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. ER04-829-002

ORDER ON REHEARING

(Issued March 4, 2005)

1. In this order, the Commission grants, in part, and denies, in part, rehearing of its October 5, 2004 Order,[1] in which we accepted, subject to condition, a joint proposal to establish PJM Interconnection, L.L.C. (PJM) as the Regional Transmission Organization (RTO) for Virginia Electric and Power Company (Dominion).[2]

Background

2. On May 11, 2004, as amended on July 16, 2004, PJM and Dominion (collectively the Filing Parties) submitted for filing an expansion proposal known as PJM South, which was generally modeled after PJM's prior expansions.[3] The Filing Parties' submission included, among other things, a joint proposal to allocate their respective

[1] *PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 109 FERC ¶ 61,012 (2004) (October 5 Order).

[2] Rehearing and/or clarification of the October 5 Order is sought by Dominion; Southeastern Federal Power Customers, Inc. (SEFPC); Virginia State Corporation Commission (Virginia Commission); Direct Energy Marketing, Inc. and Strategic Energy, L.L.C. (Direct Energy, *et al*.); Virginia Committee for Fair Utility Rates (Virginia Committee); the Division of Consumer Counsel of the Office of the Attorney General of Virginia (Virginia Consumer Counsel); and MeadWestvaco Corp. (MeadWestvaco).

[3] *See, e.g., PJM Interconnection, L.L.C. and Allegheny Power*, 96 FERC ¶ 61,060 (2001).

filing rights under section 205 of the Federal Power Act (FPA).[4] In addition, Dominion proposed to further condition its agreement to join PJM South on the Commission's approval of certain rate requirements. First, Dominion proposed that a license plate rate structure be approved for PJM South, consistent with PJM's existing rate design. Second, Dominion proposed to recalculate PJM's existing Border Rate (a rate frozen pursuant to a Commission-approved settlement) by incorporating Dominion's revenue requirement into PJM's existing weighted average rates and thus recalculating the Border Rate on a region-wide basis. Third, Dominion proposed that lost revenues not be recovered in connection with the establishment of PJM South – whether to compensate Dominion for its lost revenue attributable to its integration into PJM, or any other PJM transmission owner seeking to collect their own lost revenues within the Dominion Zone relating to their integration into PJM.

3. Dominion also sought approval to recognize as a regulatory asset certain costs related to the establishment and operation of PJM South, as well as the costs previously incurred by Dominion regarding its participation in the proposed Alliance RTO.[5] Dominion proposed to defer recovery of these costs until Virginia's retail rate cap expires in December 2010, at which time Dominion indicated that it would make a section 205 filing with the Commission. Dominion also identified as a condition to its agreement to join PJM South, acceptance of its market-based rates application in Docket No. ER04-834-000.[6] Finally, Dominion clarified that its proposed initial rates applicable to the PJM South zone would be the subject of a separate Phase II Filing, to be made prior to the implementation date of PJM South.[7]

4. In the October 5 Order, we accepted the Filing Parties' proposal to establish PJM South, subject to conditions. First, we accepted Dominion's proposal to utilize its current rate design with respect to the establishment of its initial rates, subject to PJM's revision

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[4] 16 U.S.C. § 824d (2000).

[5] *See Alliance Companies, et al*., 97 FERC ¶ 61,327 (2001) (finding that the Alliance RTO, as proposed, lacked sufficient scope to exist as a stand-alone RTO).

[6] In an order issued September 16, 2004, we granted Dominion market-based rate authority. *See Virginia Electric Power Company*, 108 FERC ¶ 61,242 (2004).

[7] Dominion made its Phase II filing on October 28, 2004 in Docket No. ER05-87-000. Dominion's filing was subsequently accepted by the Commission subject to conditions. *See PJM Interconnection, L.L.C. and Virginia Electric and Power Company*, 109 FERC ¶ 61,302 (2004).

of its system-wide rate design in Docket No. EL02-111-004, *et al*.[8] We also addressed Dominion's request to recognize as a regulatory asset certain costs related to the establishment and operation of PJM South, as well as the costs previously incurred by Dominion regarding its participation in the proposed Alliance RTO.

