfill generating facility, which will interconnect to PJM via Dominion's distribution system. WMRE contends that it is a party to a tripartite ISA with PJM and Dominion for the Bethel Facility, which PJM filed with the Commission in Docket No. ER07-1205 on October 22, 2007. WMRE states that Schedule F to the ISA states that the rates, terms, and conditions of wholesale distribution service will be pursuant to a separate contractual agreement that Dominion will file with the Commission.

27. The Protestors argue that Dominion's method of assigning costs to the distribution service is fundamentally flawed because: (1) it ignores the reason why load ratio shares are ordinarily used to allocate capacity costs; and (2) it assumes that a generator's maximum output represents the demand the generator places on Dominion's distribution system. The Protestors argue that, because of these two basic defects, the Dominion method substantially over-allocates costs to the Emporia Hydro distribution service.

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<sup>11</sup>In a December 5, 2007 letter order, the Commission dismissed PJM's ISA with WMRE for lack of jurisdiction.

28. The Protestors state that the Commission has decided that:

While the Commission permits rolled-in, average cost pricing for transmission facilities because the transmission system operates on an integrated basis, this is not so for distribution facilities. Because distribution facilities are not integrated with the rest of the system, an outage of such a facility cannot generally be overcome by using other distribution facilities. Accordingly, the appropriate basis for developing a distribution facilities rate is to directly assign the costs of the facilities used to provide service (such as step down substations and any distribution lines connecting such substations to the customer's delivery point).<sup>12</sup>

29. The Protestors state that the Commission favored the direct assignment method, the costs of discrete substations and radial lines "actually used" to serve customer loads are to be apportioned between the customer and other users of these facilities.<sup>13</sup>

30. The Protestors add that in most cases for most circuits and substations, due to the phenomenon of reverse flow, the power flows attributable to the generator do not actually require that any distribution capacity be set aside for the generator's use of the distribution system. The Protestors assert that no capacity reservation is ever required on Dominion's distribution system to move power. The Protestors contend that in light of this phenomenon, assigning capacity costs to the generator delivery service would violate cost causation principles.

31. Applying these principles to the Emporia Hydro case, the Protestors contend that it is likely that none of the costs of Component #1, the transformer, should be assigned to the distribution-level delivery service. Additionally, the Protestors contend that the correct assignment of the costs of Component #2 is not at all clear and that Dominion's assumed cost assignment of its distribution facilities (to directly assign one-third of the costs of the Bus to Emporia Hydro) is almost undoubtedly wrong.

32. The Protestors state that a sensible way to determine how to allocate individual distribution system components for a generator delivery service is to perform representative load flow studies for each pertinent system component. The Protestors state that if the Commission determines that it might be appropriate to allocate a portion

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<sup>12</sup>The Protestors cite *Borough of Zelenople, Pennsylvania*, 70 FERC ¶ 61,073, at 61,183 (1995).

<sup>13</sup>The Protestors cite *Tex-La Elec. Coop. of Texas, Inc.*, 69 FERC ¶ 61,269 at 62,036 (1994) (distribution surcharge should "reflect the costs of only those facilities actually used to serve [the customer]").

of the capacity cost of existing distribution systems to distributed generators, the allocation should be based on any net power flows that the generator imposes on the particular system component – including line and circuitry – at the time of the annual peak load on the particular component. The Protestors state that if, on a particular circuit or component, the power flow associated with the generator causes a reduction in the net power flows at peak, then no capacity costs should be allocated to the generator delivery service for that component. The Protestors state that only if the power flow associated with the generator causes an increase in the total power flow on the circuit at peak should a portion of the total costs be assigned.

33. The Protestors assert that load flow studies should identify the effect of reverse flows and that costs should not be assigned to distribution-level delivery service provided to generators such as Emporia Hydro unless there is a net outward flow. The Protestors contend that only in that case are distribution facilities actually committed to the provision of “wheeling out” delivery service.

34. The Protestors argue that Emporia Hydro’s distribution rates should recognize and provide appropriate credits for the transmission and distribution system benefits Emporia Hydro imparts to Dominion. According to the Protestors, these system benefits include reduction in congestion, avoidance of congestion costs, and avoidance of transmission and distribution losses. Similarly, the Protestors argue that by placing a new generation source, like Emporia Hydro, closer to the load, there will be less voltage drop and therefore improved delivery voltage to the end-use customers of Dominion. The Protestors state that an important criterion in the design of power systems is voltage support. The further away a source is from the load, the lower the voltage at the load. The Protestors assert that Dominion’s wholesale distribution service rates should provide Emporia Hydro a credit to recognize the voltage support benefit that Emporia Hydro provides to Dominion.

35. Finally, the Protestors argue that Dominion’s request to revise the fixed charge rate to incorporate a 50 basis point adder to the cost of common equity for joining PJM should be rejected. According to the Protestors, the adder was designed to encourage transmission owners to turn over operational control of their transmission facilities to an entity responsible for providing regional transmission service.

36. The Protestors claim that where transmission owners have proposed a 50 basis point adder for local service facilities – facilities not used for regional service – the Commission has concluded that the rationale for the adder does not apply.<sup>14</sup> The

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<sup>14</sup>The Protestors cite *ISO New England Inc.*, 106 FERC ¶ 61,280 (2004) at P 247, *affirmed sub nom. Maine Public Utilities Comm’n v. FERC*, 454 F.3d 278, 290 (D.C. Cir. 2006).

