

169 FERC ¶ 61,041
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

PJM Interconnection, L.L.C. and Virginia Electric and Power Company Docket Nos. ER19-1661-000
ER19-1661-001

ORDER ACCEPTING TARIFF REVISIONS

(Issued October 17, 2019)

1. On April 24, 2019, pursuant to section 205 of the Federal Power Act (FPA),¹ Virginia Electric and Power Co., d/b/a Dominion Energy Virginia (Dominion), submitted proposed tariff revisions to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff) to change the calculation of Network Service Peak Load (NSPL) for transmission customers within the Dominion Zone.² Specifically, Dominion proposed a new twelve month coincident peak (12-CP) allocation feature. As discussed below, we accept Dominion’s proposal, effective January 1, 2020, as requested.

I. Background

2. Dominion has a formula rate for transmission service on file with the Commission designated as Attachment H-16A to the PJM Tariff. Currently, the charge for Network Integration Transmission Service (Transmission Service) in the Dominion Zone is calculated by dividing Dominion’s annual transmission revenue requirement by the load in the Dominion Zone at that zone’s annual coincident peak (1-CP) demand. PJM assigns Monthly Demand Charges to each zone according to each “Network Customer’s

¹ 16 U.S.C. § 824d (2018).

² PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT ATT M-2 (Dominion), OATT ATTACHMENT M-2 (Dominion) Procedures for NSPL and VaNSP, 0.0.0.

individual wholesale and retail customer Zone Network Loads (including losses) at the time of the annual peak of the Zone in which the load is located.”³

II. Filing

3. Dominion states that, because billing is calculated using a single-hour snapshot of customer demand, it can result in large changes in cost responsibility from year to year depending on when the annual system peak occurs, and it incentivizes load serving entities to forecast the annual peak and intentionally reduce their load in that hour to avoid charges. Dominion argues that reducing load in this manner can significantly reduce or even eliminate a customer’s responsibility for Transmission Service charges for an entire year.⁴

4. Dominion states that it first filed tariff revisions in Docket No. ER18-493-000 to address the incentive to cost shift and proposed an average demand calculation that would serve as a back stop to each LSE’s 1-CP calculation if its 1-CP contribution was lower than its average demand. The Commission rejected the proposal without prejudice, finding that Dominion relied on a hypothetical situation and did not provide evidence that such cost shifts actually occurred, or were likely to occur.⁵

5. Dominion proposes a new Attachment M-2 to the PJM Tariff that incorporates a 12-CP allocation feature. Dominion proposes to collect hourly load data for all Network Customers⁶ in the Dominion Zone (including applicable losses) coincident with each of the Dominion Zone’s twelve monthly transmission peaks during the twelve-month period ending September 30, and then calculate a Network Customer’s average 12-CP value by dividing the sum of the twelve coincident peak load values for that customer by twelve. The 12-CP allocation factor for a Network Customer is calculated by dividing the Network Customer’s average 12-CP demand by the sum of all the average 12-CP demands for all Network Customers. Then, each Network Customer’s NSPL is calculated by multiplying its 12-CP allocation factor by the Dominion Zone’s NSPL.⁷

³ 34.1, OATT 34.1 Monthly Demand Charge: 0.0.0.

⁴ Transmittal at 2-3.

⁵ *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,136, at P 25 (2018) (February 16, 2018 Order).

⁶ “Network Customer” shall mean an entity receiving transmission service pursuant to the terms of the Transmission Provider’s Network Integration Transmission Service under Tariff, Part III.

⁷ Jackson Testimony at 17.

Dominion states that Attachment M-2 will also include a process to adjust a Network Customer's NSPL contributions daily, in the event that eligible retail customers in jurisdictions that provide retail choice change Network Customers.

6. Dominion explains that it does not propose any changes to its Transmission Service formula rate, i.e., the 1-CP demand will remain the divisor in the formula rate, and the rate will not change.

7. Dominion states that the proposed changes are necessary to reduce yearly volatility in transmission charges due to seasonal peak changes, as the Dominion Zone has experienced summer and winter peaks in recent years. Dominion claims the new methodology will result in a more stable cost allocation by reducing cost shifts due to changes in the annual system peak and will discourage cost-shifting among network customers. Dominion contends that customers have actively reduced demand of their own volition during the 1-CP in order to shift Transmission Service charges to other customers.

8. Dominion states that the Commission has previously identified the risk of cost-shifting among network customers through load reductions during a coincident peak.⁸ Dominion states that customers can forecast when the annual 1-CP will occur using the hourly seven day load forecast for the Dominion Zone provided on PJM's website.⁹ Dominion states that it has provided evidence showing that both wholesale and retail customers actively reduced their demand during the 2018 1-CP and during the single highest peak load hour the Dominion Zone has experienced to-date during the 12 month period starting November 1, 2018 (i.e., January 31, 2019). Dominion argues that since these demand reductions occurred in the winter, rather than the summer when a customer's NSPL charges are assessed, the demand reductions could only be to avoid

⁸ Transmittal at 5 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,259-60 (1997) (cross-referenced at 78 FERC ¶ 61,220) (“For example, if at the time of the monthly system peak the FMPA member city generates more than 40 MW (or takes short-term firm transmission service (or a combination of the two)), it may be able to lower its monthly coincident peak load for network billing purposes, and thereby reducing if not eliminating its load-ratio cost responsibility for network service. Because network and native load customers bear any residual system costs on a load-ratio basis, any cost responsibility evaded by a network customer in this manner would be borne by the remaining network customers and native load.”)).

⁹ *Id.* (citing Hewett Testimony, Ex. No. DEV-5 at 5:15-19).

Transmission Service charges.¹⁰ Dominion also notes that other PJM transmission owners use a 5-CP¹¹ approach to reduce reliance on the single coincident peak demand hour for the calculation of transmission billing determinants.¹² Dominion states that it evaluated adopting a similar 5-CP approach, but determined that a 12-CP approach would provide a better method to reduce cost shifting due to discretionary curtailments and address the full range of operating realities of its system. Moreover, Dominion states its proposal is consistent with transmission planning and associated cost causation principles, will not result in over collection of its annual transmission revenue requirement, and will charge each Network Customer based on an NSPL that is consistent with PJM's NSPL billing practices.

