

172 FERC ¶ 61,054  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C. and Virginia Electric and Power Company      Docket No. ER19-1661-002

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued July 17, 2020)

1. On November 18, 2019, the PJM Industrial Customers Coalition (PJM ICC) in tandem with the Virginia Committee for Fair Electricity Rates (together, Customer Advocates) and Microsoft Corporation (Microsoft) requested rehearing of the Commission’s October 17, 2019 order<sup>1</sup> in the above-captioned proceeding, which accepted the proposal submitted by Virginia Electric and Power Company, d/b/a Dominion Energy Virginia (Dominion), to revise the PJM Interconnection L.L.C. (PJM) Open Access Transmission Tariff (Tariff) pursuant to section 205 of the Federal Power Act (FPA).<sup>2</sup> The Coincident Peak Order established a new 12 month coincident peak (12-CP) allocation methodology for determining Network Service Peak Load contributions for Network Customers for the Dominion Zone,<sup>3</sup> effective January 1, 2020, as requested.

2. Pursuant to *Allegheny Defense Project v. FERC*,<sup>4</sup> the rehearing requests filed in this proceeding may be deemed denied by operation of law. As permitted by section 313(a) of the Federal Power Act (FPA),<sup>5</sup> however, we are modifying the

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<sup>1</sup> *Va. Elec. and Power Co.*, 169 FERC ¶ 61,041 (2019) (Coincident Peak Order).

<sup>2</sup> 16 U.S.C. § 824d (2018).

<sup>3</sup> “Network Customer” means an entity receiving transmission service pursuant to the terms of the Transmission provider’s Network Integration Transmission Service under Tariff, Part 111.

<sup>4</sup> *Allegheny Defense Project v. FERC*, No. 17-1098 (D.C. Cir. June 30, 2020).

<sup>5</sup> 16 U.S.C. § 825l(a) (2018) (“Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set

discussion in the Coincident Peak Order and continue to reach the same result in this proceeding, as discussed below.<sup>6</sup>

## I. Background

3. Dominion has a formula rate for transmission service on file with the Commission, Attachment H-16A to the PJM Tariff.<sup>7</sup> PJM assigns monthly demand charges to each zone according to each “Network Customer’s 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.”<sup>8</sup> Network Integration Transmission Service (Transmission Service) charges in the Dominion Zone are 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.

4. On April 24, 2019, Dominion proposed to revise the PJM Tariff to incorporate a new Attachment M-2.<sup>9</sup> Attachment M-2 changes the calculation of the Network Service Peak Load contribution for each Load Serving Entity within the Dominion Zone. The Network Service Peak Load calculation is used to determine each load serving entity’s load ratio share of Dominion’s annual transmission revenue requirement. Dominion’s proposed Attachment M-2 includes a new 12-CP allocation method to reduce cost shifts related to annual peak seasonal changes and lower the incentive for load serving entities to shift costs to other transmission customers by reducing consumption at the peak hour in order to avoid Transmission Service and other charges under the PJM Tariff.<sup>10</sup>

5. Dominion explained that, because billing is calculated based on a single-hour snapshot of customer demand, it can result in large swings in cost responsibility from

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aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

<sup>6</sup> *Allegheny Defense Project*, slip op. at 30. The Commission is not changing the outcome of the Coincident Peak Order. See *Smith Lake Improvement & Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

<sup>7</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 2.

<sup>8</sup> *Id.* P 2 & n.3. (citing 34.1, OATT 34.1 Monthly Demand Charge: 0.0.0).

<sup>9</sup> See *Va. Elec. and Power Co.*, Proposed Tariff Revisions to Incorporate a New Attachment M-2, Docket No. ER19-1661-000 (filed Apr. 24, 2019).

<sup>10</sup> See Transmittal at 1-2.

year-to-year, depending on when the annual system peak occurs.<sup>11</sup> Dominion asserted that this single-hour annual snapshot approach provides incentive for load serving entities to forecast the annual peak and intentionally reduce their load in that hour to avoid charges. Dominion stated that reducing load in this manner can significantly reduce or even eliminate a customer's responsibility for Transmission Service charges for an entire year.<sup>12</sup>

6. Dominion asserted the proposed changes were necessary to reduce yearly volatility in transmission charges due to seasonal peak changes, as the Dominion Zone had experienced summer and winter peaks in recent years.<sup>13</sup> Dominion explained that the timing of the Dominion Zone 1-CP (i.e., whether it occurs in summer or winter) can result in large changes in a Network Customer's Network Service Peak Load relative to the Dominion Zone Network Service Peak Load. This, in turn, results in dramatic changes in a Network Customer's cost responsibility.<sup>14</sup> Dominion argued that the new methodology would result in a more stable cost allocation by reducing cost shifts due to changes in the annual system peak. Dominion explained that customers have actively reduced demand of their own volition during the 1-CP to shift Transmission Service charges to other customers; Dominion further asserted that this 12-CP method would discourage cost-shifting among Network Customers.<sup>15</sup>

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<sup>11</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 3; *see also* Transmittal at 2.

