

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Virginia Electric and Power Company

Docket Nos. ER03-743-001
ER03-743-002

ORDER ON COMPLIANCE FILING AND REHEARING

(Issued September 10, 2003)

1. On June 10, 2003, the Commission accepted for filing, as modified, a Revised Generator Interconnection and Operating Agreement (Revised IA) between Virginia Electric and Power Company (Dominion Virginia Power), doing business as Dominion Virginia Power, and Competitive Power Ventures Cunningham Creek, LLC (CPV).¹ In this order, we direct modification to and accept Dominion Virginia Power's compliance filing. We also address Tenaska Virginia II Partners, L.P.'s (Tenaska) request for rehearing. This order benefits customers because it will ensure that reliable energy service will continue to be provided at just and reasonable rates and provides guidance on a queue management issue.

¹Virginia Electric and Power Company, 103 FERC ¶ 61,318 (2003) (June 10 Order). The Commission had previously approved an unexecuted IA between Dominion Virginia Power and CPV, Virginia Electric and Power Company, 97 FERC ¶ 61,262, 61,142 (2001) (Original IA), and later the Commission approved an executed version of the IA (Executed IA) in an unpublished letter order, in Docket Nos. ER02-2585-000 and ER02-2485-001. Under the Revised IA, CPV will own and operate a 550 MW generating facility in Fluvanna County, Virginia (the Facility) that will interconnect with the transmission system owned by Dominion Virginia Power.

Background

2. The Revised IA proposed, among other things, extensions to CPV's milestone dates.² Dominion Virginia Power stated that the revisions to the milestone dates were being made at the request of CPV. Dominion Virginia Power also requested an April 15, 2003 effective date.

3. Tenaska Virginia II Partners, L.P. (Tenaska)³ protested Dominion Virginia Power's April 14 filing, stating that this additional extension in time would harm Tenaska's own power project, which is next in line in Dominion Virginia Power's interconnection queue.⁴ To remedy this problem, Tenaska asked that the Commission direct Dominion Virginia Power to permit Tenaska's interconnection request to "leap frog" CPV's interconnection request in the interconnection queue so that Dominion Virginia Power studies the Tenaska project as if the CPV project were not going forward.⁵

4. The June 10 Order accepted the Revised IA for filing, as modified, and denied Tenaska's request to step in front of CPV in the interconnection queue because it appeared that CPV's interconnection would be completed well in advance of Tenaska's

²Dominion Virginia Power proposed to extend the following milestone dates for CPV, from its previously filed and approved Executed IA: (1) Permitting Completion - from September 2002 to October 2002; (2) Initial Design Completion - from March 2003 to May 2003; (3) Equipment Purchases - from March 2003 to April 2004; (4) Construction Start Date - from March 2003 to April 2004; (5) Energization Date - from June 2004 to June 2005; (6) Construction Completion Date - from December 2004 to December 2005; and (7) Commercial Operation Date - from May 2005 to May 2006.

³Tenaska is developing an electric generation facility in Buckingham County, Virginia. The facility will interconnect with Dominion Virginia Power's electric transmission system.

⁴Dominion Virginia Power evaluates interconnection requests on a first-come, first-served basis, and includes all pending higher and lower-queued interconnection requests in a Generation Interconnection Evaluation Study.

⁵In its protest, Tenaska explained that because CPV is ahead of Tenaska in the interconnection queue and is studied ahead of Tenaska, Dominion Virginia Power has prepared a system impact study for Tenaska's interconnection request that assumes that CPV has been constructed.

project, even with the extended milestones.⁶ The Commission also denied Tenaska's request that we require CPV to provide a written commitment to accept responsibility for any incremental Network Upgrade facilities that result from lower-queued projects executing IAs before CPV's proposed Construction Start Date. Thus, we found that CPV's delay should not harm Tenaska.⁷ The Commission also ordered Dominion Virginia Power to fix a typographical error in the definition of "Direct Assignment Facilities" in Section 1.6 of the Revised IA.

5. On July, 9, 2003, Dominion Virginia Power filed to comply with the Commission's June 10 Order. Notice of Dominion Virginia Power's compliance filing was published in the Federal Register, 68 Fed. Reg. 19,805 (2003), with comments, protests or interventions due on or before May 5, 2003. None was filed.

6. On July 10, 2003, Tenaska filed a request for rehearing of the Commission's June 10 Order. Its arguments are discussed below. On July 25, 2003, CPV filed an answer to Tenaska's rehearing request.

Discussion

7. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure,⁸ answers to requests for rehearing are not permitted, and accordingly, we will reject CPV's answer.

A. Dominion Virginia Power's Compliance Filing

8. The June 10 Order directed Dominion Virginia Power to correct a typographical error in the definition section of the Revised IA.⁹

9. In compliance with the June 10 Order, Dominion Virginia Power revised Section 1.6. However, Dominion Virginia Power failed to file the revision consistent with Order

⁶Tenaska's in-service dates are June 2006 for projects GI-99 and GI-139 and June 2007 for GI-140, which are later than CPV's proposed Construction Completion Date of December 2005.