9. Dominion requests a January 1, 2020 effective date for its proposal to allow for a transition period during 2019 when it will continue to calculate each Network Customer's NSPL contribution using the current methodology.¹³ Dominion states that it will also calculate each Network Customer's NSPL according to the proposed methodology for informational purposes only and provide it upon request. Dominion states that this transition period will provide Network Customers with sufficient time to understand the proposed 12-CP methodology, as compared to the present method, prior to it impacting their billing for Network Service.

III. Notice of Filings

10. Notice of Dominion's Filing was published in the *Federal Register*, 84 Fed. Reg. 18,275 (2019), with interventions and protests due on or before May 15, 2019. Timely motions to intervene were filed by Direct Energy Business Marketing, LLC and DirectEnergy Business, LLC, Central Virginia Electric Cooperative, Inc., Virginia Committee for Fair Utility Rates, Virginia Municipal Electric Association No. 1 (VMEA), and American Municipal Power, Inc. North Carolina Electric Membership Corporation filed a motion to intervene out of time.

¹⁰ *Id.*

¹¹ The five highest peak hours annually or during summer as defined in PJM.

¹² *See, e.g.*, Attachment M-2 of FirstEnergy at Section II; Attachment M-2 of Commonwealth Edison at Section II; Attachment M-2 of PSE&G at Section A(1); Attachment M-2 of Atlantic City Electric at Section 1. The Attachment M-2s are currently available under PJM's "Intra-PJM Tariffs" title in eTariff, <https://etariff.ferc.gov/TariffBrowser.aspx?tid=1731>

¹³ Transmittal at 8. Dominion seeks a waiver of section 35.3(a)(1)) of the Commission's regulations to permit an effective date of January 1, 2020.

11. Old Dominion Electric Cooperative (ODEC) filed a timely motion to intervene and comments in support of Dominion's Filing. Calpine Energy Solutions, LLC (Calpine), Northern Virginia Electric Cooperative, Inc. (NOVEC), Microsoft Corporation (Microsoft), PJM Industrial Customer Coalition (ICC), and Virginia State Corporation Commission Staff (Virginia Commission) filed timely motions to intervene and protests. Dominion and ODEC filed answers to protests.

12. On June 14, 2019, Commission staff issued a deficiency letter seeking additional information related to Dominion's transmission system planning, data on customer load reductions at the Dominion Zone 1-CP hour in previous years, and the potential benefits of customer load reductions during the 1-CP (Deficiency Letter).

13. On July 15, 2019, Dominion filed its response to the deficiency letter (Deficiency Letter Response). Notice of Dominion's Deficiency Letter Response was published in the *Federal Register*, 84 Fed. Reg. 35,383 (2019), with interventions and protests due on or before August 5, 2019. ICC and the Virginia Committee for Fair Utility Rates (together, Joint Protestors), NOVEC, Calpine, Microsoft, and VMEA filed protests. ODEC filed comments in support of Dominion's Deficiency Letter Response. Dominion filed an answer to protests.

IV. Responsive Pleadings and Deficiency Response

1. FPA Section 205 Burden

a. Protests and Answers

14. Protestors argue that Dominion failed to meet its burden under FPA section 205 to demonstrate that its proposed rate is just and reasonable.¹⁴ Microsoft states that Dominion provides no evidence of a supervening change in circumstances or change in Commission policy to justify a change in demand cost allocation; no demonstration of a flat load profile; and no load data necessary to conduct the three peak load tests historically used in analyzing the appropriate demand cost allocation methodology for a given utility, i.e., (1) the on and off peak test, (2) the low to annual peak test, and (3) the average to annual peak test.¹⁵

¹⁴ See Calpine Protest at 5-6; Microsoft Protest at 6; ICC Protest at 14; NOVEC Protest at 10.

¹⁵ Microsoft Protest at 6-7 (citing *Sw. Pub. Serv. Co.*, 144 FERC ¶ 61,133, at PP 2, 45-46 (2013) (*Southwest Public Service Co.*)).

15. Microsoft and NOVEC claim that, similar to Dominion's previous filing, Dominion fails to provide sufficient evidence that there is a problem in need of a solution. With respect to evidence provided by Dominion to show that there was an intentional reduction in demand at the 1-CP, Microsoft argues that Dominion simply "cherry-picked" a few customers over a few years without providing context for the data points. NOVEC asserts that it is unclear whether the reductions were following PJM operational instructions; are consistent with each customer's load curtailment patterns over a larger period of time; or reflect a generalized behavior.¹⁶ Microsoft contends that Dominion's decision to use percentages, instead of raw data, masks whether these shifts in demand are from significant users or are from small users who would only account for tiny fractions of the system's use during the 1-CP. Microsoft further argues that Dominion's data on yearly variability in cost responsibility, dependent on whether the 1-CP falls in the summer or winter, does not demonstrate new or worsening variability.¹⁷ NOVEC concurs, arguing that a trend of the zone peaking in the winter, rather than in the summer, does not mean that the 1-CP method is no longer appropriate.¹⁸

16. In its answer, Dominion disagrees that it has not demonstrated evidence of a problem, reiterating that its proposal will reduce yearly volatility in transmission charges due to seasonal peak changes and will reduce cost shifting or avoidance at the 1-CP.¹⁹ ODEC similarly asserts that Dominion has provided evidence in satisfaction of the February 16, 2018 Order to demonstrate that cost shifts have occurred, arguing that Dominion need not provide evidence of every instance of curtailment in the Dominion Zone peak to demonstrate that a problem exists.²⁰

17. Dominion disagrees with claims it "cherry picked" data to demonstrate yearly volatility, arguing that it used actual load data from the four most recent rate years. Dominion states that it chose to express customer load as a percentage to protect the identity of the network customers, but that does not undermine the data's accuracy.²¹

¹⁶ NOVEC Protest at 4-5.

