

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket Nos. ER04-829-004 and  
ER04-829-005

ORDER ACCEPTING COMPLIANCE FILINGS

(Issued May 26, 2005)

1. On November 4, 2004, PJM Interconnection, L.L.C. (PJM) and Virginia Electric and Power Company (Dominion) (collectively, the Filing Parties) submitted a compliance filing, in Docket No. ER04-829-004, in response to an order issued by the Commission on October 5, 2004.<sup>1</sup> In addition, on April 4, 2005, Dominion submitted a second compliance filing, in Docket No. ER04-829-005, in response to our order issued in this proceeding on March 4, 2005.<sup>2</sup> For the reasons discussed below, we will accept the compliance filings. This order benefits customers by resolving pending issues relating to Dominion's integration into PJM.

**Background**

2. On May 11, 2004, PJM and Dominion submitted for filing an expansion proposal known as PJM South. Part of the proposal, which was sponsored solely by Dominion, dealt with proposal to allocate filing rights under section 205 of the Federal Power Act (FPA).<sup>3</sup> In the October 5 Order, we accepted the Filing Parties' proposal to establish PJM South, subject to conditions. Among other things, we required the Filing Parties to revise section 11.3.2(d) of the PJM Operating Agreement to clarify the scope of the PJM

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<sup>1</sup> See *P.J.M. Interconnection, L.L.C. and Virginia Electric and Power Company*, 109 FERC 61,012 (2004) (October 5 Order).

<sup>2</sup> See *P.J.M. Interconnection, L.L.C. and Virginia Electric and Power Company*, 110 FERC 61,234 (2005) (March 4 Order).

<sup>3</sup> 16 U.S.C. § 824d (2000).

member obligations with respect to compliance with applicable regional reliability councils. In addition, we rejected the Filing Parties' proposed allocation of their section 205 filing rights, specifically, the Filing Parties' proposal to vest, in Dominion, unilateral filing rights authority over rate design matters. Instead, we required the Filing Parties to revise the PJM South Transmission Owner's Agreement to incorporate the joint section 205 filing rights authority applicable to PJM East Transmission Owners and PJM West Transmission Owners in their respective Transmission Owners Agreements.

3. On reconsideration, in the March 4 Order, we granted rehearing with respect to our initial filing rights determinations. First, we noted that Dominion's proposed reservation of filing rights was a conditional reservation. We noted, for example, that under the proposed language set forth in the PJM South Transmission Owner's Agreement, Dominion would not be permitted to "unilaterally file rates that do not preserve the revenues or payments due to other PJM Transmission Owners and [would not be permitted to] implement rates that result in a customer paying PJM more than one transmission access charge."

4. In addition, we noted that under Dominion's proposed filing rights allocation, any section 205 filings made by Dominion would be limited to rates for its own facilities and thus could not affect either the revenues or payments to the other PJM transmission owners, or the rate design applicable to these public utilities. On rehearing, we found that these proposed provisions were generally acceptable. However, we directed Dominion to make a compliance filing making clear that it does not have a unilateral right to file for transmission or ancillary service rate design changes that would affect the overall PJM rate design without receiving the consent of the PJM transmission owners to whom this rate design would apply.

### **Compliance with the October 5 Order**

5. The Filing Parties, in their compliance filing submitted in Docket No. ER04-829-004, state that they have revised the PJM South Transmission Owner's Agreement to comply with the filing rights determinations made by the Commission in the October 5 Order, subject to Dominion's rehearing request concerning these issues (which, as noted above, was granted by the Commission in the March 4 Order).<sup>4</sup> In

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<sup>4</sup> As such (and as discussed below), Dominion's subsequent compliance filing in response to the March 4 Order supersedes, in part, the Filing Parties' compliance filing, in Docket No. ER04-829-004, as it relates to section 205 filing rights matters.

addition, the Filing Parties state that they have revised section 11.3.2(d) of the PJM Operating Agreement to clarify the scope of PJM member obligations with respect to compliance with applicable regional reliability councils.

