

108 FERC ¶ 61,242
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Virginia Electric and Power Company

Docket No. ER04-834-000

ORDER ON MARKET-BASED RATES

(Issued September 16, 2004)

Introduction

1. In this order, we accept a request submitted by Virginia Electric and Power Company (Dominion) to allow Dominion and its affiliates to sell energy and capacity at market-based rates within Dominion's service territory, subject to Dominion's integration into PJM Interconnection, L.L.C. (PJM)¹ and subject to American Electric Power's (AEP) and Dayton Power and Light's (DP&L) integration into PJM. This order benefits customers by allowing Dominion to participate fully in the PJM market.

Background

2. On May 11, 2004, Dominion filed, under section 205 of the Federal Power Act (FPA),² an application requesting a Commission determination that Dominion and all of its affiliates with authority to sell energy and capacity at market-based rates be permitted to make sales at market-based rates within Dominion's service territory upon the integration of Dominion into the PJM as "PJM South." Dominion requests that the Commission accept revised tariff sheets under Dominion's two market-based rate tariffs

¹ The related joint application submitted by Dominion and PJM, for acceptance of the agreements and tariff changes necessary to implement Dominion's integration into PJM, is currently pending before the Commission in Docket No. ER04-829-000 (PJM-Dominion filing).

² 16 U.S.C. § 824d (2000).

Docket No. ER04-834-000

- 2 -

removing limitations on sales within Dominion's service territory.³ Dominion states that, upon the transfer of operational control over Dominion's transmission facilities to PJM, the reasons for limiting Dominion's market-based rate sales to entities outside Dominion's service territory no longer apply. Dominion requests as an effective date the date of transfer of its transmission facilities to PJM.

3. Dominion currently has two market-based rate tariffs on file with the Commission allowing it to make sales at market-based rates only outside its service territory. Dominion accepted this limitation on the geographic scope of its market-based rate authority under a settlement agreement with the Commission resulting from a hearing initiated by the Commission to assess the impact of transmission constraints on Dominion's ability to exercise generation market power within its control area.⁴

4. In the instant filing, Dominion has submitted the required generation market power analyses using "Expanded PJM," as defined by Dominion, as the relevant geographic market.⁵ Dominion states that it passes the Commission's indicative screens for Expanded PJM, as defined.

Notice of Filing and Pleadings

5. Notice of Dominion's filing was published in the *Federal Register*, 69 Fed. Reg. 29,292 (2004), with protests and motions to intervene due on or before June 1, 2004.

³ Dominion states that following issuance of a Commission order on the instant application, and prior to the date of Dominion's integration into PJM, all Dominion affiliates will file the required tariff changes to remove the current limitations and to allow Dominion affiliates to sell energy and capacity at market-based rate rates within Dominion's service territory.

⁴ Virginia Electric and Power Company, 91 FERC ¶ 61,209 (2000); Virginia Electric and Power Company, 86 FERC ¶ 61,027 (1999); and Virginia Electric and Power Company, 80 FERC ¶ 61,275 (1997).

⁵ Expanded PJM is defined to include Dominion, Commonwealth Edison Company (ComEd), east zone of American Electric Power (AEP East), Dayton Power & Light (DP&L), and classic PJM.

Docket No. ER04-834-000

- 3 -

6. Timely motions to intervene and protest were filed by the Virginia State Corporation Commission (the Virginia Commission) and Virginia Municipal Electric Association No. 1 (VMEA). On June 14, 2004, Dominion filed an answer to these protests.

7. Timely motions to intervene were filed by the Office of the Attorney General in Virginia (Virginia Consumers Counsel), PJM Industrial Customer Coalition, Old Dominion Electric Cooperative, Constellation Power Source, Inc., Constellation NewEnergy, Inc. and Constellation Generation Group, LLC, North Carolina Eastern Municipal Power Agency, North Carolina Eastern Municipal Power Agency, Coral Power, L.L.C. (Coral), Southeastern Power Administration, MeadWestvaco Corp., Pennsylvania Public Utility Commission (Pennsylvania Commission), Direct Energy Marketing, Inc. (DEMI), Strategic Energy, L.L.C. (Strategic), and Chaparral (Virginia) Inc. (Chaparral). Chaparral requests consolidation of this filing with the PJM-Dominion filing. Virginia Consumers Counsel asks the Commission to evaluate the instant filing independent of the PJM-Dominion filing.