¹⁷ Microsoft Protest at 8-9.

¹⁸ NOVEC Protest at 5-6.

¹⁹ Dominion Answer at 2-3.

²⁰ ODEC Answer at 3.

²¹ Dominion Answer at 3-4.

18. Dominion asserts that it demonstrated that its proposed 12-CP allocation feature is a narrowly tailored, just and reasonable solution to the weaknesses of the 1-CP method (i.e., yearly volatility in transmission charges and cost avoidance), in light of customer behavior and Dominion's operating realities.²²

b. Deficiency Letter Response and Protests

19. In the deficiency letter response, Dominion states that it clearly demonstrated in its exhibits' data that its network customers are able to curtail their load during the 1-CP and have reduced their allocated NITS costs and shifted those costs to other customers. Dominion states that its 12-CP proposal evens out this allocation and allows Dominion to allocate the NITS costs based on a much broader range of system usage conditions throughout the year.²³

20. Microsoft asserts that Dominion's cost allocation methodology should follow PJM's methodology.²⁴ VMEA notes that no other utility in PJM uses a 12-CP methodology, arguing that Dominion's circumstances do not merit a different allocator than the rest of PJM.²⁵ VMEA argues that Dominion does not have a relatively flat demand curve, showing that, over the last five years, the 12-CPs have differed by almost 10,000 MW.²⁶

21. Calpine argues that Dominion has no empirical evidence to back up its claims that the 12-CP methodology is needed to avoid improper cost shifting.²⁷ Microsoft states that the data Dominion provided in response to the Commission's question does not demonstrate that customers are consistently reducing demand at the 1-CP, but shows increases and decreases in demand across days.²⁸ Joint Protestors argue that the data Dominion presents merely shows that four customers had success in predicting

²² *Id.* at 4-5.

²³ Dominion Deficiency Letter Response at 2.

²⁴ Microsoft Deficiency Protest at 2 (citing *Old Dominion Elec. Coop.*, 158 FERC ¶ 61,045, at PP 60-67 (2017)).

²⁵ VMEA Deficiency Protest at 5.

²⁶ *Id.* at 4.

²⁷ Calpine Deficiency Protest at 1-2.

²⁸ Microsoft Deficiency Protest at 4-5.

Dominion's 1-CP event and, therefore, curtailed, but did not unnecessarily curtail during other hours when they did not have incentive to do so.²⁹

2. Transmission Planning and Cost Causation

a. Protests and Answers

22. Protestors argue that Dominion has failed to demonstrate that its proposed 12-CP methodology would generate a just and reasonable cost allocation that follows the principle of cost causation, requiring that “all approved rates reflect to some degree the costs actually caused by the customer who must pay them,” and “costs are to be allocated to those who cause the costs to be incurred and reap the resulting benefits.”³⁰ Protestors argue that because annual peak loads are one of the main determinants of the investment in transmission capacity in PJM,³¹ the current 1-CP approach allows customers to pay for transmission based on their contribution to the annual system peak, on which transmission system planning is based.³² By contrast, they argue that Dominion's proposal would not link customers' charges for transmission with their contribution to system peak load and the transmission investment needed to accommodate that peak load.³³ Calpine points out that Dominion does not claim to plan its system on a 12-CP

²⁹ Joint Protesters Deficiency Protest at 6.

³⁰ ICC Protest at 5 (citing *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *BNP Paribas v. FERC*, 743 F.3d 264, 267-68 (D.C. Cir. 2014); *Black Oak Energy v. FERC*, 725 F.3d 230, 237 (D.C. Cir. 2013); *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 85 (D.C. Cir. 2014); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004)); *see also* Microsoft Protest at 4; Calpine Protest at 6-7; NOVEC Protest at 9.

³¹ ICC Protest at 5-6 (stating that PJM and its transmission owners plan and develop the system to meet the single highest system peak or demand on the system because a failure to plan to meet the annual peak would leave the transmission system with insufficient capacity to meet load during one or more hours each year) (citing *La. Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 895 (D.C. Cir. 1999)); *see also* Calpine Protest at 12; NOVEC Protest at 9.

³² ICC Protest at 5-6; Microsoft Protest at 4-5; Calpine Protest at 6-7 (citing *Tex-La Elec. Coop. of Texas, Inc.*, 69 FERC ¶ 61,269, at 62,035 (1994)); NOVEC Protest at 8-9.

³³ *See* NOVEC Protest at 8-9.

basis.³⁴ ICC states that Dominion's proposed approach would not allocate costs based on actual use of the system during the periods most relevant for planning purposes, i.e., during the annual system peak.³⁵ Rather, ICC argues, Dominion's proposed approach is inconsistent with *Occidental v. PJM*, since Dominion would "dilute" that annual system peak value by incorporating 11 additional peaks.

23. NOVEC argues that the proposed 12-CP method creates a mismatch between the 1-CP demand divisor used in the NITS formula rate and the billing determinants to which that rate is applied. Virginia Commission argues that, if the Commission determines that the risk of customers curtailing load to reduce their NITS obligation supports a tariff change, the Commission should consider alternative methodologies that may be superior to the 12-CP calculation, such as the 5-CP method, which is used by most PJM members to calculate their NPSL contributions.³⁶

24. In its answer, Dominion states that transmission planning cannot be boiled down to building transmission to meet single coincident peak demand, but rather must consider other factors, such as distribution level solar growth, end of life of existing facilities, maintenance, light load issues causing high voltage on the system, and specific high demand customer hookups.³⁷ ODEC states that a majority of Dominion's transmission projects are not constructed to handle the annual system peak, but rather to address non-peak load needs (i.e., baseline projects that are end-of-life projects, generation retirements, supplemental projects, and reliability projects). Accordingly, ODEC argues that transmission costs should not be allocated only to customers that have contributed to

³⁴ See, e.g., Calpine Protest at 8 (noting that the Commission has permitted a 12-CP allocation methodology where the system is also planned on a 12-CP basis).

