167 FERC ¶ 61,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick,

Virginia Electric and Power Company Docket No. IN19-3-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued May 3, 2019)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Virginia Electric and Power Company (doing business as Dominion Energy Virginia (DEV)).[1] This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2018), into whether DEV violated any Commission rules, including the Anti-Manipulation Rule, 18 C.F.R. §1c.2 (2018), related to its receipt of lost opportunity cost credits (LOCs) in the PJM Interconnection, L.L.C. (PJM) market (the Investigation).

2. DEV agrees to pay disgorgement of $7,000,000 to PJM and a civil penalty of $7,000,000 to the United States Treasury, and to be subject to compliance monitoring as provided in the Agreement. DEV stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations.

I. Facts

3. DEV is a vertically-integrated, franchised public utility that serves retail and wholesale customers in Virginia and North Carolina. DEV has been authorized by the Commission to make wholesale sales of energy, capacity, and ancillary services at market-based rates. DEV joined PJM in 2005 and participates in the PJM capacity, energy, and ancillary services markets with both generation assets and load service obligations regulated by the Virginia and North Carolina state commissions.

4. DEV began offering its fleet of generators into the PJM day-ahead (DA) and real-time (RT) energy markets when it joined PJM. Its fleet included all forms of generation: solar, wind, hydro, nuclear, coal, combined cycle, and 20 simple cycle combustion turbine units at five locations in PJM (the CT units). The CT units, which have been the

[1] For administrative reasons, the docket number used for the issuance of this order differs from the docket number on the attached Agreement.

subject of Enforcement's Investigation, had an aggregate capacity of approximately 2,414 megawatts.

5. Simple cycle CTs traditionally have been one of the most expensive forms of generation in PJM on a per megawatt basis, but most CTs have the ability to come quickly online from a cold start and have served as a source of power in PJM that could be deployed to meet peak demand in the RT market and for unexpected demand increase.

6. PJM established LOCs to encourage generators to offer their resources into the PJM DA energy markets, and if awarded a DA commitment, to be dispatched as part of PJM's pool-scheduled resources and thereby allow PJM to control their output to manage system operations. LOCs are designed to compensate generators for lost opportunity costs resulting from PJM's generation dispatch decisions and to enhance PJM's ability to ensure efficient and reliable power to meet RT demand system wide in PJM. The PJM Open Access Transmission Tariff (PJM Tariff) provides for the payment of LOCs to combustion turbine units that receive a DA award and that PJM directs to reduce output or does not dispatch in the RT market. During the period covered by the Investigation, the PJM Tariff provided that certain units (including CT units) that clear the DA market and are not dispatched in the RT market would be paid LOCs equal to the higher of: (a) the difference between the RT locational marginal price (RTLMP) and the DA locational marginal price (DALMP), or (b) the difference between the RTLMP and the higher of the unit's price-based or cost-based incremental energy offers, computed hourly based on the amount of the unit's awarded megawatts. Prior to 2015, the LOC formula for CTs did not subtract start-up and no-load costs, although such costs would be incurred if the unit were dispatched by PJM in the RT market.[2] As a result, a generator with a DA award potentially could earn a greater margin when it received LOCs and was not dispatched by PJM in the RT market than the margin it would earn if it was dispatched. However, generators that purchased fuel in anticipation of PJM dispatching a CT unit in the RT market could incur fuel costs such as losses from needing to resell fuel.

7. Like other PJM units, offers for CT units involve two daily submissions: a price-based offer and a cost-based offer. PJM uses price-based offers to clear (award) units in the DA market. Both price-based and cost-based offers consist of three main components: start-up cost (the one-time cost of starting a unit, expressed in dollars per start); no-load cost (the cost, in dollars per hour, of keeping a unit on but without providing any net energy to the grid); and incremental energy cost (the cost, in dollars per MWh, of generating the next MW of energy at various output levels). Under the PJM Tariff, generators may elect to submit fixed price-based offer start-up and no-load costs for six-month intervals (one from April 1 through September 30 and another from October 1 through March 31, referred to as "lock-in" periods).