8. Allegheny Power, Allegheny Energy Supply Company, Exelon Corporation, and Virginia Committee for Fair Utility Rates filed motions to intervene out-of-time. On June 8, 2004, DEMI and Strategic filed a late joint protest, supplemental comments, and request for hearing and technical conference.

Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we will accept the unopposed motions to intervene out-of-time from Allegheny Power, Allegheny Energy Supply Company, Exelon Corporation, and Virginia Committee for Fair Utility Rates given their interest, the early stage of this proceeding, and the absence of undue prejudice or delay.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Dominion's answer because it has provided information that assisted us in our decision-making process.

11. We will deny Chaparral's motion to consolidate proceedings. Consolidation is unnecessary because we are conditioning the acceptance of the market-based rates within Dominion's service territory on Dominion being fully integrated into PJM.

Analysis

12. The Commission uses a four-part test to determine whether to grant a public utility market-based rate authority. An applicant for market-based rate authority must demonstrate that it lacks, or has adequately mitigated, generation market power and transmission market power and that it cannot erect barriers to entry or engage in affiliate abuse or reciprocal dealing. For a transmission-owning public utility, or its affiliate, to demonstrate the absence or mitigation of market power, the public utility must have on file with the Commission an Open Access Transmission Tariff (OATT) for the provision of comparable services.

1. Generation Market Power

Relevant Geographic Market

13. As stated above, in support of Dominion's request for authorization to make market-based rate sales in its service territory, Dominion has filed a generation market power study pursuant to the Commission's recent interim generation market power study order.⁶ Dominion's application designates Expanded PJM as its relevant geographic market, which includes AEP-East and DP&L in anticipation of their planned integration into PJM on October 1, 2004. Dominion has performed the pivotal supplier screen and the market share screen and states it passes both screens if the relevant geographic market is Expanded PJM.

14. The Virginia Commission argues that Dominion's use of Expanded PJM as the relevant geographic market is unreasonably broad because it ignores the limited transfer capability between the Dominion control area and neighboring control areas, which limits competitors' ability to compete with Dominion in its control area. The Virginia Commission asserts that Dominion's entry into PJM will not eliminate these transmission constraints between the Dominion control area and neighboring control areas, and, consequently, Dominion will retain its overwhelming dominance in its own control area. The Virginia Commission urges the Commission to require Dominion to perform the screens using Dominion's control area as the relevant market.

15. The Virginia Commission contends that it is inappropriate for Dominion to include the loads and resources of AEP East and DP&L in its generation market power analysis, even if the Commission determines that Expanded PJM is the relevant

⁶ AEP Power Marketing, Inc., *et al.*, 107 FERC ¶ 61,018 (2004) (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

Docket No. ER04-834-000

- 5 -

geographic market, because neither company is currently integrated into PJM. The Virginia Commission emphasizes that the April 14 Order mandates the use of historical data in the performance of the screens and expressly prohibits applicants from making any adjustments to the historical data. The Virginia Commission thus urges the Commission to exclude from consideration the loads and resources of AEP East and DP&L until they become members of PJM.

16. DEMI and Strategic argue that Dominion's generation market power analysis is inconsistent with the April 14 Order because Dominion uses PJM as the relevant geographic market even though it has yet to join and because it includes AEP and DP&L in the PJM footprint even though the planned integration of AEP and DP&L into PJM will not occur until October 1, 2004. DEMI and Strategic argue that Dominion's reliance upon future events to rebut the presumption that Dominion's control area is the starting point of the analysis is not allowed by the April 14 Order. DEMI and Strategic further state that the Commission should not grant Dominion's request until Dominion submits a market power analysis that uses the Dominion control area as the relevant geographic market.