5. However, we rejected Dominion's proposal to unilaterally alter PJM's Border Rate, given the fact that PJM's Border Rate is a jointly-filed rate applicable to any transaction that goes through or exits the PJM region. We also rejected the Filing Parties' proposed allocation of their future section 205 filing rights, specifically, the Filing Parties' proposal to vest, in Dominion, unilateral filing rights authority over rate design matters. We noted that PJM is a single integrated transmission system with system-wide rates and a single rate design. We further found that the PJM Transmission Owners recognized this fact in accepting the collective action requirements set forth in the PJM Transmission Owners Agreement at section 6.5.1.[9] We found that Dominion cannot both join PJM and yet retain its own independent authority to seek rate design changes. As such, we required Dominion to be bound by the terms of section 6.5.1.

6. Finally, we rejected Dominion's proposed exemption from PJM's lost revenue charges, but did so without prejudice. We found that Dominion's integration into PJM must be subject to the resolution of related issues in the Going Forward Principles and

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[8] *See Midwest Independent Transmission System Operator, Inc*., *et al*., 106 FERC ¶ 61,262 at P 1 (2004) (Order on Going Forward Principles and Procedures). Under the Going Forward Principles and Procedures, the PJM Transmission Owners agreed to develop and propose a long-term transmission pricing structure to apply throughout the combined PJM and Midwest Independent System Operator (Midwest ISO) regions, to be implemented on December 1, 2004.

[9] Section 6.5.1 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.

Procedures proceedings, just as the rest of PJM will be. Accordingly, we found that Dominion, if it so chooses, may make or participate in a filing in the context of that proceeding.

Requests for Rehearing and Clarification

7. Dominion asserts as error our requirement, in the October 5 Order, that Dominion, as a condition to its membership in PJM, bind itself to the joint transmission owner filing requirements set forth at section 6.5.1 of the PJM Transmission Owners Agreement. Dominion argues that the Commission's finding ignores the fundamental holding in *Atlantic City Electric Co., et al v. FERC*.[10] Specifically, Dominion asserts that the Commission's requirement that Dominion waive its individual section 205 filing rights as a condition to its membership in PJM is neither compelled by, nor supported by, *Atlantic City*. Dominion argues that *Atlantic City* stands for the proposition that neither the Commission nor any third-party transmission owner or group of transmission owners can force a utility to cede its section 205 filing rights.

8. Dominion further argues that in relying on Dominion's proposed PJM-wide, joint Border Rate as a rationale for rejecting Dominion's filing rights proposal, the Commission ignored the fact that Dominion's proposal was primarily based on its interest in retaining its existing transmission rate over its own facilities. Dominion argues that these rates would not be joint rates.

9. Dominion also asserts as error the Commission's rejection of Dominion's requested conditions related to lost revenue recovery and its requirement that Dominion be subject to the long-term pricing structure currently pending in the Going Forward Principles and Procedures proceeding. Dominion argues that the Commission is not precluded from approving Dominion's proposed rate treatment for PJM South, as requested, and then separately dealing with the issues raised in the Going Forward Principles and Procedures proceeding as to the remainder of PJM. Dominion asserts that, by contrast, requiring Dominion to participate in the Going Forward Principles and Procedures proceeding at the eleventh hour, as part of the combined region, would be unfair to Dominion.

[10] 295 F.3d 1 (D.C. Cir. 2002) (*Atlantic City*).

10. A number of parties also assert as error the Commission's guidance regarding Dominion's proposed regulatory asset treatment covering its RTO start-up expenses and related costs.[11] These requests for rehearing and/or clarification are discussed in greater detail below.[12] Finally, SEFPC asserts as error the Commission's determination not to grandfather the rates it currently pays in conjunction with a long-term third party agreement with the Southeastern Power Administration (SEPA) for transactions that exit PJM South for subsequent delivery in the CP&L control area. SEFPC argues that the transmission service at issue is relatively small (76 MW) and otherwise analogous to the grandfathered treatment accorded in the October 5 Order to certain of Dominion's pre-Order No. 888, wholesale bundled contracts

Discussion

11. For the reasons discussed below, we will grant rehearing, in part, and deny rehearing, in part, of the October 5 Order. We will also require Dominion to make a compliance filing, within 30 days of the date of this order, addressing certain matters, as identified below.