[2] In 2015, the Commission approved a change to the CT LOC formula in the PJM Tariff that eliminated compensation for start-up and no-load costs in hours in which PJM did not dispatch a CT. *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,165 (2015).

8. Prior to April 1, 2010, DEV priced its CT units' DA price-based offers on the higher side of its estimated costs to minimize the risk of financial loss in the event their estimated costs proved to be lower than actual costs and/or the actual DALMP was insufficient to cover actual costs. This offer strategy produced relatively modest numbers of DA commitments from PJM for DEV's CT units and resulted in idle CT units on many days. In late 2009, DEV concluded that this approach was too conservative and that, although it minimized potential risks, it also excluded CTs from the DA market on many days. Further, DEV recognized that the revenue from LOCs had the potential to both produce positive margin and partially offset operational costs incurred in making DA offers, such as staffing and fuel costs that are incurred when the CTs are not dispatched by PJM.

9. In March 2010, DEV changed its strategy for offering the CT units in the DA market. The new strategy involved restructuring the three values (start-up, no-load, and incremental energy) in its price-based offers. As part of the new strategy, DEV raised its six month locked start-up and no-load values for certain of its CT units' DA offers during the period from April 1, 2010 to September 30, 2010 by amounts that were significantly higher than its previously used start-up and no-load values. To offset the elevated start-up and no-load values with the goal of maintaining an attractive DA offer, DEV daily discounted the incremental energy value of its priced-based offer at the risk of running at a loss. DEV staggered the reapportionments of start-up costs, no-load costs, and incremental energy costs to varying degrees among different units. The new six month start-up values for certain of its CT units exceeded the previously used start-up values for these units by over 30 percent and in some cases by over 100 percent. For purposes of preparing its DA offers, DEV generally measured estimated total production costs using the minimum run time on which the offers were conditioned (typically, four hours), although DEV sought and PJM frequently set day-ahead commitments of between 12 and 14 hours. PJM dispatched DEV's CTs with DA awards approximately 70% of the time, and their average run time was approximately 10 hours. Also, DEV further lowered, at times, the incremental energy value of its offers to increase the potential for receiving a DA commitment (i.e., clear the market).

10. DEV employed this new strategy with the expectation that its energy offers would produce more DA commitments, increased LOCs and longer RT run times when dispatched.

11. After implementing the new strategy for the period April 1, 2010 to September 30, 2010, DEV concluded that the strategy resulted in more DA awards for its CT units, increased RT run times, and greater positive net energy revenue, and that the CT units with higher start-up values and correspondingly lower incremental energy offers earned greater LOC revenues. As a consequence, for the next six month period from October 1, 2010 to March 31, 2011, DEV raised the locked start-up values for all of its CT units to high levels, rather than staggering the degree of reapportionment of costs among the units.

12. During the period from April 1, 2010 to March 31, 2011, when DEV increased the start-up and no-load values in its DA offers for its CT units substantially above the start-up and no-load values it previously had used and correspondingly lowered the units' incremental energy offers, DEV's DA commitments, RT run times, net positive energy revenue, and LOCs for the CT units significantly increased relative to earlier time periods, as DEV expected. DEV also expected that offering its CT units according to this strategy would better optimize the CTs paid for by its customers.

13. DEV cooperated with Enforcement during the Investigation.

II. Violations

14. Enforcement determined that from April 1, 2010 to March 31, 2011, DEV engaged in a strategy to target and maximize its receipt of LOCs by offering its CT units in the DA market with price-based offers with substantially increased start-up and no-load values than previously used and with discounted incremental energy offers. Enforcement determined that this strategy sought to obtain more DA commitments, by correspondingly lowering the incremental energy offers in the CT units' offers, and at the same time, sought to reduce the chance the units were dispatched by PJM in RT, by increasing the start-up values in the offers. Enforcement further determined that this strategy increased LOC payouts in certain hours when the CT units had a risk of operating at a loss.

