

108 FERC ¶ 61, 108
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Virginia Electric and Power Company

Docket No. ER04-898-000

ORDER ACCEPTING AND SUSPENDING RATES AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 30, 2004)

1. Virginia Electric and Power Company, doing business as Dominion Virginia Power (Dominion), filed a proposal to modify, among other things, its methodology for recovery of its revenue requirement for reactive power service under Schedule 2 of its Open Access Transmission Tariff (OATT) and to increase its reactive power revenue requirement. In this order, we accept and suspend the proposed rates, subject to refund, and institute hearing and settlement judge procedures. This action benefits customers because it provides an opportunity for the parties to develop a more complete factual record upon which the Commission may evaluate the justness and reasonableness of the proposed rates.

I. Background

2. Dominion's current reactive power rate, pursuant to Schedule 2 of its OATT, is a product of a settlement agreement (the 1997 Settlement Agreement)¹ and is billed at a per unit rate of \$0.11/kW month.

¹ On June 11, 1997, the Commission accepted the 1997 Settlement Agreement. See Virginia Electric and Power Company, *et al.*, Docket No. OA96-52-000 (June 11, 1997).

3. On May 28, 2004, the Commission accepted for filing a proposed rate schedule of Tenaska Virginia Partners, L.P. (Tenaska), which allows Tenaska to collect its revenue requirements for reactive power service provided to Dominion from Tenaska's Fluvanna Plant.² The Commission made Tenaska's proposed rate schedule effective May 1, 2004.

II. Filing

4. On June 1, 2004, Dominion filed revised tariff sheets modifying the rate methodology for reactive power under Schedule 2 of its OATT. Dominion explains that it is modifying its reactive power service revenue requirement by replacing the fixed unit charges, as established under the 1997 Settlement Agreement, with a formula rate that would permit it to collect and pass-through charges to its customers for reactive power service that may be supplied by various generators, including Tenaska, in Dominion's control area. Dominion states that this formula rate design would distribute the total reactive power revenue requirement for Dominion's control area among customers based on their respective shares (the Allocation Factor) of the Adjusted Monthly Transmission System Load. For network customers, Dominion explains that the Allocation Factor would be determined by their load (minus credits for self-supply of reactive power)³ divided by the Adjusted Monthly Transmission System Load. Dominion further explains that with regard to point-to-point customers, the Allocation Factor would be determined by their reserved capacity (minus credits for self-supply of reactive power) divided by the Adjusted Monthly Transmission System Load.

5. In addition, Dominion proposes, in order to calculate reactive power costs, to aggregate Commission-accepted revenue requirements for all generation owners, including itself, that provide reactive power to its service area. According to Dominion, this proposed change is to accommodate the Commission's acceptance, in *Tenaska*, of Tenaska's reactive power revenue requirement charges to Dominion for reactive power service. Dominion also proposes to include Commission-accepted lost opportunity costs related to reactive supply when they are billed to it. Dominion further proposes that its revised OATT sheets for reactive power supply also incorporate a chart that would be revised occasionally to include the revenue requirements of a generators' reactive power service and/or a generator's lost opportunity costs when they are approved by the Commission.

² See *Tenaska Virginia Partners*, 107 FERC ¶ 61,207 (2004) (*Tenaska*).

³ Dominion states that any load or reserved capacity for which a customer receives a credit for self-supply of reactive capability is excluded from the adjusted monthly system load in order to maintain consistency between the rate design and cost allocation.

6. Dominion states that its annual aggregate revenue requirement would be the sum of its annual revenue requirement, which is \$22,222,702 (as approved in the 1997 Settlement Agreement),⁴ plus Tenaska's annual reactive power revenue requirement, which is \$1,179,258.39 (as approved in *Tenaska*), and any lost opportunity costs that may be billed to Dominion.

7. Dominion requests that the Commission allow the revised sheets, amending Dominion's Schedule 2 reactive power rate to become effective on May 1, 2004, which is the day that the Commission made Tenaska's reactive power service revenue requirement charge to Dominion effective.⁵ If the Commission does not grant the May 1, 2004 effective date, Dominion requests a June 2, 2004 effective date.