### **Compliance with the March 4 Order**

6. Dominion, in its compliance filing submitted in Docket No. ER04-829-005, states that it has revised section 2.2.1 of the PJM South Transmission Owner's Agreement (addressing retained rights) to incorporate the clarifying language required by the March 4 Order.<sup>5</sup>

7. In addition, Dominion states that other, limited revisions have been made to the PJM South Transmission Owner's Agreement consistent with the Commission's grant of rehearing (as summarized above). Dominion notes that the March 4 Order granted rehearing of the October 5 Order's requirement that Dominion adopt the same joint section 205 filing rights as applicable in the PJM East and PJM West Transmission Owners Agreements. Nonetheless, Dominion states that it is proposing to retain much of the rate design allocation language, as proposed in their earlier compliance filing. Dominion explains that because it retains unilateral filing rights only in situations where

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<sup>5</sup> As revised, section 2.2.1 would provide, in relevant part, as follows (the proposed language shown in italics):

[Dominion] shall have the right at any time unilaterally to file pursuant to section 205 . . . to change rates and charges for transmission and ancillary services . . . for delivery to the [Dominion] zone, schedules for new services solely involving the transmission facilities of [Dominion], and the revenue requirement for [Dominion] for use in developing rates for other transmission services provided by PJM; provided that if the PJM rate design is modified to eliminate zonal rates, [Dominion] shall not be deemed to have waived any of its rights under section 205 with respect to any such modified rate design. [Dominion], however, shall not unilaterally file rates that do not preserve the revenues or payments due to other PJM Transmission Owners, and shall not implement rates that result in a customer paying PJM more than one transmission access charge. *Dominion shall not have a unilateral right to file pursuant to section 205 . . . for transmission or ancillary service rate design changes that would affect the overall PJM rate design unless it shall have obtained the consent of PJM Transmission Owners to whom the altered rate design would apply.*

the transmission or ancillary services rate design changes at issue do not affect the overall PJM rate design, there remains a need for consistent joint filing procedures in other situations where multiple PJM Transmission Owners are affected.

8. Dominion states that, accordingly, section 5.1 (addressing rate design changes) has been amended to incorporate specific references to the section 2.2.1 unilateral filing rights retained by Dominion which are not to be limited or changed by section 5.1.<sup>6</sup> In addition, Dominion states that section 5.1.1 has been amended to clarify that “[t]he procedures and filing rights set forth in . . . section 5.1.1 apply only to changes in the transmission rate design under the PJM Tariff for joint rates or . . . changes affecting the overall PJM rate design.” Finally, Dominion states that section 5.1.1(c) has been revised to make clear that nothing in the joint filing procedures and allocations of section 5.1.1 limits or changes Dominion’s unilateral rights, as established in section 2.2.1.<sup>7</sup>

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<sup>6</sup> As revised, section 5.1 would provide, in relevant part, as follows (the proposed language shown in italics):

Effective December 1, 2004, the PJM transmission rates shall be calculated in accordance with the Going-Forward Principles and Procedures accepted by FERC on March 19, 2004 in *Midwest Independent Transmission System Operator, Inc. et al.*, 106 FERC ¶ 61,260 (2004) applicable to the long term transmission pricing structure; *provided, however, that nothing in this Article 5 is intended (a) to limit or change the right of [Dominion] under section 2.2.1 of this Agreement to file pursuant to section 205 . . . to change rates and charges for transmission and ancillary services . . . for delivery to the [Dominion] zone, schedules for new services solely involving the transmission facilities of [Dominion] and the revenue requirement for [Dominion] for use in developing rates for other transmission services provided by PJM; or (b) to authorize the PJM Transmission Owners to file pursuant to section 205 . . . to change the overall PJM rate design or otherwise to change the rates and charges for transmission . . . for delivery to the [Dominion] zone . . . without the express consent of [Dominion].*

<sup>7</sup> The proposed language set forth at section 5.1.1(c) is identical to the language proposed at section 5.1.