A. Dominion's Proposed Division of its Section 205 Filing Rights

1. Filing Rights with Respect to Rate Design

12. We will grant rehearing, in part, regarding Dominion's filing rights allocation proposal as it relates to rate design matters. As noted above, Dominion asserts that the Commission erred in rejecting its proposal to reserve section 205 filing rights regarding Dominion's proposed license plate rate design. Dominion further asserts as error our requirement that Dominion adopt the rate design filing rights allocation provisions set forth at section 6.5.1 of the PJM Transmission Owners Agreement. Dominion maintains that it is not requesting authority to modify joint rates, but simply to retain section 205 filing rights with respect to the rates and rate design used to collect revenues from its own facilities. Dominion argues that the Commission's order rejecting that proposal violates

[11] *See* rehearing requests of the Virginia Commission, Direct Energy, *et al*.; the Virginia Committee; MeadWestvaco; and the Virginia Consumer Counsel.

[12] On November 19, 2004, Dominion filed an answer further addressing these issues. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2), prohibits an answer to a rehearing request, unless otherwise permitted by the decisional authority. We are not persuaded to accept Dominion's answer and therefore will reject it.

Atlantic City, because in *Atlantic City*, the court did not authorize the Commission, or a group of transmission owners, to limit the section 205 filing rights of a new member of the RTO relative to the rate design applicable to service regarding its assets.

13. We will grant rehearing, in part. In section 2.2.1 of the PJM South Transmission Owner's Agreement, Dominion reserved the right to file unilaterally under section 205 to change the rates and charges for transmission and ancillary services for delivery to the Virginia Power Zone. The PJM South Transmission Owner's Agreement also provides, however, that Dominion "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."

14. The Commission has accepted filing rights allocations by the PJM East and PJM West Transmission Owners that have allocated the filing rights among their members. As the Commission made clear in its September 28, 2004 Order accepting the PJM West's Transmission Owners Agreement, the transmission owners, pursuant to their agreement, cannot affect the rates or terms and conditions of the PJM East transmission owners without their consent.[13] The Commission, in fact, required that with respect to the transmission rate design for the PJM region, such changes will have to be approved by both sets of transmission owners. In addition, Dominion has recognized that the Commission retains its authority to revise Dominion's rate design, or a proposed change to Dominion's rate design, under the Commission's section 206 authority.

15. The PJM South Transmission Owner's Agreement also provides that any section 205 filings made by Dominion will be limited to rates for its own facilities and cannot affect the revenues or payments to the other transmission owners, or rate design of the other transmission owners. Therefore, the Commission finds this provision generally acceptable.

16. Dominion's filing rights allocation provision, however, is unclear as to whether Dominion may file to change rate designs applicable to the PJM region as a whole. Accordingly, consistent with the *PJM West Order*, we direct Dominion to make a compliance filing within 30 days of the date of this order 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.

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[13] *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,318 at P. 69-70 (2004) (*PJM West Order*).

2. Border Rate

17. We will deny Dominion's request for rehearing as it relates to Dominion' Border Rate proposal. Dominion contends that its proposal with respect to the Border Rate was not to change the design of that rate, but only to include its data in the calculation of the rate. Dominion maintains that its proposal to include its data in the Border Rate did not require approval by the other PJM transmission owners. Dominion refers, without citation, to statements by the other transmission owners that a new transmission owner could file, without receiving approval from the other transmission owners, to revise the Border Rate schedules (Schedules 1A, 7, and Attachment H).

18. Dominion does not provide a citation to the purported statement that the PJM transmission owners approved of a filing to change the Border Rate, without their approval pursuant to the provisions of the transmission owner's agreement and PJM's tariff. Unlike other new transmission owners,[14] Dominion did not seek specific approval of the PJM transmission owners before filing its proposed change to the Border Rate, and, in fact, the other transmission owners have not supported it.