<sup>12</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 3 & n.4 (citing Transmittal at 2-3); *see also* Exhibit No. DEV-1 (Testimony of James Daniel Jackson, Jr.) at 12:3-22, 13:1-3. Dominion stated that it had previously filed Tariff revisions to address this cost shift incentive in Docket No. ER18-493-000, proposing an average demand calculation that would serve as a backstop to each load serving entity's 1-CP calculation if its 1-CP contribution was lower than its average demand. *See* Transmittal at 3 & n.10 (citation omitted). The Commission rejected the proposal without prejudice, finding that Dominion's filing was premised on a hypothetical situation and Dominion had not provided evidence that these cost shifts occurred or were likely to take place. *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,136, at P 25 (2018).

<sup>13</sup> *Coincident Peak Order*, 169 FERC ¶ 61,041 at P 7; *see also* Transmittal at 4 & n.19 (citing Exhibit No. DEV-1 at 10:3-10).

<sup>14</sup> Transmittal at 4 & n.20 (citing Jackson Testimony, Exhibit No. DEV-1 at 9:14-22, 10-11; Exhibit No. DEV-4 (Network Service Peak Load Comparisons)).

<sup>15</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 8 (2018); *see also* Transmittal at 5 & nn.28-29 (citing Exhibit No. DEV-5 (Testimony of Christopher C. Hewett) at 5:15-19, 6:1-7, 6:16-22, 7:3-6); Exhibit Nos. DEV-6 and DEV-7 (showing both retail

7. Dominion stated that the Commission has previously identified the risk of cost-shifting among Network Customers through load reductions during a coincident peak.<sup>16</sup> Dominion added that the incentive for this type of cost-shifting behavior has risen over the past decade as Network Integration Transmission Service charges have increased to recover Dominion's significant transmission system investments.<sup>17</sup> Dominion's expert witness, Mr. Hewett, explained 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.<sup>18</sup> Dominion 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 beginning November 1, 2018, (i.e., January 21, 2019). Dominion argued that since these demand reductions occurred in winter, rather than during the summer when a customer's Network Service Peak Load charges are assessed, the demand reductions could only be for the purpose of avoiding Transmission Service charges.<sup>19</sup> Dominion also noted that other PJM transmission owners use a 5-CP<sup>20</sup> approach to reduce reliance on the single coincident peak demand hour for the calculation of transmission billing determinants.<sup>21</sup> Dominion stated that it considered adopting a

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and wholesale customers actively reduced demand of their own volition 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 Nov. 1, 2018).

<sup>16</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 8 & n.8 (citing 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) (quotation omitted))).

<sup>17</sup> Transmittal at 5 & n.27.

<sup>18</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 8 & n.9 (citing Hewitt Testimony, Exhibit No. DEV-5 at 5:15-19).

<sup>19</sup> Transmittal at 5 & n.30 (citing Hewitt Testimony, Exhibit No. DEV-5 at 6:8-15).

<sup>20</sup> This refers to the five highest peak hours annually or during summer as defined in PJM.

<sup>21</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 8 & n.12 (citing Attachment M-2 of FirstEnergy at Section II; Attachment M-2 of Commonwealth Edison at Section 11; Attachment M-2 of PSE&G at Section A91); Attachment M-2 of Atlantic

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 its system's operating realities.<sup>22</sup> Moreover, Dominion asserted that its proposal is in accordance with transmission planning and associated cost causation requirements, and will charge each Network Customer based on a Network Service Peak Load that is consistent with PJM's Network Service Peak Load billing practice.

8. To implement the new 12-CP allocation method, Dominion proposed to collect hourly load data for all Network Customers in the Dominion Zone (including applicable losses) coincident with each of the Dominion Zone's 12 monthly transmission peaks during the 12-month period ending September 30. Dominion would then calculate a Network Customer's average 12-CP value by dividing the sum of the 12 coincident peak load values for that customer by 12.<sup>23</sup> Each Network Customer's 12-CP allocation factor would be 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 Network Service Peak Load would be calculated by multiplying its 12-CP allocation factor by the Dominion Zone's Network Service Peak Load.<sup>24</sup> Dominion explained that it did 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.<sup>25</sup>

9. Dominion requested a January 1, 2020 effective date to provide a transition period during 2019 when it would continue to calculate each Network Customer's Network Service Peak Load according to the proposed methodology for informational purposes only and provide it upon request.<sup>26</sup> Dominion stated that this transition period would provide Network Customers with sufficient time to understand the proposed 12-CP

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City Electric at Section 1).

<sup>22</sup> *Id.* P 8.

<sup>23</sup> *Id.* P 5.

<sup>24</sup> *Id.* P 5 & n.7 (citing Jackson Testimony, Exhibit No. DEV-1 at 17). Attachment M-2 also included a process to adjust a Network Customer's Network Service Peak Load contributions daily, if eligible retail customers in a jurisdiction that provide retail choice change Network Customers.

<sup>25</sup> *Id.* P 6.

<sup>26</sup> *Id.* P 9 & n.13 (citing Transmittal at 8). Dominion sought waiver of 18 C.F.R. § 35.3(a)(a) (2019) to permit an effective date of January 1, 2020.

methodology as compared to the present method, prior to it impacting their billing for Network Service.