17. VMEA states that the use of the entire PJM footprint as the relevant market has been challenged in requests for rehearing of the April 14 Order pending before the Commission, and VMEA believes that any determination in the instant docket should either await a final Commission order, or be subject to a final order in those rehearing dockets.

18. On June 14, 2004, Dominion submitted a consolidated answer to protests filed in response to its initial filing. Dominion states that its usage of the PJM market as the relevant geographic market in its study is consistent with the April 14 Order. Dominion notes that in the April 14 Order the Commission allowed entities within an independent system operator or regional transmission organization (ISO/RTO) with sufficient market structure and a single energy market to consider the RTO the default relevant geographic market. Dominion also notes that PJM has market mitigation protections that will apply to Dominion once it joins PJM. Dominion states that evaluating transmission limitations based on the status quo ignores the fact that, once integrated into PJM, Dominion's system will be dispatched by PJM. Dominion asserts that central PJM dispatch will fundamentally change power flows and make concerns about transfer capability between former control areas irrelevant.

Commission Determination

19. In its April 14 Order, the Commission adopted a new interim generation market power analysis to be applied to market-based rate applications pending the outcome of a rulemaking proceeding regarding potential new analytical methods for assessing markets

Docket No. ER04-834-000

- 6 -

and market power.⁷ The April 14 Order provided that the default relevant geographic market for the interim generation market power analysis should continue to be based on the applicant's control area market or an entire ISO/RTO for applicants located in ISO/RTOs that have sufficient market structure and a single energy market.

20. In the April 14 Order, the Commission recognized that the ISO/RTO footprint will not always be the appropriate geographic area to consider and afforded the opportunity for the default relevant geographic market to be rebutted on a case-specific basis. The Commission noted that applicants can incorporate the mitigation they are subject to in RTO/ISO markets as part of their market power analyses. Entities in an ISO/RTO are required to abide by the market rules and tariffs applicable in each ISO/RTO and cannot bypass the ISO/RTO mitigation on transactions in ISO/RTO markets.

21. The key determinant of whether an ISO/RTO region is a single market for purposes of the screens is whether there is a single regional generation unit commitment and dispatch function.⁸ Where such a centralized function is operational in a region, generating units may be dispatched to meet load even if they are located multiple sub-regional control areas away from the load. Thus, the region with single central commitment and dispatch would be considered a single geographic market.⁹

22. Therefore, the Commission accepts Dominion's contention that Expanded PJM is the relevant geographic market for purposes of completing the generation market power analyses. Upon entry and integration into Expanded PJM as defined by the applicant,

⁷ See Market-Based Rates For Public Utilities, 107 FERC ¶ 61,019 (2004).

⁸ April 14 Order, 107 FERC ¶ 61,018 at P 188; July 8 Order, 108 FERC ¶ 61,026 at P 181.

⁹ In the April 14 and July 8 Orders, the Commission acknowledged that binding transmission constraints can give rise to a smaller geographic market than an entire ISO/RTO. However, the Commission also noted that all ISOs and RTOs have forms of local market power mitigation in place and that this mitigation can be taken into account in the analysis. April 14 Order, 107 FERC ¶ 61,018 at P 190-191; July 8 Order, 108 FERC ¶ 61,026 at P 177-178, 181. As discussed further below, in an order issued on August 10, 2004, we initiated an investigation under section 206 of the FPA into whether PJM has identified the appropriate triggers for offering capping mitigation in the control areas of Allegheny Power, ComEd, AEP, DP&L and VEPCO for constraints to relieve the major interfaces into or out of these new areas of PJM. See PJM Interconnection, LLC, 108 FERC ¶ 61,187 (2004).