19. As we noted in the October 5 Order, the PJM tariff reflects only a single Border Rate, and does not contain a formula into which Dominion's data could be inserted to calculate a new Border Rate. In the absence of such a formula in the tariff specifying how a new transmission owner's data should be incorporated, Dominion has failed to show that either under *Atlantic City* or the FPA, it has the right to file unilaterally to modify a rate charged jointly with another utility. We will deny rehearing with respect to this issue.

20. In the underlying orders addressed in *Atlantic City*, the transmission owners within PJM initially agreed on a procedure for changing rate design and other tariff terms for transmission service, which the Commission rejected. In its place, the Commission substituted a provision that would have required that all changes in transmission rates and rate design would have to be approved by the independent PJM Board. The Court ruled that the Commission did not have statutory authority under either sections 205 or 206 to require that the transmission owners relinquish their section 205 filing rights. In that regard, the court emphasized that utilities can file to initiate rate changes with respect to services provided with their own assets.

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[14] *See* PJM Interconnection, L.L.C. and Commonwealth Edison Co. Filing to Integrate with PJM, Docket No. ER04-367-000, n.1 (Dec. 31, 2003) (PJM transmission owners approved the revision to the Border Rate).

21. The court's analysis and discussion, however, were limited to the Commission action before it, *i.e.*, the Commission's initial determination to overturn a filing rights allocation proposal to which the transmission owners had agreed. The court in *Atlantic City* recognized that "utilities may choose to voluntarily give up, by contract, some of their filing freedom under section 205."[15] The court did not address the situation we are presented with here in which transmission owners have not agreed to an allocation of filing rights and one utility seeks to file under section 205 to revise the rate for services provided by another utility using its own assets.

22. However, in this case, the other utilities comprising PJM (whose rates Dominion is seeking to change) have not authorized Dominion to make a section 205 filing to change their Border Rate. Under these circumstances, Dominion cannot cite to any provision under the FPA which would 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.

23. Moreover, Dominion's own tariff filing would not permit a filing to change the PJM Border Rate, absent approval of the other PJM transmission owners. Section 2.2.1 of the PJM South Transmission Owner Agreement states that Dominion does not have authority to file rates that do not preserve the revenues or payments due to other PJM transmission owners. A filing that would change the single Border Rate within PJM could have just such an effect, even if it is limited to a filing seeking only to add Dominion's costs to the rate. For instance, if such a filing increased the rate, and so reduced the volume of such border transactions, Dominion's filing could reduce the revenues to other transmission owners. Dominion could of course file under section 206 claiming that the existing PJM Border Rate is unjust and unreasonable without the inclusion of its costs, but it simply cannot reserve the right under section 205 to make a rate filing that revises other transmission owners' rates.

B. Dominion's Requested Conditions Regarding Lost Revenues

24. We will deny rehearing of the October 5 Order regarding our determination not to consider, in this proceeding, Dominion's proposed exemption from PJM's lost revenue charges. PJM's lost revenue charges are the transitional charges recovered by PJM's transmission owners in connection with their elimination of through-and-out rates.

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[15] 295 F.2d at 10.

Absent these transitional mechanisms, the revenue requirement of each transmission owner would be borne solely by the customers within each transmission owner's zone under PJM's existing license plate rate design and thus result in cost shifts.

25. In the October 5 Order, we noted that issues relating to PJM's existing lost revenues recovery mechanisms are currently pending in another proceeding, *i.e.*, in Docket No. EL02-111-004, *et al*. (PJM's Going Forward Principles and Procedures proceeding).[16] We also noted that if Dominion so chooses, it may make or participate in a filing in the context of that proceeding.

26. Subsequently, in an order issued November 18, 2004, in Docket Nos. ER05-6-000, *et al*., we found, under section 206, that a region-wide license plate rate design coupled with an appropriate transition mechanism to recover lost revenues represented a reasonable approach to pricing transmission service within PJM's expanded markets.[17] Dominion is a party to that proceeding and has, in fact, sought clarification and/or rehearing of that determination, as it would apply to the Dominion Zone, on much the same grounds it has raised here. Dominion's only request in this proceeding is to be exempt from having to pay the lost revenue recovery charge established in Docket Nos. ER05-6-000, *et al*.[18] That issue must be litigated in the proceeding in which the terms for payment of the rate was established, rather than in this collateral proceeding.