## II. Coincident Peak Order

10. On October 17, 2019, the Commission accepted the proposed 12-CP method, effective January 1, 2020, as requested.<sup>27</sup> The Commission found that Dominion had shown that its 12-CP proposal is aligned with how it conducts its current transmission planning, as required by Order No. 888.<sup>28</sup> The Commission explained that Dominion had shown that its transmission planning has changed in the past five years to factor-in additional load periods because Dominion “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.”<sup>29</sup>

11. In support, the Commission highlighted Dominion’s explanation 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.”<sup>30</sup> These changes, along with data center growth and siting of renewable generation resources in areas further away from heavy load centers have caused Dominion to plan more transmission projects to address aging

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<sup>27</sup> *Id.* P 52.

<sup>28</sup> *Id.* P 53 & n.85 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (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. Circuit 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.”)).

<sup>29</sup> *Id.* P 54.

<sup>30</sup> *Id.* P 55.

infrastructure and light load issues than transmission projects to address the annual system peak.<sup>31</sup>

12. For these reasons, the Commission found: (1) Dominion had demonstrated that its 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; (2) Dominion's proposed 12-CP methodology, which considers monthly peak usage in all seasons, reflects the way Dominion plans its transmission system; (3) Dominion's arguments and data persuasively support the determination that a 12-CP methodology reduces yearly volatility in transmission charges due to seasonal peak shifts.<sup>32</sup>

13. The Commission disagreed with protestors' assertions that Dominion "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 provided with its filing.<sup>33</sup> The Commission explained that Order No. 888 allows public utility transmission providers to adopt a different allocation method provided the utility is able to demonstrate the allocation reflects its transmission system planning, which the Commission found Dominion had done.<sup>34</sup>

14. The Commission disagreed with Microsoft's assertion that Dominion had not provided load data to perform the three peak load tests historically used in analyzing the appropriate demand cost allocation methodology for a given utility, noting that Dominion had in fact provided such data for the last five years in its deficiency letter response.<sup>35</sup> The Commission also stated that the peak load tests are not a bright line test,<sup>36</sup> and that its acceptance of the proposal was not based on peak load test results, but rather on

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* P 56.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* P 57 & n. 88 (citing *Sw. Pub. Serv. Co.*, 144 FERC ¶ 61,133, at P 52 (2013); *Sw. Pub. Serv. Co.*, Opinion No. 501-A, 144 FERC ¶ 61,132, at P 55 (2013)).

Dominion's showing that its proposed 12-CP methodology is consistent with its transmission planning as required by Order No. 888.<sup>37</sup>

15. Contrary to protestors' contentions, the Commission also found Dominion's proposal to be in accordance with the principles of cost causation. Reiterating Dominion's showing that, in the past five years, the utility has changed how it plans its transmission system and that its proposal is consistent with such planning, the Commission refuted the assertion 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."<sup>38</sup>

16. The Commission dismissed the argument that Dominion's proposal is not consistent with the 1-CP divisor used in Dominion's formula rate. The Commission drew a distinction between the manner in which PJM allocates system-wide transmission costs to PJM zones, such as the Dominion Zone, via the 1-CP divisor used in Dominion's formula rate, and the manner in which Dominion is proposing to change the way costs are allocated to Dominion's customers in the Dominion zone.<sup>39</sup> The Commission explained that Dominion's 12-CP method for allocating costs to its customers will not affect PJM's methodology for allocating system wide transmission costs. The Commission further pointed out that utilities in other PJM zones maintain a 1-CP divisor in their formula rates while using a different method for customers within their zone.<sup>40</sup>

17. Regarding demand response, the Commission explained that, while it "recognizes 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."<sup>41</sup> The Commission stated that Dominion provided examples that showed certain wholesale customers are voluntarily reducing demand during the 1-CP events and returning to normal levels of demand during off-peak times. The Commission reasoned that this can result in

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<sup>37</sup> *Id.* P 57.

<sup>38</sup> *Id.* P 58.

<sup>39</sup> *Id.* P 59.

<sup>40</sup> *Id.* P 59 & n.89 (citing *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 [Load Serving Entities] who are customers in PJM.")).

<sup>41</sup> *Id.* P 60.



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.<sup>42</sup>

18. Finally, the Commission disagreed with the 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*).<sup>43</sup> The Commission explained that in *Occidental v. PJM*, the Commission found PJM's inclusion of customers' interruptible, non-firm load for allocating transmission costs was unjust and unreasonable because 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.<sup>44</sup> The Commission explained that, 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, the Commission found, will yield more accurate depictions of customers' demands.<sup>45</sup>

### **III. Rehearing Requests and Responsive Pleadings**

19. On rehearing, Customer Advocates assert that the Coincident Peak Order is not based on reasoned decision-making, lacks substantial supporting record evidence, establishes an effective date in violation of due process and the rule against retroactive ratemaking, and will result in unjust, unreasonable, unduly discriminatory or preferential rates, particularly for industrial customers.<sup>46</sup> Microsoft and Customer Advocates argue Dominion failed to show how Dominion's transmission planning aligns with and justifies a 12-CP method.<sup>47</sup> Microsoft further asserts that shifting from a 1-CP to a 12-CP method will discourage – if not eliminate – beneficial voluntary demand response, resulting in

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<sup>42</sup> *Id.* P 60 & n.90 (citing *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 principles of cost causation.”)).