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

9. Notice of the compliance filings was published in the *Federal Register*, with interventions and protests due on or before November 26, 2004, in Docket No. ER04-829-004, and April 25, 2005, in Docket No. ER04-829-005. No responsive pleadings were filed in Docket No. ER04-829-004. In Docket No. ER04-829-005, a protest was filed by the PJM and PJM West Transmission Owners Agreement Administrative Committees (Transmission Owners).

10. The Transmission Owners, in their protest, assert that the proposed filing rights revisions go beyond the requirements of the March 4 Order and violate the PJM Tariff. Specifically, the Transmission Owners object to the following proposed language, as proposed at section 5.1 of the PJM South Transmission Owner's Agreement:

Nothing in this Article 5 is intended . . . to authorize the PJM Transmission Owners to file pursuant to section 205 . . . to change the overall PJM rate design or otherwise to change the rates and charges for transmission . . . for delivery to the [Dominion] zone . . . without the express consent of [Dominion].

The Transmission Owners assert that this language would have the effect of limiting the rights of the PJM Transmission Owners with respect to joint rates and rate design under the PJM Tariff. The Transmission Owners argue that while Dominion may properly seek to retain its own filing rights, it may not seek to limit the rights of other PJM Transmission Owners, which are governed under section 6.5.1 of the PJM Transmission Owners Agreement,<sup>8</sup> including the rights of PJM's Transmission Owners to propose a

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<sup>8</sup> Section 6.5.1 of the PJM East Transmission Owners Agreement (and the corollary provision set forth in the PJM West Transmission Owners Agreement provides as follows:

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

PJM-wide rate design change or joint rate applicable to all PJM zones, including the Dominion Zone once it is integrated into PJM. The Transmission Owners further assert that under section 9.4 of the PJM Tariff, the Commission cannot change the allocation of filing rights set forth in the PJM Tariff unless the Commission finds that such a change is required under the *Mobile-Sierra* public interest standard.<sup>9</sup>

11. The Transmission Owners further argue that, if literally applied, Dominion's proposed changes could be interpreted to exempt Dominion from the application of at least one provision of the PJM Tariff, namely Schedule 12, which governs the establishment of rates for new transmission construction (including the methodology applicable to the recovery of the cost of new transmission facilities). The Transmission Owners assert that the methodology established under Schedule 12 is not dependent on the location of the transmission facilities at issue and is intended to establish a consistent means to determine the rates for recovery of the cost of new transmission construction throughout PJM. The Transmission Owners conclude that Schedule 12, including any jointly proposed revisions to Schedule 12 proposed by the Transmission Owners, should apply to the Dominion Zone without the veto allowance proposed now by Dominion.

12. Finally, the Transmission Owners assert that Dominion's filing rights would be fully protected if it signed either the PJM East or PJM West Transmission Owners' Agreements and abandoned a separate PJM South Transmission Owner's Agreement.

### **Discussion**

13. We will accept the compliance filings submitted by the Filing Parties in Docket No. ER04-829-004. In addition, we accept the compliance filing submitted by Dominion in Docket No. ER04-829-005 and deny the Transmission Owners' protest. In doing so,

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<sup>9</sup> Section 9.4 of the PJM Tariff states as follows:

Sections 9.1 through 9.4 of this Tariff [addressing regulatory filing rights] shall be subject to change solely by written amendment executed by PJM and the Transmission Owners, with the Transmission Owners acting by vote in accordance with section 6.5.1 of the both the [PJM East] Transmission Owners Agreement and the [PJM] West Transmission Owners Agreement. It is the intent of this section 9.4 that the FERC's right to change sections 9.1 through 9.4 shall be limited to the maximum extent permissible by law and that any such change shall be in accordance with the *Mobile-Sierra* public interest standard applicable to fixed rate agreements.

we find that the accepted tariff sheets, as reflected in the appendix to this order, are consistent with the requirements of the October 5 Order and the March 4 Order, including the grant of rehearing with respect to the Filing Parties' section 205 filing rights allocations.