27. We also reject Dominion's assertion that it is being denied due process by being subjected to the lost revenue recovery mechanism approved in another proceeding, *i.e.*, in Docket No. ER05-6-000, *et al.*, Dominion claims that it did not have an opportunity to participate in that proceeding prior to the issuance of the November 18 Order. In fact, however, Dominion was aware of these proceedings and could have participated as an active party to the extent necessary to protect its interests. Indeed, the Chief Administrative Law Judge (ALJ) assigned to that proceeding specifically invited

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[16] *See Midwest Independent Transmission System Operator, Inc*., 106 FERC ¶ 61,262 (2004).

[17] *See* Midwest Independent Transmission System Operator, Inc., 109 FERC ¶ 61,168 (November 18 Order), *order granting clarification*, 109 FERC ¶ 61,243 (2004), *reh'g pending.*

[18] Such a filing is in the nature of a request for a declaratory order that a rate imposed by the Commission under section 206 should not be applied to Dominion. Such a determination should be made in the still-open docket addressing this issue, rather than in another docket with different parties.

Dominion to participate and Dominion declined.[19] Dominion's rights have been preserved since it is a party to the ER05-6-000 proceeding, and has sought rehearing of that order on precisely the grounds asserted here.

C. Dominion's Proposed Regulatory Asset Treatment For Its RTO Start Up Costs and Related Expenses

1. The October 5 Order

28. In the October 5 Order, we addressed Dominion's request to record, as a regulatory asset, and defer recovery of $279.4 million, plus carrying costs, in RTO start-up costs and PJM administrative fees (collectively, RTO Costs) until the expiration of Virginia's capped retail rates. First, we noted that the Commission's Uniform System of Accounts provides that a regulatory asset should be recognized when amounts otherwise chargeable to expense in the current period are to be recovered in rates in a future period. We explained that to qualify as a regulatory asset, a two-pronged showing was required: (i) that the costs at issue are unrecoverable in existing rates; and (ii) that it is probable that such costs will be determined to be recoverable in future rates.

29. We found, however, that we could not determine with certainty that all of the costs that Dominion seeks to defer are, in fact, unrecoverable in Dominion's current retail and wholesale rates or whether all such costs, if deferred, will ultimately be found, in a section 205 proceeding, to be recoverable in future rates. Accordingly, we found that Dominion must assess all available evidence bearing on the likelihood of rate recovery of

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[19] In an order issued June 4, 2004, the ALJ stated as follows:

> The [ALJ] was . . . advised that pursuant to the Joint Application, Dominion proposed to transfer operational control over [its] transmission system to PJM on November 1, 2004, and come under the PJM Tariff. As a result of the PJM South filing, it appears to the [ALJ] that it would be in the direct interest of Dominion to begin immediate participation with the other Transmission Owners in the Combined Region in their efforts to develop a permanent long-term solution to the elimination of seams, since Dominion's transmission system will become part of the Combined Region upon [its] integration into PJM.

See "Order of Chief Judge Inviting Dominion Virginia Power to Participate in Settlement Proceedings," Midwest Independent Transmission System Operator, Inc., Docket Nos. EL02-111-004, *et al*. (June 4, 2004).

these costs in periods other than the period they would otherwise be charged to expense under the general accounting requirements for costs. We noted that if, based on such assessment, Dominion determines that it is probable that these costs will be recovered in rates in future periods, it should record a regulatory asset for such amounts.

2. Requests for Rehearing and Clarification

30. On rehearing, the Virginia Consumer Counsel argues that in permitting Dominion to book its RTO costs as regulatory assets (without even a threshold determination by the Commission regarding the eligibility of these costs as regulatory assets), the October 5 Order violated the Commission's own regulations. Specifically, the Virginia Consumer Counsel argues that Part 101 of the Commission's regulations define "Regulatory Assets and Liabilities" as "assets and liabilities that result from the *rate actions* of regulatory agencies."[20] The Virginia Consumer Counsel argues that contrary to this express requirement, the October 5 Order allows Dominion to make its own unilateral determination regarding both the category and the amount of costs (including carrying costs) it may record on its books as a regulatory asset.