⁷June 10 Order at P 12.

⁸18 C.F.R. § 385.713(d) (2003).

⁹ June 10 Order at P 14.

No. 614.¹⁰ When filing a service agreement, Order No. 614 permits a company to file a cover sheet containing all of the required information, instead of paginating each page. Once the service agreement is paginated on the cover sheet only, when it is revised, it must be refiled in its entirety. Thus, because Dominion Virginia Power filed only the revised sheet and not the entire service agreement, it is directed to refile the entire service agreement, consistent with Order No. 614.

B. Tenaska's Request for Rehearing

10. Tenaska states that the Commission should not have allowed the milestone extensions because neither Dominion Virginia Power nor CPV provided any justification for the extensions. Tenaska reiterates its concern that CPV is “squatting” in the queue with a project that may never be built, which forces lower-queued generators to build Network Upgrades that would not have been necessary absent the higher-queued generator squatting in the queue in the first place.

11. Tenaska argues that this is the third amendment to the IA's milestones and will now result in a three-year delay. Tenaska asserts that CPV admits that it (i) does not have the necessary financing in place; (ii) has not broken ground on any construction activity; and (iii) does not yet have a customer for the project's power production.¹¹ Tenaska argues that the only evidence CPV has provided of its commitment to the project is that it has acquired the necessary state permits and has delivered a \$54,000 check to the Board of Supervisors of Fluvanna County, Virginia.¹² Thus, Tenaska states that the Commission's reliance on CPV's promises of delivering a viable power project on a reasonable schedule calls into question the validity of its June 10 Order.

12. Tenaska further states that the Commission based its ruling only on the fact that because the expected completion date for Tenaska's own generating project was later than CPV's, Tenaska would not be harmed by CPV's squatting in the queue. Tenaska asserts that the real issue is when the CPV project is likely to be completed; if it will not be completed within a reasonable period of time (and CPV has not provided any evidence

¹⁰ Designation of Electric Rate Schedule Sheets, Order No. 614, 65 Fed. Reg. 18,221, FERC Stats. & Regs. ¶ 31,096 (2000).

¹¹ Tenaska Rehearing Request at 5.

¹² *Id.*, citing CPV's May 20, 2003 answer to Tenaska's May 5, 2003 (May 20 Answer).

suggesting otherwise), then it will cause Tenaska to incur unnecessary interconnection costs, regardless of when Tenaska's project is built. Tenaska states that if CPV's project is ultimately constructed, the resultant costs assigned to Tenaska, as set forth in its interconnection studies provided by Dominion Virginia Power, would likely be accurate, but if CPV's project continues to be delayed, the costs assigned to Tenaska would be artificially high. Tenaska provides the following example:

Assume that there are one hundred units of interconnection capability available, and two generators in the interconnection queue, Generators A and B. Both generators require 75 units of interconnection capability. Because Generator A is higher in the queue, it gets the first call on the available interconnection capability and uses 75 of the 100 units. This leaves 25 units available for Generator B. Because Generator B requires 75 units, Generator B must build the extra 50 units of capability. Now assume that Generator A drops out of the queue. If Generator A does so early enough in the process, then Generator B would have the first opportunity to use the 100 units of interconnection capability, and it does not need to build any network upgrades. If Generator A drops out of the queue late in the process, then Generator B would have unnecessarily built the extra 50 units. This increases the costs of interconnection for all market participants and sends improper market and pricing signals. In this proceeding, CPV is Generator A and Tenaska Virginia is Generator B. Tenaska Virginia remains concerned that CPV will not build its facility, but will continue to delay its decision so long that Tenaska Virginia will wind up building costly and unnecessary network upgrades that it would not otherwise have had to build. The fact that CPV is contractually bound to complete CPV's network upgrades does not mitigate the risk to Tenaska Virginia.¹³

13. Tenaska states that it is not opposed to allowing justifiable modifications to IA's milestones, nor is it advocating strict enforcement of all milestones. Instead, Tenaska asks that there be some reasonable time frame in which a generator must complete (or at least begin constructing) a project, and that there must be an explanation for repeatedly modifying IA milestones.¹⁴

¹³ Tenaska Rehearing Request at 3-4.

¹⁴ Id. at 6.

14. Tenaska asserts that if the Commission agrees with Tenaska that a project cannot simply “squat” in the interconnection queue and that CPV has not sufficiently justified its repeated delays, the Commission should swap CPV’s and Tenaska’s positions in the queue. Tenaska argues that this form of relief is far less drastic than requesting that the Commission order CPV to abide strictly by the IA’s former milestones or have its IA terminated for failure to meet those milestones. However, Tenaska states that if the Commission does not order this relief, the Commission should require CPV to abide by the milestones in its original IA and to withdraw from the Dominion Virginia Power interconnection queue if it cannot meet those milestones.