<sup>43</sup> *Id.* P 61.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Customer Advocates Rehearing Request at 2.

<sup>47</sup> *Id.* at 2; Microsoft Rehearing Request at 1, 2-4.

higher costs to customers.<sup>48</sup> Customer Advocates similarly assert that the Coincident Peak Order is not consistent with the Commission's policy and precedent promoting peak load shaving and transmission efficiency.<sup>49</sup>

20. On December 4, 2019, Dominion and Old Dominion Electric Cooperative (ODEC) together submitted a motion to answer and answer to the rehearing requests. Subsequently, on December 19, 2019, Customer Advocates and Microsoft jointly filed a motion to answer and answer to Dominion and ODEC's answer, asking the Commission to reject that pleading.

#### **IV. Procedural Matters**

21. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure<sup>50</sup> prohibits answers to a request for rehearing. Accordingly, we deny Dominion and ODEC's motion to answer and reject their answer, as well as Customer Advocates' and Microsoft's joint answer to the answer.

#### **V. Substantive Matters**

22. We disagree with Customer Advocates' and Microsoft's arguments on rehearing. As explained below, contrary to Microsoft's and Customer Advocates' arguments, the record supports the Commission's determination that the 12-CP allocation is just and reasonable. Accordingly, we find it unnecessary to establish hearing and settlement judge procedures.

##### **A. Nexus between 12-CP Method and Transmission Planning**

###### **1. Rehearing Requests**

23. Customer Advocates and Microsoft argue the Coincident Peak Order is unjust and unreasonable and lacks substantial evidence because Dominion has not "demonstrated that its 12-CP proposal is consistent with current transmission planning."<sup>51</sup> Customer Advocates and Microsoft note that the Commission lists various changes Dominion has

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<sup>48</sup> Microsoft Rehearing Request at 2; 4-7.

<sup>49</sup> Customer Advocates Rehearing Request at 2.

<sup>50</sup> 18 C.F.R. § 713(d)(1) (2019).

<sup>51</sup> Microsoft Rehearing Request at 2 & n.4 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 53) (citations omitted); *see also* Customer Advocates Rehearing Request at 7.

identified on its transmission system, such as recent experiences with summer and winter peaks, a changing capacity mix due to renewables, and replacement of aging infrastructure.<sup>52</sup> Customer Advocates and Microsoft argue, however, that consideration of these general changes does not demonstrate that Dominion now plans its transmission system based on 12 coincident peaks.<sup>53</sup> Microsoft alleges that, while Dominion makes “some reference” to its consideration of winter peaks in transmission planning and planning projects to address aging infrastructure, Dominion does not claim that it uses 12 coincident peaks in its transmission planning methodology;<sup>54</sup> nor does Dominion demonstrate that its consideration of presumably two – summer and winter peaks – correlates to 12 monthly peaks.<sup>55</sup>

24. Customer Advocates point out that the Commission recognized that public utility transmission providers have historically established a customer’s network transmission service charges based on the demand of their transmission customers at the system’s single coincident peak or 1-CP.<sup>56</sup> Customer Advocates assert that, while the Coincident Peak Order referred to Dominion’s use of forecasts for summer and winter annual peaks, the Coincident Peak Order did not provide relevant data or articulate a rational connection between a 1-CP now occurring in the winter in several recent years and the need for cost allocation that reflects the peak during every month of the year.<sup>57</sup> Customer Advocates argue that Dominion has not shown that demand levels in October and November, or in April or May, for example, contribute in any meaningful way to determinations of how much capacity must be added to Dominion’s transmission system. Customer Advocates state that no Dominion annual peaks have occurred during these months and any annual peak occurring outside of the months of July, August, January, or February would be “extremely rare.”<sup>58</sup> Customer Advocates argue it is “unfounded and

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<sup>52</sup> Microsoft Rehearing Request at 2 & n.4 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at PP 54-55); Customer Advocates Rehearing Request at 8 & n.30 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 55).

<sup>53</sup> Customer Advocates Rehearing Request at 8.

<sup>54</sup> *Id.* at 2.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 7 & n.24 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 53 & n.86) (citing *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,136 at P 25 (2018)).

<sup>57</sup> *Id.* at 9.