15. Enforcement concluded that DEV's conduct violated the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2018). Enforcement concluded that DEV offered its CT units in a manner that sought to target and maximize LOCs, rather than making the units available to the market based on supply and demand fundamentals. Enforcement concluded that DEV's conduct was contrary to the purpose of LOCs and impaired the functioning of the LOC provisions of the PJM market and PJM's unit commitment process. LOCs are not intended to be an incentive to generators to design offers that seek to target and maximize LOCs or discourage PJM's dispatch of units in RT.

III. Stipulation and Consent Agreement

16. Enforcement and DEV have resolved the Investigation by means of the attached Agreement.

17. DEV stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations set forth in Section III of the Agreement.

18. DEV agrees to pay a civil penalty of $7,000,000 to the United States Treasury. DEV agrees to pay disgorgement of $7,000,000 to PJM.

19. DEV agrees to submit an annual compliance monitoring report, in accordance with the terms of the Agreement, with the requirement of a second annual report at Enforcement's option.

IV. Determination of Appropriate Sanctions and Remedies

20. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,[3] including the fact that DEV cooperated with Enforcement during the Investigation.

21. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

22. The Commission also concludes that DEV's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.[4]

23. The Commission directs DEV to make the civil penalty and disgorgement payments as required by the Agreement within ten days of the Effective Date of the Agreement.

24. The Commission directs PJM to allocate the disgorged funds in its discretion for the benefit of PJM customers and upon approval by Enforcement of PJM's plan for doing so.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

[3] *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

[4] *Id*.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Virginia Electric and Power Company Docket No. IN14-15-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Virginia Electric and Power Company (doing business as Dominion Energy Virginia (DEV)) enter into this Stipulation and Consent Agreement (Agreement) to resolve a non-public, formal investigation (the Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2018), into whether DEV violated any Commission rules related to its receipt of lost opportunity cost credits (LOCs) in the PJM Interconnection, L.L.C. (PJM) market.

2. DEV stipulates to the facts in Section II, but neither admits nor denies the alleged violations in Section III. It agrees to: (a) disgorge to PJM $7,000,000; (b) pay a civil penalty of $7,000,000 to the United States Treasury; and (c) be subject to compliance monitoring as provided more fully below.

II. STIPULATIONS

Enforcement and DEV hereby stipulate and agree to the following facts.

3. DEV is a vertically-integrated, franchised public utility that serves retail and wholesale customers in Virginia and North Carolina. DEV has been authorized by the Commission to make wholesale sales of energy, capacity, and ancillary services at market-based rates. DEV joined PJM in 2005 and participates in the PJM capacity, energy, and ancillary services markets with both generation assets and load service obligations regulated by the Virginia and North Carolina state commissions.

4. DEV began offering its fleet of generators into the PJM day-ahead (DA) and real-time (RT) energy markets when it joined PJM. Its fleet included all forms of generation: solar, wind, hydro, nuclear, coal, combined cycle, and 20 simple cycle combustion turbine units at five locations in PJM (the CT units). The CT units, which have been the subject of Enforcement's Investigation, had an aggregate capacity of approximately 2,414 megawatts.

5. Traditionally, simple cycle CTs have been one of the most expensive forms of generation in PJM on a per megawatt basis, but most CTs have the ability to come quickly online from a cold start and have served as a source of power in PJM that could be deployed to meet peak demand in the RT market and for unexpected demand increase.

6. PJM established LOCs to encourage generators to offer their resources into the PJM DA energy markets, and if awarded a DA commitment, to be dispatched as part of PJM's pool-scheduled resources and thereby allow PJM to control their output to manage system operations. LOCs are designed to compensate generators for lost opportunity costs resulting from PJM's generation dispatch decisions and to enhance PJM's ability to ensure efficient and reliable power to meet RT demand system wide in PJM. The PJM Open Access Transmission Tariff (PJM Tariff) provides for the payment of LOCs to combustion turbine units that receive a DA award and that PJM directs to reduce output or does not dispatch in the RT market. During the period covered by the Investigation, the PJM Tariff provided that certain units (including CT units) that clear the DA market and are not dispatched in the RT market would be paid LOCs equal to the higher of: (a) the difference between the RT locational marginal price (RTLMP) and the DA locational marginal price (DALMP), or (b) the difference between the RTLMP and the higher of the unit's price-based or cost-based incremental energy offers, computed hourly based on the amount of the unit's awarded megawatts. Prior to 2015, the LOC formula for CTs did not subtract start-up and no-load costs, although such costs would be incurred if the unit were dispatched by PJM in the RT market.[1] As a result, a generator with a DA award potentially could earn a greater margin when it received LOCs and was not dispatched by PJM in the RT market than the margin it would earn if it was dispatched. However, generators that purchased fuel in anticipation of PJM dispatching a CT unit in the RT market could incur fuel costs such as losses from needing to resell fuel.