Docket No. ER04-834-000

- 7 -

Dominion will be part of a geographic region with sufficient market structure and a single energy market with central commitment and dispatch under the control of the ISO/RTO. Also, we find that Dominion's inclusion of AEP East's and DP&L's loads and resources in Expanded PJM is appropriate for the purposes of performing the screens, given that the April 14 Order permitted applicants located in ISO/RTOs such as PJM to use the ISO/RTO region as the default relevant geographic market. However, because Dominion's generation market power analysis is premised on the inclusion of AEP East and DP&L loads and resources, our grant of market-based rate authority to Dominion in its current control area is subject to and effective upon the condition that AEP and DP&L do, in fact, integrate into PJM prior to Dominion's integration.

23. We will reject as lacking merit the Virginia Commission's protest contending that it is inappropriate for Dominion to include the loads and resources of AEP East and DP&L. The Virginia Commission's protest mischaracterizes our requirement that applicants use only historical data. Dominion has used unadjusted, historical data regarding the load and resources of AEP East and DP&L and does not rely on speculative estimates about future construction or capacity. Dominion simply adds historical data for the relevant 12-month period regarding the loads and resources of AEP East and DP&L to those currently located in PJM for the same period. We will not prohibit ISO/RTO-located applicants from including existing, installed capacity of competitors that are fully integrated into such markets at the time of the applicants' entry, even if such competitors were not fully integrated into those markets for the full relevant 12-month period used by the applicant.

24. The Commission will dismiss as moot VMEA's protest regarding the scope of the relevant geographic market because final action has been taken by the Commission in the July 8 Order on this issue.¹⁰

PJM Mitigation

25. Dominion's application states that it is in the process of joining PJM, a Commission-approved RTO with comprehensive and Commission-approved market monitoring and mitigation procedures. Dominion's answer also notes that it will be subject to the market power mitigation provisions of the PJM OATT, which provides for mitigation of market power when certain conditions creating market power exist.

¹⁰ July 8 Order, 108 FERC ¶ 61,026 at P 177-178, 181.

Docket No. ER04-834-000

- 8 -

26. The Virginia Commission requests that the Commission reject this filing or condition any grant on the outcome of a hearing to determine what additional mitigation measures should be imposed on Dominion to mitigate its market power in its control area. The Virginia Commission contends that Dominion will be able to exercise generation market power within its control area even after its proposed integration into PJM because the transmission limitations into its control area create a load pocket. The Virginia Commission further contends that PJM's existing market monitoring and mitigation measures are not sufficient to mitigate Dominion's market power within its control area. The Virginia Commission urges the Commission to convene an evidentiary hearing to determine what additional market power mitigation measures, above and beyond those currently in place in PJM, are necessary to mitigate Dominion's market power.

27. Coral states that it does not object to Dominion's application, provided that the PJM market monitoring unit is able to monitor Dominion's participation in the market to the same extent it monitors other vertically-integrated utility members of PJM and that the Commission's policies and actions to mitigate market power shall apply on a going forward basis.

Commission Determination

28. As we stated in the April 14 and July 8 Orders, the Commission believes that RTOs such as PJM with Commission-approved market monitoring and mitigation provide a further check on the potential to exercise generation market power. In such markets, the RTO screens for structural conditions of market power and applies mitigation in real-time and in advance of any market price impact, to the extent authorized by the Commission. Furthermore, in such markets electricity products are separated into tradable components with distinct markets for energy, installed capacity and various ancillary services. This segmentation of power into individually-traded components allows for mitigation of market power in each of these product markets separately and diffuses any generation market power of sellers compared to more physically-oriented markets, such as traditional vertically-integrated markets, where generation ownership often concentrates all of these products in the single sale of firm physical power.¹¹ Further, spot market prices in RTO markets can serve as a competitive check on short-term bilateral transactions, even where transmission constraints do become relevant. Buyers with the opportunity to transact in RTO spot markets, as

¹¹ April 14 Order, 107 FERC ¶ 61,018 at P 190-191. *See generally* PJM Open Access Transmission Tariff, Attachment M (PJM Market Monitoring Plan); PJM Operating Agreement, Schedule 1 (PJM Interchange Energy Market).