³⁵ See, e.g., ICC Protest at 7 (stating that the Commission has emphasized that charges for the use of PJM's transmission system should be allocated to network customers based on a network customer's actual use of PJM's system, consistent with the principle of the cost causation) (citing *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,113, at P 28, *reh'g denied*, 108 FERC ¶ 61,302 (2004); *Occidental Chem. Corp. v. PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,275, at P 14 (2003) (*Occidental v. PJM*)).

³⁶ Virginia Commission Comments at 1-2.

³⁷ Dominion Answer at 5-6. Dominion notes that PJM has identified a number of transmission investment drivers in addition to load, such as shifting generation resources, aging infrastructure repair or replacement, and public policy goals. *Id.* (citing PJM Interconnection, L.L.C., *The Benefits of the PJM Transmission System* 3 (Apr. 16, 2019), <https://www.pjm.com/-/media/library/reports-notice/special-reports/2019/the-benefits-of-the-pjm-transmissionsystem.ashx?la=en>).

the annual system peak, but to all customers that have caused and continue to benefit from all transmission projects in the Dominion Zone.³⁸

25. In response to the argument that charges for use of PJM's transmission system should be allocated based on a network customer's actual use of the transmission system, Dominion states that customers are more likely to pay for their use of the transmission system under its proposal because they can no longer curtail in a single hour and shift charges to other customers. Dominion contends that one-time yearly discretionary load reductions are unlikely to impact the need for additional transmission infrastructure on a long-term basis, and therefore are unlikely to result in transmission system cost savings.³⁹

26. Addressing the Virginia Commission's argument to consider the 5-CP as an alternative method to the 12-CP, Dominion states that since it uses five coincident summer peaks each year, it does not reflect transmission system operating reality in the Dominion Zone because the last three out of four annual peaks for that zone have been winter peaks.⁴⁰

b. Deficiency Letter Response and Protests

27. In the deficiency letter response, Dominion reiterates that because of the growth in renewable resources, changes in capacity mix, and replacement of aging transmission infrastructure, Dominion's transmission planning has evolved over the last five years. Dominion notes that its recent experiences of being a winter-peaking zone support Dominion's proposal to shift to a 12-CP methodology.⁴¹

28. Further, Dominion states that PJM's transmission planning has also changed due to these same factors. Dominion claims that PJM and its stakeholders, including Dominion, are recognizing certain reliability challenges associated with light load periods and are modifying PJM's Regional Transmission Expansion Plan (RTEP) process to incorporate light load methodology and power flow cases and new transmission project drivers.⁴² Dominion states these light load conditions have necessitated the installation of shunt reactors and other transmission technologies to help maintain system voltage

³⁸ ODEC Answer at 4-5.

³⁹ Dominion Answer at 7-9.

⁴⁰ *Id.* at 12-13.

⁴¹ Dominion Deficiency Letter Response at 3.

⁴² *Id.* at 4.

during light load conditions.⁴³ Dominion points to PJM's RTEP processes demonstrating that transmission planning is more in depth than a simple 1-CP analysis. Specifically, Dominion points to thermal analyses and load deliverability tests that PJM conducts during the RTEP process that go beyond a 1-CP methodology.⁴⁴

29. Protesters argue that Dominion's Deficiency Letter Response fails to show that its proposed 12-CP method is consistent with PJM's or Dominion's transmission system planning.⁴⁵ NOVEC notes that Dominion's planning philosophy has evolved to factor in additional load periods due to the growth of renewables, distributed resources, fuel change, and replacement of aging infrastructure, but that Dominion ties its proposal to the alleged cost shifting between customers, not to changes in its transmission planning.⁴⁶ Calpine states that while Dominion correctly pointed out factors that transmission planners should analyze, Dominion fails to provide details of appropriate costs that should be incurred by customers under the proposed 12-CP methodology.⁴⁷

30. Joint Protestors posit that Dominion's claims about seasons in support of their proposed 12-CP methodology are not relevant since Dominion must plan its transmission system for the highest 1-CP peak regardless of the season in which it occurs.⁴⁸ Joint Protestors also charge that Dominion does not show why it is reasonable to give equal weight to each of the 12 monthly peaks under a 12-CP method, given that the system must be planned for the highest 1-CP peak.⁴⁹

31. Joint Protestors argue that Dominion's 12-CP proposal is inconsistent with Commission precedent that "if load is reduced during a peak period used for billing, that

⁴³ *Id.* at 5.

⁴⁴ *Id.* at 5 (citing PJM Manual 14B at 38 (Section 2.3.6) (Baseline Thermal Analysis), PJM Manual 14B at 41 (Section 2.3.9) (Load Deliverability Analysis), PJM Manual 14B at 41 (Section 2.3.11) (Light Load Reliability Analysis)).

⁴⁵ *See* NOVEC Deficiency Protest at 5-6; Calpine Deficiency Protest at 2-4; VMEA Deficiency Protest at 3-4; Joint Protestors Deficiency Protest at 8.

⁴⁶ NOVEC Deficiency Protest at 6-7.

⁴⁷ Calpine Deficiency Protest at 3-4.

⁴⁸ Joint Protestors Deficiency Protest at 5.

⁴⁹ *Id.* at 9.

load reduction should be credited consistent with the principles of cost causation.”⁵⁰ Calpine disagrees that all of Dominion’s customers benefit from its transmission facilities and therefore cause a part of the costs to be incurred, stating that this is contrary to established judicial and Commission precedent.⁵¹

32. VMEA notes that Dominion has not supported its proposal consistent with the principles in Opinion No. 501-A, arguing that Dominion’s deficiency letter response illustrates that Dominion does not have a relatively flat demand curve and is not a 12-CP utility with respect to transmission usage.⁵²

33. Joint Protestors and VMEA contest Dominion’s claims about reliability challenges with light-load conditions justifying a 12-CP methodology.⁵³ Joint Protestors assert that Dominion’s statements about potential backflow from more renewable generation on distribution-level systems during light-load conditions do not support a 12-CP method.⁵⁴

34. Calpine and NOVEC argue that Dominion failed to explain why it would be appropriate to have a NITS rate that is based on a 1-CP methodology, but allocate NITS

⁵⁰ *Id.* at 7 (citing *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,268, at P 23 (2019) (additional citations omitted)).