<sup>58</sup> *Id.*

illogical” to conclude that the hourly peak load in each of the other eight months are equally as critical to transmission planning as are the “big 4.”<sup>59</sup> Customer Advocates assert that, even if Dominion must plan for backflow on the system during light load periods, the Commission fails to explain how planning for backflow during light load periods is connected to any reasoned basis for giving all monthly peaks equal weight, especially the monthly peaks in the spring/fall shoulder seasons.<sup>60</sup>

25. Microsoft states that Dominion’s justification for a 12-CP method appears to be that it is factoring into its transmission planning things it does all year-round, like updating old infrastructure.<sup>61</sup> Microsoft contends that those types of investments have always been needed and any transmission planning system will need to consider more than just the relevant peak(s), whether it is a 1-CP, 3-CP, 5-CP or a 12-CP. Microsoft argues that these other considerations in transmission planning are irrelevant to the question of the number of peaks around which a utility is planning its transmission system. While Microsoft concedes that Dominion’s examples “may show” that it does not consider only the 1-CP, to the exclusion of everything else, in planning its transmission system, Microsoft argues these examples do not show that Dominion considers a 12-CP or that its considerations reflect the 12-CP.<sup>62</sup> Microsoft asserts that Dominion “undoubtedly” does consider the 1-CP in planning its transmission investments to ensure that the system does not fail at the annual peak.<sup>63</sup>

26. Microsoft and Customer Advocates contend that Dominion’s own statements in this proceeding show that its motivation for changing to a 12-CP is not due to changes in its transmission planning.<sup>64</sup> Microsoft and Customer Advocates cite Dominion’s statements that it “proposed a 12-CP cost allocation feature to reduce yearly volatility in the transmission charges to customers within the Dominion Zone, and to stabilize cost allocation between Network Customers due to changes in Dominion’s annual system peak including cost-shifting between customers.”<sup>65</sup> Customer Advocates assert that this

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 10 & n.34 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 55).

<sup>61</sup> Microsoft Rehearing Request at 2.

<sup>62</sup> *Id.* at 2-3.

<sup>63</sup> *Id.* at 3 & n.6 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 62).

<sup>64</sup> *Id.* at 3; Customer Advocates Rehearing Request at 10.

<sup>65</sup> Microsoft Rehearing Request at 3 & n.7 (citing *Va. Elec. and Power Co.*, Docket No. ER19-1661-001, Response to Deficiency Letter at 2 (filed July 15, 2019))

proves Dominion's 12-CP methodology addresses perceived concerns with cost-shifting resulting from peak-shaving under a 1-CP approach, and remedying cost shifts is insufficient support for establishing a 12-CP methodology. Microsoft argues the Commission appears to have ignored Dominion's stated basis for its filing and uncritically adopted Dominion's representation that the 12-CP reflects its transmission planning, without requiring any supporting evidence, despite multiple protests from ratepayers, and despite the fact that Dominion admitted that the proposed change is designed to "disincentivize" customer peak-shaving.<sup>66</sup>

27. Accordingly, Microsoft and Customer Advocates argue that the Commission should reconsider and reject Dominion's 12-CP proposal because there is no evidence that it reflects Dominion's transmission system planning.

28. Additionally, Microsoft argues that, although the Coincident Peak Order rejected Microsoft's arguments that the Commission's traditional peak load tests were not used in analyzing the appropriate demand allocation methodology on the basis that those tests are not bright line tests, the Commission does not explain why it did not even conduct the tests.<sup>67</sup> Microsoft emphasizes that the Commission must explain its departure from recent precedent prescribing these tests to determine the appropriate demand cost allocation methodology for a given utility.<sup>68</sup>

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(July 15 Deficiency Letter Response)); Customer Advocates Rehearing Request at 10-11 & n.35 (quoting same; *Va. Elec. Power Co.*, Motion for Leave to Answer and Answer at 1, Docket No. ER19-1661-000 (filed Aug. 20, 2019) (Dominion Aug. 10 Answer).

<sup>66</sup> Microsoft Rehearing Request at 3 & n.8 (citations omitted).

<sup>67</sup> *Id.* at 4 & nn.9-10 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 57) and noting that the Commission's June 14, 2019 Deficiency Letter specifically required Dominion to provide the data to perform these tests. *Id.* (citing Deficiency Letter at 2).

<sup>68</sup> *Id.* at 4 & n.11 (citing *Sw. Pub. Serv. Co.*, 144 FERC ¶ 61,133 at P 46 & PP 45-54 ("The Commission has historically focused on three separate peak load tests when analyzing the demand cost allocation methodology appropriate for a given utility."); *Sw. Pub. Serv. Co.*, 144 FERC ¶ 61,132 at P 47, PP 45-63 ("As explained above, the Commission traditionally has used three peak load tests to examine these patterns – the On and Off Peak test, the Low to Annual Peak test, and the Average to Annual peak test. Commission precedent has set certain benchmarks against which the results of these tests are compared to help determine the appropriate demand allocation for a particular utility.") (citations omitted)).

29. Customer Advocates argue the 12-CP methodology will not ensure that Dominion has adequate transmission capacity to serve the transmission system reliably.<sup>69</sup> Customer Advocates assert the Commission erred by adopting an allocation methodology inconsistent with PJM's planning criteria.<sup>70</sup>

## 2. Commission Determination

30. We are not persuaded by the arguments raised on rehearing, and reach the same result as the Commission did in the Coincident Peak Order. Contrary to challengers' contentions, the Commission supported its decision to accept Dominion's proposal with substantial record evidence demonstrating that the 12-CP allocation methodology aligns with Dominion's transmission planning.<sup>71</sup>

31. At the outset, the Commission has never declared that the 1-CP is the only factor transmission providers must consider in transmission planning.<sup>72</sup> Indeed, transmission providers generally may need to take other conditions into account, depending on their specific systems. And, as challengers acknowledge, even in PJM, other transmission providers utilize a different (5-CP) method.<sup>73</sup> Dominion specifically explained how planning for its transmission system requires consideration of, among other things, growth in distributed solar generation, replacing and maintaining aging infrastructure,

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<sup>69</sup> See Customer Advocates Rehearing Request at 13.