31. The Virginia Consumer Counsel also notes that while the October 5 Order correctly identifies the two-pronged standard applicable to the recovery of a regulatory asset, the Commission nonetheless erred in its determination that it would not (and could not) assess whether this test has been satisfied by Dominion. The Virginia Consumer Counsel argues that this holding represents a clear divergence from Commission precedent, citing *Midwest Independent Transmission System Operator, Inc*.[21] The Virginia Consumer Counsel submits that in the *Midwest ISO Orders*, the Commission states that its two-prong test must be satisfied in the form of a section 205 filing made by the transmission owner as a prerequisite to the recordation of the regulatory asset that is requested.

32. MeadWestvaco asserts that the cases relied upon by Dominion in support of its regulatory asset request do not support that request. MeadWestvaco asserts that in *Florida Power Corp.*[22] and *American Electric Power Service Corp.*,[23] for example, the

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[20] *See* 18 C.F.R. Part 101 at def. 30 (2004) (emphasis added).

[21] 103 FERC ¶ 61,205 (2003). *See also Midwest Independent Transmission System Operator, Inc*., 102 FERC ¶ 61,279, *order on reh'g*, 106 FERC ¶ 61,337 (2004) (collectively, *Midwest ISO Orders*).

[22] Unpublished Letter Order, Docket No. AC01-10-000 (December 14, 2004).

deferral period at issue corresponded to the integration date and/or start-up of the RTO, consistent with the Commission's "matching principle."[24] Direct Energy, *et al*. make a similar argument, pointing out that under the October 5 Order, the Commission violates the matching principle.

33. The Virginia Committee also seeks rehearing with respect to these determinations. The Virginia Committee points out, among other things, that Dominion should not be permitted to have its cake and eat it too – to both support "capped rates" intended to recover all of its costs before the Virginia Commission and then claim to this Commission that these very same costs now require regulatory asset treatment. The Virginia Committee asserts that this request is particularly inappropriate where, as here, Dominion has not even attempted to show that these costs are in fact unrecoverable in its capped rates.

34. Direct Energy, *et al*. submit that in examining the just and reasonableness of Dominion's RTO costs, cost decreases as well as cost increases should be considered over the relevant period. The Virginia Commission makes the same argument, pointing out that an examination of Dominion's overall earnings suggests that Dominion is currently over recovering its costs. Direct Energy, *et al*. further argue that to the extent Dominion seeks to recover any costs, it must first make a rate filing and seek approval of these rates. Direct Energy, *et al*. point out that should the recovery of those rates be threatened by the inability to recover these costs at the retail level, Dominion's recourse should not be the establishment of a regulatory asset. Rather, Direct Energy, *et al*. submit that any such dispute should be brought before an appropriate court on federal preemption grounds.

35. The Virginia Commission questions Dominion's ability to satisfy the first prong of the Commission's two-prong regulatory asset test, *i.e.*, whether Dominion can show that its RTO related costs cannot be recovered in its existing rates. The Virginia Commission asserts that were the Commission to accept Dominion's costs in the form of a rate revision, there is a mechanism in place for these costs to be reflected in the transmission component of Dominion's unbundled retail rates. Specifically, the Virginia Commission asserts that under Dominion's retail rate cap, the transmission component of Dominion's rate is permitted to rise or fall during the rate cap period, subject to a corresponding adjustment in the wires charge or distribution rate.

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[23] 104 FERC ¶ 61,013 (2003).

[24] Under the Commission's matching principle, costs are to be assigned to the periods in which the related benefits are expected to be realized.

36. The Virginia Commission also argues that Dominion initially expensed all of its Alliance RTO start-up costs in its retail rates and recovered these costs under its capped rates. The Virginia Commission adds that notwithstanding Dominion's subsequent reversal of these entries at the time it declared its proposed regulatory asset treatment, these costs were clearly "recoverable."

37. Finally, the Virginia Commission asserts that the October 5 Order erred in not finding that Dominion's Alliance RTO start-up costs incurred after the Commission directed the Alliance Companies to implement an independent board were not prudently incurred because the Alliance Companies never complied with that requirement. The Virginia Commission concludes that the Commission erred in not denying Dominion recovery of these costs.