14. First, the Transmission Owners' protest goes beyond the scope of the compliance. The only issue in a compliance proceeding is whether the filing complies with the underlying order. In the March 4 Order, the Commission made clear that one group of "transmission owners, pursuant to their agreement, cannot affect the rates or terms and conditions of [other transmission owners] without their consent."<sup>10</sup> The filing by Dominion is in compliance with the March 4 Order.<sup>11</sup>

15. In addition, we reject the protest on its merits. Contrary to the argument of the Transmission Owners, we do not find that the proposed compliance filing revisions violate the terms of the PJM Tariff. The Transmission Owners cite to no provision in the PJM tariff that contradicts or is otherwise inconsistent with the filing rights allocations set forth in the PJM South Transmission Owner's Agreement, as accepted here. Section 9.1 of the PJM Tariff states that "[t]he Transmission Owners may only file under section 205 to change the transmission rate design for the PJM region pursuant to a filing approved in accordance with section 6.5.1 of the [PJM East] Transmission Owners Agreement and section 6.5.1 of the [PJM] West Transmission Owners Agreement." This requirement is binding on the PJM East and PJM West Transmission Owners, who are parties to these agreements. However, Dominion is not a party to these agreements. As such, section 9.1, while it addresses the rights and obligations of the PJM East and PJM West Transmission Owners, does not address the rights and obligations of Dominion. And Dominion has not agreed to allow the other transmission owners to file under section 205 to change its rates.

16. In addition, neither the PJM Tariff, including Schedule 12, nor section 6.5.1 of the PJM East Transmission Owners Agreement or the PJM West Transmission Owners Agreement, authorize the Transmission Owners to make joint section 205 rate filings

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<sup>10</sup> March 4 Order, 110 FERC ¶ 61,234 at P 14. *See also Id.* at P 22 ("[The FPA does not] permit one utility to use section 205 to change the rate of another utility. Under the FPA, attempts by one utility to change the rate of another utility must be made pursuant to section 206, together with a showing that the existing rate of the other utility is unjust or unreasonable.").

<sup>11</sup> The protesters failed to file for rehearing of this aspect of the order.

concerning Dominion's rates.<sup>12</sup> As such, section 5.1 of the PJM South Transmission Owner's Agreement appropriately states that nothing in that provision authorizes the Transmission Owners to make any such filings that would change the rates or charges for transmission relative to PJM South.<sup>13</sup>

17. Indeed, the argument by the Transmission Owners is directly at odds with the arguments made by the PJM East Transmission Owners in the proceeding addressing the PJM West's integration into PJM. In that proceeding, the PJM East Transmission Owners contended: "the West Transmission Owners, acting on their own pursuant to 6.5.1 of the West TOA, may not propose pursuant to section 205, any change to the transmission rates, transmission cost recovery, or transmission rate design under the PJM Tariff which would affect the PJM Transmission Owners."<sup>14</sup> In the order on that filing, the Commission agreed with the PJM East Transmission Owners:

The comments filed by PJM East Transmission Owners Agreement-Administrative Committee acknowledge that one group of transmission owners cannot make unilateral filings that would affect the rate design of the other transmission owners without their agreement. The PJM East Transmission Owners explicitly disclaim any right to file unilaterally to change the rate design of the PJM West Transmission Owners. The PJM East Transmission Owners, therefore, recognize that in order for either group of transmission owners to change a rate design affecting the other group that both groups will need to approve of such a change.<sup>[15]</sup>

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<sup>12</sup> Similarly, Dominion is prohibited under section 2.2.1 of the PJM South Transmission Owner's Agreement from making a rate filing concerning the transmission facilities owned by either the PJM East or PJM West Transmission Owners.

<sup>13</sup> This ruling applies only to those filings made after Dominion's integration into PJM. Any valid section 205 filings by the PJM Transmission Owners to change joint rates and rate design made prior to Dominion's integration will still be considered under section 205, since at that time, all transmission owners had agreed to such a filing.

<sup>14</sup> Comments of The PJM Transmission Owners Agreement-Administrative Committee, Docket No. ER04-1074-000 at 3 (filed, Aug. 20, 2004).