<sup>70</sup> *Id.* at 12.

<sup>71</sup> See Transmittal, Exhibit Nos. 1-5.

<sup>72</sup> See Coincident Peak Order, 161 FERC ¶ 61,041 at P 53 & n.87 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,736 (stating that alternatives to the 1-CP allocation method will be evaluated on a case-by-case basis)).

<sup>73</sup> See, e.g., *Commonwealth Edison Co.*, 133 FERC ¶ 61,118 (2010); *Duke Energy Ohio, Inc.*, 155 FERC ¶ 61,163 (2016); *PJM Interconnection, L.L.C.*, Docket No. ER14-2340-000 (Aug. 7, 2014) (accepting Attachment M-2 of PECO Energy Company); *PJM Interconnection, L.L.C.*, Docket No. ER14-2339-000 (Aug. 6, 2014) (accepting Attachment M-2 of Baltimore Gas and Electric Company); *Duke Energy Ohio, Inc.*, Docket No. ER16-1150-001 (Jul. 27, 2016) (accepting Attachment M-2 of Duke Energy Ohio, Inc.).

light load issues causing high voltage on the system, and specific high-demand customer interconnections.<sup>74</sup>

32. Moreover, Dominion explained how the utility and PJM must take into account additional load periods other than system peak conditions, due to the impact of increased renewable and distributed energy resources on the transmission system, the change in capacity mix resulting from the retirement of old coal units, and the addition of gas-fired resources.<sup>75</sup> Dominion now considers peak loads in winter and summer, as well as light loads that it states are much closer in magnitude to monthly peak load levels than the single hour annual peak level.<sup>76</sup> Dominion stated that it currently must plan more transmission projects to accommodate increasing disbursement of renewable generation, aging infrastructure, and light load periods, than projects addressing peak load periods.<sup>77</sup> Dominion stated that renewable generation resources are being sited in areas farther away from heavy load centers, covering a broader geographic area with multiple points of interconnection.<sup>78</sup> Significantly, the Commission further highlighted Dominion's statement that data center growth has a high load factor, which, notably, includes year-round monthly peaks.<sup>79</sup> We disagree with Microsoft and Customer Advocates that these issues are irrelevant to determining the number of peaks germane to Dominion's transmission planning. Rather, they show that Dominion is reasonably planning its transmission system using pertinent factors beyond the one-hour system peak and, indeed, the record supports our finding that Dominion's transmission planning aligns with the 12-CP allocation method because Dominion is planning its transmission around 12 monthly peaks.<sup>80</sup> Thus, we conclude that Dominion established a sufficient nexus

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<sup>74</sup> See Jackson Testimony, Exhibit No. DEV-1 at 13-14.

<sup>75</sup> See July 15 Deficiency Letter Response at 3-5; *see also* Transmittal at 5.

<sup>76</sup> See Transmittal at 5.

<sup>77</sup> July 15 Deficiency Letter at 3-4.

<sup>78</sup> Transmittal at 5.

<sup>79</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 55.

<sup>80</sup> See Coincident Peak Order, 161 FERC ¶ 61,041 at PP 52-55. We note that Dominion's proposed Tariff modification need not be superior to the 1-CP method, as long as it is just and reasonable, in other words, aligns with Dominion's approach to transmission planning. *See, e.g. Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (holding that, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology or even

between its transmission planning and its use of the 12-CP allocation method, including giving equal weight to 12 monthly peaks.

33. We further disagree with Customer Advocates' assertion that the 12-CP allocation methodology fails to ensure that Dominion has adequate transmission capacity to reliably serve the system at its annual peak. This proceeding is not about whether Dominion's transmission planning meets reliability requirements. This proceeding centers on cost allocation, i.e., whether Dominion has shown that the 12-CP cost allocation method is reasonably reflective of Dominion's transmission planning, such that it is just and reasonable to allocate transmission costs using a 12-CP method. The 12-CP method does not ignore the annual peak but instead considers *all* monthly peaks, including the annual peak.<sup>81</sup> Dominion has explained that it no longer conducts transmission planning predominantly by considering the annual peak.<sup>82</sup> Even if it did, transmission usage at the annual peak would not give Dominion an accurate assessment of its customers' demand because, as the record shows, certain customers are engaging in peak shaving at the annual peak and returning to normal levels of demand during off-peak times. The Commission reasonably concluded based on this record evidence that a 12-CP allocation method would yield more accurate depictions of customer demand by increasing the frequency at which Dominion measures system peaks. And, in any event, Dominion has explained that its transmission planning appropriately takes into account other factors in addition to the monthly peaks.<sup>83</sup> Furthermore, Dominion explained that several other utilities in the PJM zone maintain a 1-CP divisor in their formula rates while using a different allocation method.<sup>84</sup>

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the most accurate one”).