Protestors contend that in the instant case, the wholesale distribution service rate at issue involves only distribution facilities at voltages of, at most, 13.2 kV over which PJM does not have operational control and which are not included in the regional services offered by PJM in its OATT. The Protestors assert that these low-voltage facilities are not eligible for the 50 basis point adder, and that Dominion's request for the adder should be rejected. The Protestors add that, "[i]f any of the facilities are under PJM's control, then Dominion is already recovering their cost through PJM's transmission rates and the rate proposal in this proceeding would constitute double-recovery."

#### **IV. Discussion**

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

37. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene 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) (2007), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We will accept the answer filed by Dominion because it has provided information that has assisted us in our decision-making process.

##### **B. 50 Basis Point Adder**

38. Dominion proposes to include a 50 basis point adder to the return on common equity, as it did in formula transmission rate filing in Docket No. ER08-92-000. We will deny Dominion's proposed 50 basis point adder in the instant proceeding, based on Commission precedent. In *ISO New England*, the Commission stated:

the adder was intended as an incentive for transmission owners to turn over the operational control of their transmission facilities to an entity responsible for providing regional transmission service under the terms and conditions of a regional tariff . . . [and that] it does not apply for the facilities that are subject to the Local Service Schedule. The Local Service charges generally recover the costs of facilities that do not provide regional service, e.g., lower voltage lines and radial lines.<sup>15</sup>

In this case, the wholesale distribution service at issue involves low voltages over which Dominion, not PJM, has operational control. Therefore, the 50 basis point adder does not apply in this case.

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<sup>15</sup>*ISO New England, Inc.* 106 FERC ¶ 61,280, at P 247 (2004).

**C. Rate of Return**

39. In the instant proceeding, Dominion proposes to use the same rate of return proposed in its formula transmission rate case in Docket No. ER08-92-000. Consequently, we will accept Dominion's rate of return, subject to the outcome of the proceeding in Docket No. ER08-92-000.

**D. Hearing and Settlement Judge Procedures**

40. Dominion's proposed level of its wholesale distribution charge to Emporia Hydro raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

41. The hearing and settlement procedures are to examine all the issues raised by the parties to these filings. In particular, the issues to be considered at the hearing include, but are not limited to: (1) whether the rate design methodology clearly identifies and properly assigns costs; (2) whether there are quantifiable benefits associated with certain avoided costs, such as reduced congestion, reduced line losses or reduced distribution system losses; and (3) if there are quantifiable benefits, whether those benefits should be reflected in the wholesale distribution rate design.

42. Our preliminary analysis indicates that Dominion's method of assigning cost for distribution service has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Dominion's proposed filing, suspend it for a nominal period, make it effective August 21, 2007, subject to refund, and set it for hearing and settlement judge procedures.

43. The Protesters maintain that the instant case raises similar rate issues to another Dominion proceeding that is currently under consideration in Docket Nos. ER07-1421 and ER07-1422. To try to ensure that similar issues are litigated only once, we will hold the hearing and settlement judge procedures in this proceeding in abeyance pending our determination of the proceeding in Docket Nos. ER07-1421 and ER07-1422.

**E. Request for Waiver of the 60 Day Notice Requirement**

44. Dominion provides no support for its request for waiver of the Commission's prior notice requirement, failing to explain why it made its section 205 filing nearly four months after its requested effective date of February 28, 2007. Absent a strong showing of good cause, we deny requests for waiver of prior notice for new service for agreements

filed prior to the commencement of service.<sup>16</sup> We find that Dominion has failed to make the showing of good cause necessary to justify waiver of the Commission's prior notice requirement for new service for agreements filed prior to the commencement of service. and will, therefore, deny such waiver.

45. Accordingly, we will direct Dominion to refund to its customers, within 30 days of the date of this order, the time value of revenues collected, calculated pursuant to section 35.19a of the Commission's regulations,<sup>17</sup> for the period that the rate was collected without Commission authorization.<sup>18</sup> We will also direct Dominion to file a refund report with the Commission within 15 days of the date refunds are made.

The Commission orders:

(A) Dominion's proposed rate to Emporia Hydro for wholesale distribution service is hereby accepted for filing and suspended for a nominal period, subject to refund, and subject to the outcome of the proceeding in Docket No. ER08-92-000, to become effective August 21, 2007.

(B) Dominion's request for a 50 basis point adder is hereby denied, as discussed in the body of this order.

(C) Dominion's request for waiver of prior notice is hereby denied, as discussed in the body of this order.

(D) Dominion is hereby ordered to make time value of revenues refunds within 30 days of the date of issuance of this order, and to file a refund report with the Commission within 15 days thereafter.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and

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<sup>16</sup>*Central Hudson Gas and Electric Company*, 60 FERC ¶ 61,106 at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act (Prior Notice)*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

<sup>17</sup> 18 C.F.R. § 35.19a (2007).

<sup>18</sup> We note that the Commission limits the application of the time value formula to an amount that permits the public utility to recover its variable costs. *See, e.g., Carolina Power*, 87 FERC at 61,357.

Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Dominion's proposed level of its wholesale distribution charge to Emporia Hydro. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (F) and (G) below, and pending the resolution of the proceeding in Docket Nos. ER07-1421 and ER07-1422, as discussed in the body of this order.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge. However, these settlement judge procedures will be held in abeyance pending the resolution of the proceeding in Docket Nos. ER07-1421 and ER07-1422, as discussed in the body of this order.

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

(H) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.