B. Commission Response

15. We deny Tenaska’s request for rehearing on this issue. CPV’s extensions of its milestones do not negate the fact that CPV has made substantial investments in its project; this is evidence that CPV is serious about the project. The Commission encourages transmission providers to be flexible in allowing generators to extend their milestones.¹⁵ Generally, the Commission allows extensions if the generator commits to funding the necessary system upgrades.¹⁶ Extensions allow flexibility to meet the needs of all generators, who must deal with the changing nature of business realities.

16. Tenaska has not shown that CPV is “squatting” on the interconnection queue, since CPV has made a substantial contribution and commitment to its generating project. In its rehearing request, Tenaska relies on CPV’s May 20, 2003 answer to Tenaska’s protest, arguing that “the only evidence CPV has provided to this record for its commitment to the project is that it has acquired the necessary state permitting and has delivered a \$54,000 check to the Fluvanna County, Virginia Board of Supervisors.”¹⁷ However, Tenaska fails to point out that CPV also stated in its answer that it has spent

¹⁵ See e.g., Florida Power & Light Co., 98 FERC ¶ 61,226 at 61,896, order on reh’g, 99 FERC ¶ 61,318 (2002) (FP&L).

¹⁶ In FP&L, the Commission found that it was reasonable to allow an extension of the generator’s milestones, since the generator committed to funding the necessary system upgrades and maintaining a construction schedule that would “not impact adversely lower-queued generators.” Id. at 61,896.

¹⁷ Tenaska Rehearing Request at 5, citing CPV’s May 30 Answer at 3. The Commission rejected CPV’s May 30 Answer in the June 10 Order; however, Tenaska relies on the answer in its request for rehearing.

over \$10 million to develop its project.¹⁸ Another example of CPV's substantial commitments to this project is that CPV is responsible for the costs of any Network Upgrades, described in Appendix C, that are necessary for the provision of Interconnection Service to a Subsequent Generator if the IA is terminated.¹⁹

17. Accordingly, because CPV's extended milestones appear to be reasonable, we will deny Tenaska's request for rehearing to step in front of CPV in the queue. However, while we are in favor of allowing interconnection customers flexibility with respect to interconnection milestones, we also find it important to ensure that interconnection queues do not become clogged with speculative projects. Therefore, we will require CPV to file in this docket annual reports documenting CPV's progress in meeting its milestones, *i.e.*, obtaining financing, breaking ground, and securing customers.

18. We note that this case raises issues about what to do when the existing transmission system's capability to support interconnections without upgrades is sufficient to accommodate only the generator or generators that hold the highest positions in the interconnection queue. In this situation, lower queued generators must fund additional, and perhaps substantial, network upgrades in order to complete their interconnections, while those in the front of the queue are able to use that existing capability to interconnect with less need for upgrades. Tenaska claims that, because CPV's interconnection would use existing interconnection capability that could otherwise be used for Tenaska's interconnection, there is a possibility that Tenaska will end up funding network upgrades that would not be needed if CPV does not build its facility.

19. The Commission agrees that this is a valid concern, and to help avert such an outcome, directs Dominion Virginia Power to use the following procedure. If, as Tenaska states, existing transmission capability has been "set aside" for CPV²⁰ and the next generator in the queue is ready to interconnect before CPV, Dominion Virginia Power must give that next generator the option of interconnecting using (to the extent it can) the transmission capability that had been set aside for CPV's interconnection. For example, if Tenaska is next in the queue, executes its IA (or asks that an unexecuted IA be filed), and is proceeding with its project on a timeline that places its in-service date ahead of CPV, then Dominion Virginia Power must give Tenaska the option to complete

¹⁸ CPV's May 30 Answer at 2.

¹⁹ Section 2.2.3.3 of the IA.

²⁰ Tenaska's May 5 Protest at 4, 9.

its interconnection using the excess transmission capacity that had been set aside for CPV's interconnection, if that capability can support Tenaska's interconnection. Then, if and when CPV completes its project and interconnection, Tenaska will have to fund the network upgrades needed for CPV's interconnection to the extent that the need for the upgrades is due to Tenaska's use of the excess transmission capability and Tenaska's decision to have its interconnection completed ahead of CPV.²¹ This ensures that, if CPV withdraws from the queue, Tenaska will not be in the position of having funded network upgrades that turn out not to be needed. However, it also ensures that, if CPV's project is constructed as planned, CPV will not be required to fund costs in excess of the costs applicable to its original queue position.

The Commission orders:

(A) Dominion Virginia Power is hereby directed to file a compliance filing within 30 days of this order reflecting the modification to the IA discussed in the body of this order.

(B) Tenaska's request for rehearing is hereby denied.

(C) CPV is hereby directed to file in this docket, as discussed above, annual reports documenting CPV's progress in meeting its milestones.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²¹ Tenaska would also be responsible for any additional study costs.