3. Commission Ruling

38. We deny rehearing of the October 5 Order regarding Dominion's proposed regulatory asset treatment of its RTO Costs. In acknowledging Dominion's request to record its claimed RTO Costs as a regulatory asset, the October 5 Order made no finding regarding the ultimate justness or reasonableness of these costs. Such findings can only be made at the time that Dominion makes its section 205 filing seeking to recover such costs in its rates.

39. The guidance provided in the October 5 Order regarding the proper accounting and recordation of a regulatory asset was procedural in nature and thus without prejudice to any party seeking to challenge the subsequent recoverability of these costs in a future rate case. In providing this guidance, the Commission did not violate Part 101 of its regulations. Those regulations provide for the booking of certain costs as a regulatory asset where it is "probable that such items will be included in a different period(s) for purposes of developing rates that the utility is authorized to charge for its utility services."[25]

40. These regulations require that Dominion, not the Commission, make the determination based on generally accepted accounting principles. This means that Dominion must support its determination with relevant, reliable evidence demonstrating that it indeed meets the criteria for recognition of a regulatory asset discussed *supra* at the time it makes the initial determination, each accounting period thereafter, and when it makes its section 205 filing.

[25] *See* 18 C.F.R. § Part 101 at section 182.3 (2004).

41. Moreover, our ruling on the regulatory asset treatment is consistent with our rulings in the *Midwest ISO Orders*. In the *Midwest ISO Orders*, we made no finding regarding the recoverability of a regulatory asset because there was no such rate proposal before us. Instead, we provided guidance applicable to any transmission owner seeking to recover a regulatory asset in its rates. We stated, for example, that our accounting rules require "a utility to recognize a regulatory asset where it [the utility] determines it is probable that a cost that would otherwise be charged to expense in one period will be recovered in rates in another."[26] We also stated that "any party desiring to recover [its claimed costs] in rates other than the period in which they would ordinarily be charged to expense must submit a filing demonstrating that their retail rates in effect applicable to that period and a rate plan for recovery of them in a different period."[27] For all these reasons, we will deny rehearing of the October 5 Order as to this issue.

D. SEFPC's Request for Grandfather Rates

42. As noted above, SEFPC requests that the rates it currently pays Dominion for transactions that exit the Dominion Zone, for subsequent delivery in the CP&L control area, be frozen at their current level and thus not be required to pay a through-and-out rate (PJM's Border Rate) until such time as a seams agreement can be developed between CP&L and Dominion. SEFPC argues that the transmission service at issue is relatively small (76 MW) and otherwise analogous to the grandfathered treatment accorded in the October 5 Order to certain of Dominion's pre-Order No. 888, wholesale bundled contracts.

43. We will deny SEFPC's request for rehearing. SEFPC requests, in effect, that it be granted a preferential rate for its transactions that exit PJM, based on the needs and circumstances relating to its third-party contractual obligations. However, as we held in the October 5 Order and reiterate here, SEFPC has not demonstrated that PJM's region-wide Border Rate is unjust or unreasonable, nor is the instant proceeding the appropriate forum in which to consider a region-wide rate issue.

44. We also cannot agree that the rate exemption SEFPC seeks is warranted or otherwise lawful. First, this proposed exemption cannot be justified based on the grandfathered rate treatment accorded to certain of Dominion's wholesale bundled contracts. As we have held in the past, a public utility seeking to join an RTO is not

[26] *See* 106 FERC ¶ 61,337 at P 13.

[27] Id. at P 15.

required to terminate or abrogate its pre-existing contracts.[28] Similarly, with respect to SEFPC's contract, Dominion is not seeking to abrogate its contractual rights. Finally, SEFPC cannot claim a right to amend its agreement, based on the express right given to Dominion to seek a rate revision. Dominion's right is within the scope of the business risk SEFPC assumed when in entered into the agreement, but does not implicate or otherwise justify SEFPC's request.

The Commission orders:

(A) Rehearing of the October 5 Order is hereby granted, in part, and denied, in part, as discussed in the body of this order.

(B) Dominion is hereby required to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

[28] *PJM Interconnection, L.L.C.,* 109 FERC ¶ 61299 (2004).