⁵¹ Calpine Deficiency Protest at 9-10 (citing Deficiency Letter Response at 10; *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009); *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,216, at P 27 (2013)).

⁵² VMEA Deficiency Protest at 3-5 (citing *Golden Spread Elec. Coop. v. Sw. Pub. Serv. Co.*, Opinion No. 501-A, 144 FERC ¶ 61,132, at P 45 (2013) (“When assessing the first operating reality, system demand, the Commission looks at a utility’s pattern of monthly peak demands throughout the year. A company that has a relatively flat demand curve would typically allocate demand on a 12 CP basis.”)).

⁵³ Joint Protestors Deficiency Protest at 9-10; VMEA Deficiency Protest at 5-6.

⁵⁴ Joint Protestors Deficiency Protest at 9-10.

charges to its customers based on a 12-CP methodology.⁵⁵ NOVEC argues that instead of using the 1-CP to develop the rate charged, the revenue requirement would already be allocated through the 12-CP averaging method and Dominion could simply divide each customer's allocated share by 12, and not use 1-CP.⁵⁶

35. In its supplemental answer, Dominion argues that it has provided ample evidence that Dominion's system planning considers more than just a single, annual coincident peak. Dominion notes that PJM plans beyond the needs of a single coincident peak. For example, Dominion asserts that operating realities between winter conditions and summer conditions impact the transmission system differently and that PJM studies summer peaks as well as winter peaks and light load conditions. Therefore, Dominion proclaims, a 12-CP approach is more consistent with the entire range of operating realities than a 1-CP methodology.⁵⁷ Additionally, Dominion states the sum of all Network Customer's NSPLs will equal the 1-CP demand divisor included in the formula rate. Dominion notes that several other PJM transmission owners (Commonwealth Edison Company, Public Service Electric and Gas Company, Atlantic City Electric Company, and Delmarva Power & Light Company) use different CP approaches while maintaining a 1-CP demand divisor in their formula rates.⁵⁸

3. Load Reductions during the Dominion Zone 1-CP

a. Protests and Answers

36. Protestors argue that Dominion's proposal reduces the incentive to peak-shave. NOVEC contends that by allocating the 1-CP demand based on average 12-CP demands, and not actual demand at the system peak, Dominion's proposal eliminates the economic incentive to manage demand at the time of the system peak.⁵⁹ ICC similarly argues that

⁵⁵ Calpine Deficiency Protest at 4-5 (noting that PJM uses annual peaks for many aspects of its transmission planning process) (citing PJM, *2017 Regional Transmission Expansion Plan, Book 2, Inputs and Process* at 13 (Feb. 28, 2018), <https://www.pjm.com/-/media/library/reports-notices/2017-rtep/2017-rtep-book-2.ashx?la=en>; Dominion, April 24 Filing, Exhibit No. DEV-1, Prepared Direct Testimony of James Daniel Jackson, Jr. at 7); NOVEC Deficiency Protest at 3.

⁵⁶ NOVEC Deficiency Protest at 4.

⁵⁷ Dominion Supplemental Answer at 9.

⁵⁸ *Id.* at 11-12.

⁵⁹ NOVEC Protest at 7.

for customers to save on transmission costs by reducing their peak loads under the proposal as they would under the current 1-CP methodology, they would need to reduce load during a greater number of hours each month, as well as reduce load during every month.⁶⁰

37. NOVEC, Microsoft, and ICC argue that reduced incentives to peak shave will lead to increased capital investments to accommodate higher demand, to the detriment of customers and grid efficiency.⁶¹ Microsoft argues that the Commission has emphasized the benefit of demand response and that PJM has similarly recognized that, while demand response would benefit the system most when participating as a supply resource, customers can also continue to peak shave on the demand side if they believe this is their best opportunity to manage cost.⁶² Calpine similarly contends that Dominion repeatedly characterizes customers that reduce their load during the annual system peak as having engaged in improper behavior, where such behavior actually promotes efficiency and lowers costs.⁶³

38. Calpine notes that Mr. Jackson's testimony states that "[h]aving the load reduced during a single peak hour in one year does little to mitigate the need for transmission if it reappears during another single peak hour within a few years."⁶⁴ Calpine contends that Mr. Jackson does not demonstrate that Dominion plans its transmission system based on the assumption that curtailed load will somehow suddenly "reappear" at system peak in future years, and also ignores that customers will continue to reduce their load at the system peak if rates are properly structured to incentivize such reductions. Calpine states

⁶⁰ ICC Protest at 11-12

⁶¹ NOVEC Protest at 7; Microsoft Protest at 9-11; ICC Protest at 7-8 (citing *Nevada Power Co.*, 153 FERC ¶ 61,306, at P 46 (2015)).

⁶² Microsoft Protest at 9-10 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119 at P 888, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009); Energy Policy Act of 2005, Pub. L. No. 109-58, § 1252(f), 119 Stat. 594, 966; *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,113, at P 28 (recognizing "the need to encourage load response during periods when generation or transmission are in short supply and prices are rising"))).

⁶³ Calpine Protest at 6.