<sup>81</sup> We note that Dominion's proposal still rewards discretionary peak load reducers, but not for a full year of transmission charge savings for each MW they reduce at the hour of the single annual peak. Dominion August 20 Answer at 6. Dominion's 12-CP allocation method both rewards Network Customers for reducing load on the summer and winter peaks and mitigates cost-shifting between Network Customers.

<sup>82</sup> See Transmittal at 7; Jackson Testimony, Exhibit No. DEV-1 at 13:7-21, 14:1-2; July 15 Deficiency Letter Response at 3-5.

<sup>83</sup> See *supra* PP 31-32. When considering which allocation method to use, the Commission will consider “[t]he full range of a company's operating realities.” *Carolina Power & Light Co.*, Opinion No. 19, 4 FERC ¶ 61,107, at 61,230 (1978); *accord Ill. Power Co.*, 11 FERC ¶ 63,040, at 65,247-48 (1980).

<sup>84</sup> Coincident Peak Order, 161 FERC ¶ 61,041 at P 59; See also Transmittal at 7;



34. Additionally, Microsoft and Customer Advocates assert that Dominion's statements that it proposed the 12-CP to reduce volatility and cost shifts proves that Dominion's proposal is not premised on addressing changes in transmission planning.<sup>85</sup> We find this argument unpersuasive. Dominion has shown that the 12-CP cost allocation method reflects Dominion's current transmission planning around 12 monthly coincident peaks. The fact that the 12-CP methodology also addresses other concerns, such as volatility and cost shifts, does not detract from the determination that Dominion has shown that the 12-CP method is just and reasonable because it is consistent with transmission planning.

35. Microsoft reiterates on rehearing its contention that the Commission erred by failing to explain why it did not consider the results of the three standard peak load tests historically used in analyzing the appropriate demand cost allocation methodology for a given utility when it evaluated Dominion's 12-CP allocation factor.<sup>86</sup> Microsoft is mistaken. Dominion provided load data for the last five years in its July 15 Deficiency Letter Response Filing, which enabled the Commission or any party to conduct and consider the three peak load tests.<sup>87</sup> But, as the Commission acknowledged in the Coincident Peak Order, the on- and off-peak test, low to annual peak test, and average to annual peak tests are not bright line tests for determining an appropriate demand cost allocation methodology.<sup>88</sup> The Coincident Peak Order makes clear that the Commission's acceptance of Dominion's proposal was based on Dominion's demonstration that the 12-CP allocation method is consistent with its approach to

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July 15 Deficiency Letter Response at 12.

<sup>85</sup> See Microsoft Rehearing Request at 3, Customer Advocates Rehearing Request at 10-11.

<sup>86</sup> Microsoft Rehearing Request at 4.

<sup>87</sup> See July 15 Deficiency Letter Response Filing at Exhibit 1(b).

<sup>88</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 57 & n.88 (citing *Sw. Pub. Serv. 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 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”)).

transmission planning, as required by Order No. 888.<sup>89</sup> Thus, the Commission did not err in declining to evaluate or rely on Dominion's peak load test results, as Microsoft alleges.

## **B. Demand Response**

### **1. Rehearing Requests**

36. Microsoft and Customer Advocates contend the Commission erred in failing to consider the Coincident Peak Order's adverse impact on voluntary and beneficial demand response,<sup>90</sup> ostensibly because the Commission found voluntary load reductions "are obscuring the level of transmission usage by Dominion's customers."<sup>91</sup> Microsoft and Customer Advocates argue that, on the contrary, this reduction is not obscured or hidden, noting that indeed, Dominion submitted data that purports to show demand reductions at the 1-CP.<sup>92</sup>

37. Microsoft states that the Coincident Peak Order seems to further find fault with customers for reducing demand during the 1-CP events and returning to normal levels of demand during off-peak times.<sup>93</sup> But, Microsoft argues, this is exactly the benefit of demand response – it avoids incremental demand and transmission use during peak times, reducing the need for additional transmission upgrades, and shifts that load to non-peak times when there is excess capacity on the transmission system. Microsoft asserts that

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<sup>89</sup> *Id.* P 57.

<sup>90</sup> Microsoft Rehearing Request at 4; Customer Advocates Rehearing Request at 24-30.

<sup>91</sup> Microsoft Rehearing Request at 5 & n.13 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 60); *see also* Customer Advocates Rehearing Request at 25.

<sup>92</sup> *See* Customer Advocates Rehearing Request at 25 & n.95 (citing Exhibit No. DEV-6, Charts-Customers Curtailing Load During the 2018 Dominion Zone Peak, Exhibit No. DEV-7, Charts-Customers Curtailing Load During the 2019 to-date Dominion Zone Peak (filed Apr. 24, 2019); Microsoft Protest at 7-9; *see also* Microsoft Rehearing Request at 5 (citing same). Microsoft, however, "disputes whether the specific data Dominion submitted can be definitely linked to *intentional* peak-shaving." *Id.* at 4 (emphasis in original). *See also* Customer Advocates Rehearing Request at 25 & n.95.