<sup>15</sup> *PJM Interconnection, LLC*, 108 FERC ¶61,318, at 69 (2004).

Likewise, in this case the PJM East and PJM West Transmission Owners cannot file under section 205 to change joint rates affecting Dominion, without receiving Dominion's agreement.

18. As the Commission explained in the March 4 Order, under *Atlantic City Electric Co., v. FERC*,<sup>16</sup> each transmission owner that joins PJM retains its own section 205 filing rights unless it “choose[s] to voluntarily give up, by contract, some of [its] filing freedom under section 205.”<sup>17</sup> Under the FPA, one utility can file under section 205 only to change its own rates; it cannot file under section 205 to change the rates of another utility. Thus, absent Dominion's agreement, the other Transmission Owners of PJM cannot file under section 205 to change joint rates affecting Dominion without obtaining Dominion's agreement.

19. As the Commission has made clear in prior orders, our ruling here is circumscribed by the Court's decision in *Atlantic City* that the Commission does not have authority to take away or enhance utilities' filing rights under the FPA. We have repeatedly urged the PJM transmission owners to develop, through agreement, a better method of dealing with section 205 filings that would eliminate the dysfunction of the current agreements.<sup>18</sup>

20. We also find that, in contrast to the contention made by the Transmission Owners, Dominion's proposed changes in Article 5.1 will not exempt Dominion from existing tariff provisions, such as Schedule 12, governing reimbursement for transmission enhancement charges. Article 5.1 states that “nothing in this Article 5 is intended ... to authorize the PJM Transmission Owners to file pursuant to section 5 ....” Thus, this provision governs only the making of section 205 filings by the other Transmission

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<sup>16</sup> 295 F.3d 1 (2002) (*Atlantic City*).

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *PJM Interconnection, LLC*, 109 FERC ¶ 61,012, at 63 (2004) (the proliferation of these agreements (now and in the future) could result in confusion and/or an inefficient use of resources on the part of both the market participants and the Commission, as the interplay between these agreements may become an issue in a given case); *PJM Interconnection, LLC*, 108 FERC ¶ 61,318 at 69 (2004) (“We also agree with the PJM West Transmission Owners that this process in the long run will run more efficiently if the parties negotiate a single Transmission Owner Agreement, and we strongly encourage the parties to continue on their negotiations toward this end”).

Owners, it does not change the effectiveness of current PJM tariff provisions or their applicability to Dominion. Thus, this section does not operate to exempt Dominion from rate provisions of the PJM tariff that exist at its integration.

The Commission orders:

The Filing Parties compliance filings are hereby accepted for filing, as discussed in the body of this order, to be made effective on the dates specified in the Appendix to this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

**Appendix**

***Docket No. ER04-829-004***

*Sheets Accepted for Filing, Effective May 1, 2005:*

PJM South Transmission Owner Agreement -- Rate Schedule FERC No. 39  
First Revised Sheet No. 2  
Original Sheet No. 2A  
First Revised Sheet No. 4  
Original Sheet No. 12B  
Original Sheet No. 12C  
Original Sheet No. 12D  
Original Sheet No. 12E  
First Revised Sheet No. 14  
First Revised Sheet No. 17  
First Revised Sheet No. 18

PJM Operating Agreement -- Third Revised Rate Schedule FERC No. 24  
Fifth Revised Sheet No. 44

*Sheets Rejected as Moot:*

PJM South Transmission Owner Agreement -- Rate Schedule FERC No. 39  
First Revised Sheet No. 12  
Original Sheet No. 12A

***Docket No. ER04-829-005***

*Sheets Accepted for Filing, Effective May 1, 2005*

PJM South Transmission Owner Agreement -- Rate Schedule FERC No. 39  
First Revised Sheet No. 5                      Original Sheet No. 5A  
Second Revised Sheet No. 12                Original Sheet No. 12.01  
First Revised Sheet No. 12A                Original Sheet No. 12A.01