⁶⁴ *Id.* at 11 (citing Jackson Testimony at 13).

that load reductions during the annual peak could help offset the need for transmission additions caused by the other identified factors.⁶⁵

39. ICC argues that Dominion has made no effort to distinguish precedent where the Commission found that the public interest is better served when PJM allocates its transmission charges to those using the system on peak and when customers have incentives to curtail load during the peak period.⁶⁶ NOVEC argues that Dominion has not reconciled its proposal with the other mechanisms and policies in place encouraging peak demand management, such as PJM's Behind the Meter Generation load netting mechanism.⁶⁷

40. Dominion responds in its answer that its proposal neither places any restriction on a customer's ability to utilize demand response in order to pursue energy cost-reduction, which is expressly permitted by the PJM Tariff and compensated by the market, nor does it impact any capacity or energy payment from PJM that customers may obtain from peak shaving. Dominion states that the only activity that its proposal may make less rewarding is reducing load during the single peak hour in one year in order to reduce or eliminate a customer's responsibility for network service charges for the entire year. Dominion asserts that protestors' inefficient use arguments are unsupported because they do not demonstrate identifiable cost savings associated with Dominion transmission facilities that exceed the real costs to network customers (e.g., delayed production, work flow schedule changes, or running behind the meter generators). Dominion states that its proposal will encourage efficient use of the transmission system by reducing the whole years' worth of transmission charges reward for annual peak hour discretionary reductions (nonuse of the transmission system), which does not have identifiable savings in the costs of Dominion transmission facilities.⁶⁸

b. Deficiency Letter Response and Protests

41. In its deficiency letter response, Dominion provides supporting exhibits that Dominion argues demonstrate that certain customers reduce demand in anticipation of 1-CP events but make no reductions on subsequent days that are experiencing near-peak

⁶⁵ *Id.* at 11-12 (citing Jackson Testimony at 13-14).

⁶⁶ ICC Protest at 9-11 (citing *Occidental v. PJM*, 102 FERC ¶ 61,275 at PP 13, 17).

⁶⁷ NOVEC Protest at 6-7.

⁶⁸ Dominion Answer at 9-10.

conditions.⁶⁹ Dominion also reiterates the arguments made in the supporting testimony with their initial filing. For example, Dominion underscores that it recognizes the benefits of PJM demand response programs, but, in the absence of identifiable transmission cost savings accruing from Dominion's customers' voluntary or discretionary load reductions at the time of the 1-CP event, Dominion's ability to identify cost savings of constructing transmission facilities is limited.⁷⁰

42. Protestors argue that load curtailment efforts should be encouraged because they reduce zonal peak loads, lower stress at peak times, and lessen the need for Dominion to build more transmission capacity to meet peak loads at the highest hour of demand.⁷¹ In response to claims that Dominion incurs costs that its customers avoid by reducing their demand during peak hours, Microsoft argues the resulting lower peak saves costs for all customers since Dominion and PJM will not build to that higher peak absent load curtailment efforts.⁷²

43. Protestors also argue that Dominion's proposal is at odds with certain policies and programs. For instance, Joint Protestors assert that Dominion's proposal is at odds with PJM's goal of integrating demand response into the retail market as well as the Commonwealth of Virginia's Energy Policy.⁷³ NOVEC notes that Dominion uses solar generation as "load reducers" to reduce load obligation within PJM at the times of the coincident peak.⁷⁴ NOVEC notes that federal and state legislators have supported measures to incent customers to adjust their consumption at times of system peak to ease system stress and to reduce the need to add incremental generation and transmission.⁷⁵ NOVEC argues that customers have implemented these policies but Dominion's filing

⁶⁹ Dominion Deficiency Letter Response at 7.

⁷⁰ *Id.* at 9 (citing Jackson Testimony at 13).

⁷¹ Joint Protestors Deficiency Protest at 14, 17; Microsoft Deficiency Protest at 3.

⁷² Microsoft Deficiency Protest at 3-4.

⁷³ Joint Protestors Deficiency Protest at 18 (citing Va. Code Ann. § 67-102 and Va. Code § 56-585.1(A)(5)(b)).

⁷⁴ NOVEC Deficiency Protest at 8 (citing Virginia Electric and Power Company for Revision of Rate Adjustment Clause Rider US-2, Virginia State Corporation Commission Case No. PUR-2018-00167, Pre-filed Testimony of VSCC Witness Allison F. Samuel at 8).

⁷⁵ NOVEC Deficiency Protest at 8.

runs counter to them and dilutes the price signal or penalizes certain customers.⁷⁶ Joint Protestors state that in Order No. 745, the Commission determined that it is appropriate to compensate demand response resources that help balance supply and demand in a cost-effective manner.⁷⁷ Joint Protestors state that reductions in Locational Marginal Price, as customers are doing under a 1-CP method, reduce the total amount that consumers pay for energy. Joint Protestors note the Commission recently upheld its policy that crediting customers for load reductions is consistent with the principles of cost causation.⁷⁸

44. Calpine argues that Dominion's proposal will stifle attempts by other load-serving entities to promote efficiency and cost-saving by managing their customers' demand.⁷⁹ Joint Protestors argue that the ongoing market uncertainty regarding the potential implementation of Dominion's proposal deters customers from investing time and resources in sustainable load management systems and solutions.⁸⁰

4. Retail Choice

45. Protestors argue that Dominion's proposed methodology should be rejected because it would discourage retail competition for energy supply in Virginia. ICC states that retail customers can currently reduce their costs by moving from Dominion's rate structure, where peak-shaving signals are muted by Dominion's retail tariff rate design, to a rate structure where they can realize savings by reducing demand during the annual zonal peak hour. ICC and Calpine argue that this incentive is removed by Dominion's proposal because customers reducing their load during the annual system peak would receive approximately 1/12th the savings in NITS and other charges that they would have received under the current 1-CP methodology, thereby also reducing the incentives for retail customers to switch providers. Calpine also states that Dominion's proposal will disrupt long-term contracts it has entered into, as a Competitive Service Provider in

⁷⁶ *Id.* at 8.

⁷⁷ Joint Protestors Deficiency Protest at 14 (citing *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 134 FERC ¶ 61,187, at PP 48-50 (2011)).

⁷⁸ *Id.* at 14-15 (citing *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,268, at P 23).

⁷⁹ Calpine Deficiency Protest at 2.

⁸⁰ Joint Protestors Deficiency Protest at 18-19.