II. Notice, Interventions, Protests, and Answer

8. Notice of Dominion's filing was published in the *Federal Register*, 69 Fed. Reg. 34,345 (2004), with comments, protests, and interventions due on or before June 22, 2004. ODEC Electric Cooperative (ODEC) and North Carolina Electric Membership Corporation (NCEMC) filed timely, unopposed motions to intervene and protest. Southeastern Power Administration filed a timely notice of intervention. On June 25, 2004, Coral Power, L.L.C. (Coral) filed an untimely motion to intervene and protest. In addition, on July 8, 2004, Dominion filed an answer to the protests.

9. ODEC, NCEMC, and Coral oppose the change from the per unit rate for reactive power service to a formula rate, because customers cannot predict the resulting impacts from the less transparent formula rate. In particular, ODEC states that Dominion is proposing to recover revenue requirements from generators that might provide reactive power service without determining the reasonableness of such charges. In addition, NCEMC asserts that Dominion has not demonstrated its need for reactive power on its transmission system has increased commensurate with the increase in revenue requirement it intends to pass on to its customers.

10. According to ODEC, Dominion's filing allows it to recover costs for reactive power service from its customers without any regard for whether Dominion actually receives reactive service from generators. ODEC asserts that such an automatic pass-through of costs without taking into consideration the level of reactive power actually

⁴ This would replace Virginia Power's current rate of \$.11/kW month.

⁵ *Id.* at P 27.

received by Dominion from a generator is unjust and unreasonable, as it does not match cost causation with cost responsibility. Furthermore, ODEC notes that Dominion currently receives sufficient reactive power to maintain reliability within its control area.

11. Coral states that a party may not selectively choose part of an old settlement, such as the 1997 Settlement Agreement, and fundamentally alter the rate design in that agreement, without making a section 205 filing. NCMEC maintains that Dominion is attempting to raise one component of its cost of service (*i.e.*, the portion attributable to Tenaska) without allowing the Commission to examine the other components of its cost of service (*i.e.*, the portion attributable to Virginia Power). NCEMC asserts that the Commission does not generally allow such single issue ratemaking; instead, in evaluating cost-based rates, the Commission analyzes all of a utility's costs.

12. NCMEC also states that Dominion's representation that the \$22.2 million revenue requirement covers only the costs of its own generation appears to be incorrect, because it actually consists of two parts: \$16,443,329 of "Var related Cost for [Dominion's] Plants" and \$5,789,373 of "Var related Cost for [non-utility generators (NUGs)]." In this regard, NCMEC maintains that Dominion has failed to explain the relationship between the nearly \$5.8 million in "Var related cost for NUGs" included in its own revenue requirement and the amount that it proposes to tack on for Tenaska's revenue requirement.

13. Even if Dominion's filing here is simply to pass-through charges assessed by Dominion, Coral, NCEMC, and ODEC assert that the filing nevertheless represents a rate increase for Dominion's OATT customers. In this regard, they state that, contrary to the Commission's regulations that require cost support for rate schedule changes, Dominion has failed to include in its filing any level of cost support. Without this information, they argue that there is no way to evaluate the impact that Dominion's proposed changes would have on its customers. Accordingly, they argue that Dominion has not justified its request for waiver from section 35.13(c) of the Commission's Rules of Practice and Procedure, and, therefore, the Commission should deny that request.

14. ODEC, NCEMC, and Coral urge the Commission to reject Dominion's filing as unjust and unreasonable or, in the alternative, reject Dominion's filing without prejudice to its ability to re-file its proposal with some level of support. However, if the Commission does not reject Dominion's proposed modifications or ask for cost support for them, ODEC, NCEMC, and Coral request that the Commission suspend them for the maximum five-month period, and NCEMC states that they should be set for hearing and make them effective, subject to refund. Coral maintains that the Commission should require Dominion to comply with the terms of the entire 1997 Settlement Agreement, in which case Dominion would have to raise its existing fixed rate for reactive power service by the amount of Tenaska's revenue requirement for reactive service.

15. In addition, ODEC states that Dominion's proposal for recovery of lost opportunity costs is premature and therefore should be rejected. Specifically, ODEC asserts that because the Commission has not yet approved lost opportunity costs for any generating units in Dominion's control area, the Commission cannot possibly determine, at this time, that the automatic pass-through provision is just and reasonable with regard to lost opportunity costs.