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periods, as DEV expected. DEV also expected that offering its CT units according to this strategy would better optimize the CTs paid for by its customers.

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IV. REMEDIES AND SANCTIONS

16. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to DEV's conduct evaluated in Enforcement's Investigation, DEV agrees with the facts as stipulated in Section II of this Agreement, but it neither admits nor denies the violations described in Section III of this Agreement. DEV further agrees to undertake obligations set forth in the following paragraphs.

A. Civil Penalty

17. DEV shall pay a civil penalty of $7,000,000 to the United States Treasury by wire transfer within ten days of the Effective Date of this Agreement, as defined herein.

B. Disgorgement

18. DEV shall disgorge to PJM $7,000,000 within ten days of the Effective Date of this Agreement, to be allocated by PJM in its discretion for the benefit of PJM customers and upon approval by Enforcement of PJM's plan for doing so.

C. Compliance

19. DEV shall make an annual compliance monitoring report to Enforcement for one year following the Effective Date of this Agreement regarding its current offering of its CT units into the PJM DA market, which shall be submitted no later than thirty days after the first anniversary of the Effective Date. After the receipt of the first annual report, Enforcement may, at its sole discretion, require DEV to submit a second annual report for the following year.

20. Each compliance monitoring report shall: (1) identify any known violations of the PJM Tariff or Commission regulations regarding DEV's offering of its CT units into the PJM DA market that occurred during the applicable period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures related to compliance with the PJM Tariff and Commission regulations regarding its offering of its CT units into the PJM DA market that DEV instituted or modified during the applicable period; and (3) describe all PJM and Commission-related compliance training that DEV administered during the applicable period regarding its offering of its CT units into the PJM DA market, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

21. Each compliance monitoring report shall also include an affidavit executed by an officer of DEV stating that it is true and accurate to the best of his/her knowledge.

22. Upon request by Enforcement, DEV shall provide to Enforcement documentation supporting the contents of its reports.

V. TERMS

23. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to DEV and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

24. Commission approval of this Agreement without material modification shall release DEV and forever bar the Commission from holding DEV, any affiliated entity, any successor in interest, and their respective agents, officers, directors, or employees,

both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

25. Failure by DEV to make the disgorgement or civil penalty payments, or to comply with the compliance reporting obligations agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. §792, *et seq*., and may subject DEV to additional action under the enforcement provisions of the FPA.

26. If DEV does not make the required civil penalty and disgorgement payments described above within the times agreed by the parties, interest shall begin to accrue at the rates specified at 18 C.F.R. § 35.19a(a)(2)(iii) from the date that payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose.

27. This Agreement binds DEV and its agents, successors, and assignees. This Agreement does not create any additional or independent obligations on DEV, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

28. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or DEV has been made to induce the signatories or any other party to enter into the Agreement.

29. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor DEV shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and DEV.

30. In connection with the civil penalty provided for herein, DEV agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). DEV waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

31. This Agreement can be modified only if in writing and signed by Enforcement and DEV, and any modifications will not be effective unless approved by the Commission.

32. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

33. The undersigned representative of DEV affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

34. This Agreement may be executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and Accepted:

Larry R. Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission
Date: DEC. 19, 2018

Carlos M. Brown
Vice President and General Counsel
Virginia Electric and Power Company
Date: December 14, 2018