Virginia, which were priced based on the assumption that Calpine would be able to manage its customers' respective loads to help control NITS and other costs.⁸¹

46. In its answer, Dominion states that its proposal will not prevent customers from shopping with alternative energy suppliers for lower cost energy or capacity. Dominion disagrees that its proposal will have the effect of frustrating retail competition, but rather, states that it seeks to levelize transmission costs among its customers and discourage cost shifting.⁸²

5. Effective Date/Transition Period

47. ICC states that it is unclear how Dominion's proposed 2019 transition period, during which each LSE would obtain its new NSPL contribution calculated under the new proposed methodology, would work. ICC states that billing during 2020 could potentially be set based on system peaks set during the frigid cold snap in late January 2019, when customers were making operational decisions based on the current 1-CP rules, not based on the proposed 12-CP rules. ICC argues that any proposal to use consumption patterns that occurred prior to the filing as a basis for determining individual customer transmission charges after the filing constitutes retroactive ratemaking and violates the premise that customers must have notice and an opportunity to be heard before new rates may go into effect. Accordingly, ICC argues that if the Commission accepts Dominion's proposal, it should clarify that any peak loads that occurred prior to or during this proceeding should not be considered when implementing the new 12-CP methodology. Instead, the first full month after issuance of the Commission order should be the first month on which the 12-CP calculation is based.⁸³

48. In its answer, Dominion states that it provided customers with sufficient notice and detail of the transition period and 12-CP allocation proposal through the filing letter, the testimony of Mr. Jackson in Exhibit No. DEV-1 and the tables in DEV-4 that compare the current and proposed methods. Dominion states that it will provide customers with information to understand the impact of the new methodology on their own NSPLs prior to January 1, 2020. Finally, Dominion argues that the assertion that the requested effective date represents retroactive rulemaking lacks merit and is contrary to Commission precedent.⁸⁴

⁸¹ ICC Protest at 12-13; Calpine Protest at 13-15.

⁸² Dominion Answer at 10-11.

⁸³ ICC Protest at 14-16.

⁸⁴ Dominion Answer at 13-14.

V. Discussion

A. Procedural Matters

49. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

50. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant North Carolina Electric Membership Corporation's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

51. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Dominion's and ODEC's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

52. For the reasons discussed below, we accept Dominion's Filing, effective January 1, 2020, as requested.

53. As required by Order No. 888, Dominion has demonstrated that its 12-CP proposal is consistent with its current transmission planning.⁸⁵ Traditionally, public utility transmission providers have relied on the demand of their transmission customers at the system's coincident peak to determine each customer's network transmission service

⁸⁵ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,736 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) ("Because network service is load based, it is reasonable to allocate costs on the basis of load for purposes of pricing network service Utilities are free to file another [load ratio allocation method of pricing network service] if they demonstrate it reflects their transmission system planning.").

charges.⁸⁶ However, a public utility transmission provider may adopt a different approach, provided it reflects their transmission planning.⁸⁷

54. Here, we find that Dominion's proposed 12-CP methodology aligns with how Dominion conducts transmission system planning. Dominion has shown that, in the past five years, its transmission planning has changed to factor-in additional load periods because it is experiencing both winter and summer peaks, a changing capacity mix, growth of distributed energy resources, growth in renewables, and replacement of aging transmission infrastructure. Dominion explains that it has traditionally performed transmission planning to ensure reliability for all load levels that would occur during the year, but with an emphasis on summer and/or winter peak loading periods. Dominion notes that up until the last five years, the actual annual peaks were typically summer peaks, but in the last four out of five years, the actual annual peaks have been winter peaks. Dominion explains that this has resulted in a forecast of summer annual peaks for the next ten years and also consideration of the winter peaks in transmission planning.

55. Further, Dominion states that the changing capacity mix, due to significant growth in renewable resources and the retirement of fossil fuel generators, has required the need to fully assess other load periods beyond the summer and winter peaks. Dominion points to the growth of distributed generation in creating operational challenges, such as backflow occurring onto the transmission system during light load periods, which requires transmission upgrades. Additionally, Dominion notes that data center growth has a high load factor, which influences year-round monthly peaks, and that renewable generation resources are being sited in areas further away from heavy load centers, covering a broader geographic area with multiple points of interconnection. As a result, Dominion is planning more transmission level projects to address aging infrastructure and light load issues than transmission projects necessary to address the annual system peak. Dominion notes that PJM has recognized the reliability challenges associated with light load periods and has modified PJM's RTEP process to incorporate light load methodology in power flow cases and potential new project drivers. For these reasons, we find that Dominion has demonstrated that the transmission planning process has changed from planning for an annual peak to considering the reliability needs necessary to meet changing system conditions for other periods of the year and that Dominion's proposed 12-CP methodology, which considers monthly peak usage in all seasons, reflects the way Dominion plans its transmission system. Additionally, we are persuaded

⁸⁶ February 16, 2018 Order, 162 FERC ¶ 61,136 at P 25.

⁸⁷ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,736 (“[W]e recognize that alternate allocation proposals may have merit and welcome their submittal by utilities in future rate applications. They will be evaluated on a case-by-case basis and decided on their merits.”).

by Dominion's arguments and data that a 12-CP methodology reduces yearly volatility in transmission charges due to seasonal peak shifts.

56. We disagree with protestors who assert that Dominion has failed to satisfy its FPA section 205 burden based on the examples of the data of the customers that are able to curtail their load during the 1-CP that Dominion provides in this filing. Protestors assert that because Dominion does not specifically identify which customers are the subjects of those examples, the Commission should, therefore, reject Dominion's proposal. As we explained above, Order No. 888 allows public utility transmission providers to adopt a different allocation provided the utility is able to reasonably demonstrate the allocation reflects its transmission system planning, which Dominion has done. For the same reason we reject VMEA's argument that Dominion's circumstances do not merit a different allocator than the rest of PJM because no other utility in PJM uses a 12-CP methodology. It is irrelevant for purposes of our determination here what allocation methodology other utilities in PJM are using.

57. We also reject Microsoft's argument that Dominion provided no load data necessary to conduct the three peak load tests historically used in analyzing the appropriate demand cost allocation methodology for a given utility, i.e., (1) the on and off peak test, (2) the low to annual peak test, and (3) the average to annual peak test. Dominion provided such data for the last five years in its deficiency letter response. The peak load tests are not a bright line test⁸⁸ and, as explained above, our acceptance of Dominion's instant proposal is not based on the peak load test results but rather on Dominion's demonstration that its proposed 12-CP methodology is consistent with its transmission planning as required by Order No. 888.