Docket No. ER04-834-000

- 9 -

purchasers from Dominion would be able to do in Expanded PJM, should have the ability to avoid paying higher prices for bilateral transactions if they can procure power at lower prices in spot markets with Commission-approved market power mitigation procedures.

29. PJM's Operating Agreement establishes offer caps intended to mitigate generation market power. Among other things, there is effectively an offer cap of \$160/MW-day in the capacity market.¹² In addition, the PJM Operating Agreement provides that PJM shall cap the offers of units when conditions on the transmission system and the absence of sufficient competition in the area defined by the transmission constraint put generating units in a position to exercise local market power. These rules provide that units will be offer-capped – generally at the marginal cost of the unit plus 10 percent – when they are dispatched out of economic merit order.¹³

30. The Commission recently reviewed the PJM mitigation procedures for generation that must run for reliability in locations where there are transmission constraints and found that PJM's current offer capping rules work effectively to mitigate market power in a manner that is fair to most generating units.¹⁴

¹² See PJM Interconnection, LL.C., 108 FERC ¶ 61,187 (2004). Although PJM has not explicitly established such a cap in the capacity markets, the deficiency charge of \$160/MW-day that is imposed on load-serving entities for their failure to comply with their capacity requirements sets a cap on capacity payments because a customer will not pay more than the \$160/MW-day deficiency charge to procure capacity. *Id.* at P 54.

¹³ PJM Operating Agreement, Schedule 1, section 6.4.2.

¹⁴ See PJM Interconnection, LL.C., 107 FERC ¶ 61,112 at P 36 (2004).

31. Thus, we are satisfied that PJM has clear rules in place to address instances where transmission constraints would otherwise allow generators to exercise local market power and that these rules and procedures will apply in the PJM South region upon its entry into PJM.¹⁵

32. We are not persuaded by the Virginia Commission's argument that, despite passing the screens, Dominion will have the potential to exercise local market power within its current control area after its integration into Expanded PJM and that PJM's existing mitigation measures are insufficient to mitigate Dominion's alleged market power. As discussed above, we find that, when Dominion is integrated into Expanded PJM, it satisfies our generation market power concerns, as indicated by its passage of the screens, and that PJM's Commission-approved market monitoring and mitigation provides an adequate check on the potential to exercise market power within PJM.

33. In any case, the Virginia Commission's protest does not raise any factual issues regarding the effectiveness of PJM's mitigation regime that would require us to convene an evidentiary hearing. The Virginia Commission simply makes a blanket assertion that PJM's market monitoring and mitigation measures are inadequate without offering any evidence to support its contention or identifying any specific, alleged deficiencies. Finally, we note that the Virginia Commission will have a further opportunity to gather and submit any evidence to support its allegations of Dominion's post-integration ability to exercise market power within its control area during our investigation of PJM's mitigation measures in Docket No. EL04-121. For these reasons, we will reject the Virginia Commission's protest regarding PJM's market monitoring and mitigation measures.

34. With respect to Coral's concerns, we note that Dominion has not requested, nor do we here grant, any exceptions to either PJM's or the Commission's generally applicable rules regarding market monitoring or mitigation.

¹⁵ In an order issued on August 10, 2004, we initiated an investigation under section 206 of the FPA into whether PJM has identified the appropriate triggers for offering capping mitigation in the control areas of Allegheny Power, ComEd, AEP, DP&L and VEPCO for constraints to relieve the major interfaces into or out of these new areas of PJM. This investigation will enable the Commission to take into account any evidence indicating that constraints on the major interfaces into/or out of AEP, DP&L and VEPCO should trigger offer capping as those companies move into PJM. PJM Interconnection, LLC, 108 FERC ¶ 61,187 (2004).

Docket No. ER04-834-000

- 11 -

35. We have reviewed Dominion's generation market power screens for the Expanded PJM market. Based on the representations contained in Dominion's application, the Commission finds that Dominion passes both the pivotal supplier and wholesale market share screens for that market.¹⁶ However, we reiterate that the use of Expanded PJM is only permissible if AEP East and DP&L become members of PJM. Therefore, our grant of market-based rate authority to Dominion in its current control area, in this order, is subject to and effective upon the condition that AEP and DP&L do, in fact, integrate into PJM prior to Dominion's integration.