16. NCEMC and ODEC oppose Dominion's retroactive effective date of May 1, 2004. NCMEC states that the parties did not have prior notice that Dominion intended to modify its OATT to incorporate Tenaska's reactive power requirement until the instant filing. ODEC maintains that Dominion has not offered any assurances that Tenaska's Fluvanna Facility is prepared to provide reactive service at all or that it did so as of May 1, 2004; therefore, Dominion has not justified the collection of costs to that date. Coral states that the 1997 Settlement Agreement provides that changes to it can only occur with 12 months' prior notice to the other parties to the agreement.

17. Dominion responds that if a generator demonstrates to the Commission that it is providing reactive power capability to Dominion's system and the Commission determines that its charges to Dominion are just and reasonable, then Dominion should be able to recover those charges from its ratepayers. Furthermore, Dominion argues that it is not seeking to recover costs without a review of their reasonableness. On the contrary, Dominion states that it is seeking only to recover reactive power costs that the Commission has permitted generators to recover. Furthermore, Dominion argues that such a recovery would be specifically permitted in its OATT, which would state that: "The Transmission Provider shall revise the chart to include the Annual Reactive Power Service Revenue Requirement of each generation owner that has obtained FERC approval of its reactive power service Rate Schedule with charges payable by the Transmission Provider."⁶

18. In addition, Dominion states, in response to ODEC's assertion that Dominion's proposal does not address the issue of how much reactive power is actually received by Dominion, that (with the exception of the New England Power Pool) every utility that has filed a rate for reactive power service has based its charge on the reactive capability of its generators, not on the actual reactive power output.⁷ Dominion also argues that ODEC's

⁶ Virginia Electric & Power Company, FERC Electric Tariff Second Revised Volume No. 5, Original Sheet Nos. 93A and 93B.

⁷ Dominion Answer at 4 (citing WPS Westwood Generation, LLC, 101 FERC ¶ 61,290 (2002); American Electric Power Service Corporation, 88 FERC ¶ 61,141 (1999); Northern States Power Company, 64 FERC ¶ 61,324 (1993)).

statement that it must be first determined whether Dominion's system "needs" additional reactive power from generators is contrary to Commission precedent and to North American Electric Reliability Council's (NERC) requirement that all generators meet specific standards with respect to reactive capability.

19. Dominion also asserts that cost support is not necessary to justify the reactive power revenue requirements filed in this proceeding, because these reactive power revenue requirements have already been found to be cost-justified by the Commission in other proceedings. In this regard, Dominion states that neither it nor Tenaska is seeking to change Commission-approved costs of service. Dominion also states that the Commission does not require reexamination of a utility's entire cost of service when a utility seeks to modify its rates to take into account new charges that are imposed on it.⁸ In addition, Dominion maintains that its proposed formula assures that the revenue recovered will always equal the accepted revenue, because its cost of service component from the 1997 Settlement Agreement includes only reactive power costs for Dominion's generators and NUGs, whose entire output was contracted to Dominion.

20. Dominion further states that if it was to adopt a stated rate, as Coral requests, Dominion would not have the assurance that it would collect the reactive power costs that it incurs from Tenaska. Specifically, Dominion explains that because Tenaska proposed a rate that would fluctuate monthly based on variations in Dominion's load, there could be a mismatch between Dominion's payment to Tenaska and Dominion's collection of the Tenaska payments from its customers if it were to adopt a stated rate, which could lead to either over recovery or under recovery of Dominion's costs.

21. Dominion asserts that ODEC's, NCEMC's, and Coral's concerns that they will not be able to assess the impact of the Schedule 2 charges are unfounded, because every transmission customer will be able to determine the approximate level of the reactive power charge in a month based on the level of charges in the previous month. Furthermore, Dominion explains that it has included a provision for lost opportunity costs in the event that the Commission approves Tenaska or another generator's recovery of such costs from Dominion.

22. Dominion also responds to Coral's assertion that the 1997 Settlement Agreement requires that it must give 12 months' advance notice before making changes to the rates. Dominion asserts that the 12 months' advance notice applies to "power factor charges,"

⁸ Dominion Answer at 10 (citing Central Hudson Gas & Electric Corp., 95 FERC ¶ 63,013 at 65,171, aff'd, 100 FERC ¶ 61,023 (2002)).

not to Schedule 2's reactive power charges. Therefore, Dominion maintains that it is not under an obligation to notify its customers 12 months in advance before modifying Schedule 2.

III. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of this proceeding, the absence of any undue prejudice or delay, and its interest in this proceeding, we grant the untimely, unopposed motion to intervene of Coral Power, L.L.C.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Dominion's answer because it has provided information that assisted us in our decision-making process.

B. Analysis

25. We reject Coral's argument that the 1997 Settlement Agreement only allowed Dominion to make this filing after providing 12 months' prior notice. We agree with Dominion that the cited provision of the 1997 Settlement Agreement does not apply to this filing by Dominion.

26. We note that the revenue requirement, which Tenaska charges Dominion and that Dominion proposes, in turn, to charge its customers, is temporary in nature. In the *Tenaska* proceeding, Tenaska stated that: "[I]t is proposing (1) to charge [Dominion] for [reactive power] service only until [Dominion] joins PJM and (2) to charge PJM for this service thereafter."⁹ Thus, Dominion's reactive power charge is temporary because once it joins PJM, PJM will be the transmission provider (not Dominion) and PJM will bill the reactive power charge under its tariff. With this in mind, we find that Dominion's proposed reactive power formula is appropriately tailored to temporarily recover

⁹ Tenaska Transmittal Letter at 6.

Dominion's reactive power capability costs. In addition, we note that Dominion's proposal to incorporate its reactive power revenue requirement into an allocation formula is consistent with methodologies that we have previously found to be just and reasonable.¹⁰ Further, as Dominion points out, its proposed Schedule 2 of its OATT would allow it to recover reactive power costs that the Commission has permitted generators in its service area to charge Dominion. We also note that any future section 205 filings by generators to recover reactive power charges from Dominion and its customers would be subject to Commission review.

27. While we find that Dominion's proposed reactive power formula methodology, which passes through the reactive power costs of generators in Dominion's control area to its customers based on their respective transmission load share, is reasonable, Dominion's proposed revenue requirement raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Specifically, Dominion has not supported its claimed revenue requirement of \$22.2 million as appropriate for inclusion in the formula, as it has neither shown that the \$22.2 million is the level of costs that it is currently incurring to provide reactive power nor that the reactive power costs of other generators that it proposes to include in the formula in the future are not already included in Dominion's claimed \$22.2 million of reactive power costs. Therefore, we will set the determination of the appropriate level of Dominion's revenue requirement for hearing.

28. Our preliminary analysis of Dominion's proposed reactive power rates indicates that they have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed rates, suspend them for a nominal period, make them effective August 1, 2004,¹¹ subject to refund, and institute hearing and settlement judge procedures.

29. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹² If the parties desire, they may, by

¹⁰ See, e.g., PJM Interconnection LLC, Docket No. ER00-3327-000 (September 25, 2000).

¹¹ Central Hudson Gas and Elec. Corp., 60 FERC ¶ 61,106 at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹² 18 C.F.R. § 385.603 (2003).

mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹³ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

30. Dominion also proposes two ministerial changes to its OATT. First, Dominion proposes to delete Attachments E and I to its OATT, which contain the indices of its OATT customers. Dominion states that the indices are no longer necessary because the same information is provided in Dominion's electronic quarterly reports. Second, Dominion proposes to update several references to the Commission's standards of conduct regulations. To accommodate those updated standards and any future changes to them, Dominion proposes to replace its existing language relating to the standards of conduct with a reference to the "currently applicable" standards of conduct.

31. We note that no parties to this proceeding protest these changes and that they are ministerial in nature and do not impact the existing rates, terms, or conditions of its OATT. We accept the proposed ministerial changes to be effective August 1, 2004.

The Commission orders:

(A) Dominion's proposed reactive power rates are hereby accepted, suspended for a nominal period, to become effective August 1, 2004, subject to refund, as discussed in the body of this order.

(B) Dominion's ministerial changes are accepted, effective on August 1, 2004, as discussed in the body of this order.

(C) 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 the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Dominion's proposed rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

¹³ *Id.*

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. 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 in writing or by telephone within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, 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.

(F) 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 conference in this proceeding, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such 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)

Magalie R. Salas,
Secretary.