58. We reject arguments that Dominion's proposal is inconsistent with the principles of cost causation. As we have found above, Dominion has demonstrated that, in the past five years, it has changed how it plans its transmission system and that its proposal is consistent with such planning. Thus, we disagree with NOVEC that there is no link between a Network Customer's charges for transmission service, its contribution to system peak load, and the resulting investment needed to accommodate that contribution.

59. We reject NOVEC's argument that Dominion's proposal is inconsistent with the 1-CP divisor used in Dominion's formula rate. We note that the CP divisor used in Dominion's formula rate is the manner in which PJM allocates system-wide transmission

⁸⁸ See *Southwest Public Service Co.*, 144 FERC ¶ 61,133 at P 52 ("However, system demand is only one of the operating realities the Commission must consider."); Opinion No. 501-A, 144 FERC ¶ 61,132 at P 55 (stating that "the historical percentages that indicate a 12 CP utility in these peak load tests do not constitute a bright line test for determining an appropriate demand cost allocation methodology").

costs to PJM zones (e.g., Dominion). Here, Dominion is proposing to change the way costs are allocated to Dominion customers in the Dominion Zone. Dominion's proposal will not affect PJM's methodology for allocating system wide transmission costs. Additionally, utilities in other PJM zones maintain a 1-CP divisor in their formula rates while using a different method for customers within their zone like Dominion proposes here.⁸⁹

60. While we recognize system benefits may result from voluntary load reductions, the record in this proceeding demonstrates that voluntary load reductions during the 1-CP events are obscuring the level of transmission system usage by Dominion's customers. As detailed in the examples offered by Dominion, certain wholesale customers are voluntarily reducing demand during the 1-CP events and returning to normal levels of demand during off-peak times. This can result in Dominion not having an accurate depiction of transmission usage with which to plan the transmission system in a manner that ensures all demand can be reliably served.⁹⁰

61. We disagree with ICC's contention that the 12-CP method would not allocate costs based on actual use of the system during the periods most relevant for planning purposes, consistent with Commission precedent (i.e., *Occidental v. PJM*). In *Occidental v. PJM*, the Commission found PJM's inclusion of customers' interruptible, non-firm load for allocating transmission costs was unjust and unreasonable since access charges for use of PJM's transmission system should be allocated to network customers based on a network customer's actual use of PJM's transmission system, consistent with the principle of cost causation.⁹¹ In the instant proceeding, Dominion is not seeking to include its customers' quantity of interruptible, non-firm load. Rather, Dominion is modifying the frequency at which it measures system peaks, which will yield more accurate depictions of customers' demands.

62. We reject Calpine's argument that Dominion did not demonstrate that it plans its transmission system based on the assumption that curtailed load will "reappear" at system peak. Calpine's argument is misplaced because it assumes Dominion still conducts transmission planning based on annual peak. As we explain above, the 12-CP method reflects Dominion's current transmission planning, which considers system conditions for

⁸⁹ See, e.g., *Commonwealth Edison Co.*, 133 FERC ¶ 61,118, at P 12 (2010) ("As such, the proposed tariff provisions specify methodologies that are inputs to Commission-jurisdictional charges assessed by PJM to LSEs, who are customers of PJM.").

⁹⁰ See *Occidental v. PJM*, 102 FERC ¶ 61,275 at P 14 ("Access charges for use of PJM's transmission system should be allocated to network customers based on a network customer's actual use of PJM's system, consistent with the principle of cost causation.").

⁹¹ *Id.*

other periods of the year. Thus, we need not address Dominion's support for this "reappearance" issue.

63. We need not address NOVEC's arguments that Dominion's instant proposal runs counter to Virginia-specific policy goals, nor must we address the impacts this proceeding has on other programs within PJM. Those issues are beyond the scope of this proceeding.

64. We also find ICC's and Calpine's concerns regarding retail choice in Virginia to be beyond the scope of this proceeding. The FPA reserves the responsibilities of retail-related matters exclusively to the states, not the Commission⁹² and therefore, we will not address these concerns here.

65. We grant Dominion's requested waiver of the Commission's notice requirement to allow Dominion's Filing to become effective January 1, 2020.⁹³ We find unnecessary ICC's request to provide additional clarification that any peak loads that occurred prior to or during this proceeding should not be considered when implementing the new 12-CP methodology. We recognize that Network Customers have sufficient notice of the new methodology that will become effective on January 1, 2020, as well as Dominion's commitment to work with its customers in providing calculations for informational purposes upon a customer's request. We disagree that any reliance on consumption patterns that occurred prior to the proposed 12-CP methodology's effectiveness constitutes retroactive ratemaking. In *Town of Norwood, Massachusetts v. FERC*, the court stated that "the retroactive ratemaking doctrine prohibits the Commission from authorizing or requiring a utility to adjust current rates to make up for past errors in projections. If a utility includes an estimate of certain costs in its rates and subsequently finds out that the estimate was too low, it cannot adjust *future* rates to 'recoup past losses.'"⁹⁴ Here, Dominion is not proposing to adjust its rates to make up for over- or under-collection in prior periods, and all Tariff revisions are prospective. Thus, we disagree that Dominion's proposal constitutes retroactive ratemaking.

⁹² The FPA "places beyond FERC's power, and leaves to the States alone, the regulation of 'any other sale'—most notably, any retail sale—of electricity." *FERC v. Elec. Power Supply Ass'n*, 136 S.Ct. 760, 766 (2016) (quoting 18 U.S.C. § 824b (2018)).

⁹³ 18 C.F.R. § 35.3(a)(1) (2019).

⁹⁴ *Town of Norwood, Mass. v. FERC*, 53 F.3d 377, 381 (D.C. Cir. 1995) (additional citations omitted) (emphasis in original).

The Commission orders:

Dominion's proposal is hereby accepted, effective January 1, 2020, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.