2. Transmission Market Power

36. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility have an OATT on file before granting such authorization. Dominion states there should be no concerns about transmission market power in connection with Dominion or its affiliates because Dominion is in the process of joining PJM, a Commission-approved RTO with Commission-approved mitigation and monitoring, and the only other transmission facilities owned by affiliates of Dominion are the generator leads and associated equipment used to interconnect their generating facilities with the transmission systems owned by third parties. Since Dominion and its affiliates will transfer functional control of its transmission facilities operating at 69 kV or above to PJM and transmission service over these facilities would thereafter be provided by PJM under the PJM OATT, we find that Dominion satisfies the Commission's transmission market power standard for approval of market-based rates.

¹⁶ In the April 14 Order, the Commission required applicants to prepare their studies using the most recent 12 months' historical data as a snapshot in time. In the July 8 Order, the Commission clarified that, as to the vintage of data to be used in calculating the indicative screens, applicants are to use the most recently available data. Dominion states that the most recent hourly load data available was for the calendar year 2002, thus 2002 was used as the basis for their analyses. Applicants are reminded that the twelve months need not necessarily track the calendar year. While it is preferable that all data used in the screens should be consistent (*i.e.*, using data from the same time period for all inputs, to the extent necessary to assure that the most timely data is utilized, we will allow applicants to use data from different time periods if the need for doing so is sufficiently supported and documented.

3. Other Barriers to Entry

37. Dominion states that neither Dominion nor its affiliates have dominant control over sites or other scarce inputs into generation. Dominion claims that a substantial amount of new generation capacity has been developed or under development in the relevant market. Dominion states Dominion Resources, Inc. (DRI) owns both interstate natural gas pipelines and natural gas local distribution companies. DRI applies the gas pipelines standards of conduct to its relationship with all electric and gas marketing affiliates. Therefore, they conclude that Dominion cannot erect barriers to entry that would prevent competitors from participating in the relevant geographic market. Based on these representations, we are satisfied that Dominion and its affiliates cannot erect barriers to entry. However, should Dominion or any of its affiliates deny, delay or require unreasonable terms, conditions or rates for natural gas service to a potential electric competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in the suspension of Dominion's authority to sell power at market-based rates.¹⁷

4. Affiliate Abuse

38. Sales between a traditional public utility with market-based rate authority and its affiliates are prohibited without first receiving approval of those transactions pursuant to a separate filing with the Commission under section 205 of the FPA.¹⁸ The Commission requires a code of conduct be filed when an affiliate, such as an affiliate power marketer or power producer of a traditional public utility, seeks market-based rate authority. The code of conduct is intended to govern the relationship between the utility and its affiliate. Dominion currently has a code of conduct on file with the Commission.

39. The Commission has allowed sales between affiliates at market-based rates if it is satisfied that there are no affiliate abuse concerns. The Commission has stated that affiliate abuse takes place when the traditional public utility and its affiliate transact in ways that result in a transfer of benefits from the traditional public utility (and its captive customers) to the affiliate (and its shareholders).¹⁹ The Commission is also concerned

¹⁷ See, e.g., Louisville Gas & Electric Co., 62 FERC ¶ 61,016 (1993).

¹⁸ See Aquila, Inc., 101 FERC ¶ 61,331 at P 12 (2002) (Aquila).

¹⁹ See, e.g., Heartland Energy Services Inc., 68 FERC ¶ 61,223 at 62,062 (1994).

Docket No. ER04-834-000

- 13 -

with the effect on wholesale competition.²⁰ The Commission has allowed sales by a power marketer or power producer to its affiliated public utility where there are no captive wholesale customers and where retail ratepayers are protected by a rate freeze or the availability of retail choice.²¹

40. In a prior proceeding the Commission allowed Dominion to make market-based rate sales to affiliates for the sole purpose of participation in Virginia's Retail Access Pilot Program.²² These sales were limited by certain *Detroit Edison* provisions.²³ In the instant filing, Dominion seeks to eliminate certain restrictions on its ability to make affiliate sales, thereby expanding its authority to make market-based rate sales to affiliates.

41. Dominion has included revised tariff sheets that expand its authority to make market-based rate sales to affiliates by eliminating any reference to the Virginia Retail Access Pilot Program. Dominion's transmittal letter is silent with respect to these revisions. As such Dominion has presented no support or rationale regarding how its proposed tariff revision addresses the Commission's affiliate abuse concerns. Accordingly, we defer action in this regard and direct Dominion, within 15 days from the date of this order, to provide support for how its proposal to expand its authority to make affiliate sales satisfies our affiliate abuse concerns. In addition, we direct Dominion to provide a status report on Virginia's Retail Access Pilot Program.

²⁰ See Entergy Services, Inc. and EWO Marketing LP, 103 FERC ¶ 61, 256 (2003); Ameren Energy Marketing Company, 99 FERC ¶ 61,226 (2002).

²¹ See, e.g., Illinova Power Marketing, Inc., et al., 88 FERC ¶ 61,189 at 61,649; AmerGen Energy Co., 90 FERC ¶ 61,080 at 61,282 (2000).

²² Virginia Electric and Power Company, 91 FERC ¶ 61,209 (2000).

²³ When Dominion offers to sell power to an affiliate, it must simultaneously make the same offer to any non-affiliate by posting the offer on an electronic bulletin board; any sale to an affiliate must be made at a rate no lower than the rate Dominion charges a non-affiliate; and Dominion must report all sales to its affiliates at above-cost rates in its quarterly reports to the Commission. See *Detroit Edison Company*, 80 FERC ¶ 61,348 (1997) (*Detroit Edison*).

Reporting Requirements

42. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.²⁴ Each Electric Quarterly Report must be filed no later than the last day of the month following each calendar quarter.²⁵ Accordingly, Dominion must file its Electronic Quarterly Report containing a summary of the contractual terms and conditions for every effective service agreement and transaction information, including market-based power sales within Dominion's service territory during the most recent calendar quarter.

43. Additionally, we will direct Dominion to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These characteristics include, but are not limited to: (1) ownership of generating or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.²⁶

²⁴ Revised Public Utility Filing Requirements, Order No. 2001, 67 Fed. Reg. 31,043 (2002), FERC Stats. & Regs. ¶ 31,127 (2002). The required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001.

²⁵ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b.

²⁶ See, e.g., Morgan Stanley Capital Group, Inc., 69 FERC ¶ 61,175, 61,695 (1994), *order on reh'g*, 72 FERC ¶ 61,082 (1995), InterCoast Power Marketing Co., 68 FERC ¶ 61,248 at 62,134 (1994), *order clarified*, 68 FERC ¶ 61,324 (1994).

Docket No. ER04-834-000

- 15 -

The Commission orders:

(A) Dominion's proposal to allow Dominion and its affiliates to sell energy and capacity at market-based rates within Dominion's service territory, is hereby accepted for filing, subject to and effective upon Dominion's full integration into PJM and subject to AEP-East and DP&L also being fully integrated into PJM, as discussed above. Accordingly, Dominion is directed to inform the Commission in this Docket of the date that it has completed its integration into PJM.

(B) Within 15 days of the date of this order, as discussed in the body of this order, Dominion is directed to provide a status report on Virginia's Retail Access Pilot Program and to support its proposal to expand its authority to make affiliate sales.

(C) Dominion is hereby informed that tariff designations will be assigned upon compliance with the Commission's directives, as discussed in the body of this order.

(D) Consistent with the procedures the Commission adopted in Order No. 2001, Dominion must file electronically with the Commission Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.

(E) Dominion is hereby directed to promptly inform the Commission of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.