<sup>93</sup> Customer Advocates Rehearing Request at 15 & n.15 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 60).

the Coincident Peak Order's implication that this is not beneficial rejects a foundational concept of transmission and generation planning in use across the country.<sup>94</sup>

38. Highlighting the Coincident Peak Order's statement that demand response efforts "can result in Dominion not having an accurate depiction of transmission usage for its planning purposes," Microsoft argues this statement also seems to imply that customers are hiding transmission system use by peak-shaving.<sup>95</sup> Microsoft argues this is not true; customers reducing their demand are actually using less transmission. Microsoft adds that Dominion has data regarding customers' demand, so Dominion's depiction of transmission usage is perfectly accurate.

39. Microsoft and Customer Advocates contend that the Coincident Peak Order also fails to address substantive concerns on this issue and fails to acknowledge Dominion's self-serving interest.<sup>96</sup> Microsoft states that the transmission system is built and maintained to handle peak demand so that it functions year-round and does not fail during the annual peak. Microsoft states that, if the annual peak is lower due to customers' effective load management efforts, then less transmission capacity is needed, and upgrades that would otherwise have been needed can be avoided. Microsoft states that this benefits not only customers who have reduced their own demand charges by peak-shaving, but all customers on Dominion's system who have now avoided their share of a transmission system upgrade that would have otherwise been needed.

40. Microsoft and Customer Advocates argue Dominion is financially motivated to prevent customers from engaging in beneficial peak shaving at the 1-CP.<sup>97</sup> Customer Advocates explain that, as a result of implementing the 12-CP method, Dominion's system will realize increased demand, especially at peak times, enabling Dominion to justify the need for additional transmission expansions and upgrades that will result in additions to Dominion's rate base and additional returns based on that expanded rate

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<sup>94</sup> *Id.* at 15 & n.16 (citing *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 134 FERC ¶ 61,187, at P 1 (2011) ("a market functions effectively only when both supply and demand can meaningfully participate"); *PJM Interconnection L.L.C.*, 107 FERC ¶ 61,113, at P 28 (2004) (emphasizing "the need to encourage load response during periods when generation or transmission are in short supply and prices are rising"))).

<sup>95</sup> *Id.* at 6 & n.17 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 60).

<sup>96</sup> Microsoft Rehearing Request at 5-6; Customer Advocates Rehearing Request at 24-28.

<sup>97</sup> Customer Advocates Rehearing Request at 25.

base. Microsoft asserts that switching to the 12-CP will likely lead to increased costs due to reduced demand response and a higher annual coincident peak. Microsoft states that it is unlikely that customers who are able to reduce demand during the 1-CP will be able to predict and prepare for 12 coincident peaks – to do so 12 times a year would likely cause significant disruption to their operations – and voluntary beneficial demand response will end, to Dominion’s economic benefit.<sup>98</sup>

41. Customer Advocates add that the Coincident Peak Order is arbitrary and capricious because it fails to balance Dominion’s interests with consumer interests, and does not reconcile or conform PJM rules and Commission precedent promoting peak shaving, fair and accurate price signals to customers, and transmission system efficiency.<sup>99</sup> Customer Advocates argue that a just and reasonable rate design promotes fair and accurate price signals to customers, but the 12-CP method fails to do this. Customer Advocates argue that the 12-CP allocation method eliminates the efficiency benefits of the 1-CP approach and will cause system inefficiencies because consumers will lack incentive to reduce consumption and engage in peak load shaving under the 12-CP method.<sup>100</sup> Customer Advocates insist that peak load shaving efforts by large industrial and commercial customers under the 1-CP approach benefit the system by reducing zonal peak loads and stress on the system at peak times.<sup>101</sup> Customer Advocates argue reduced demand during peak times helps prevent system emergencies prevents the need for the grid operator to call on more expensive forms of electricity, which, in turn, reduces wholesale electricity prices.

42. Customer Advocates explain that, to successfully peak shave at the single system peak under the 1-CP method, even sophisticated customers must respond with 10-20 hours of load reduction in order to “hit” the peak hour and provide value to the system.<sup>102</sup> Customer Advocates state that Dominion’s 12-CP method extinguishes practical opportunities to engage in peak shaving because, under a 12-CP approach, customers would need to reduce load (and endure the often substantial costs associated with reducing load and halting operations) during a greater number of hours each month, including the shoulder months where a system peak is very unlikely. Customer Advocates assert that moving from 1-CP to 12-CP would require customers to increase

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 26.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 27.

the load curtailment hours from as few as 10 to as many as 360 (a 36-fold increase) in order to attain the value received under the 1-CP method. Customer Advocates state that this would virtually extinguish opportunities to engage in peak-shaving.

43. In sum, challengers assert the Coincident Peak Order is arbitrary and capricious because it failed to address meaningfully the arguments from multiple parties that the movement from a 1-CP to a 12-CP cost allocation method contravenes Commission precedent and PJM rules encouraging peak shaving and demand response.

## 2. Commission Determination

44. We continue to support the Commission's finding in the Coincident Peak Order that the 12-CP proposal does not unreasonably deter peak shaving and demand response.<sup>103</sup> Microsoft and Customer Advocates object to the Commission's determination that the record in this proceeding demonstrates that voluntary load reductions during the coincident peak obscure the level of transmission usage by Dominion customers.<sup>104</sup> Microsoft and Customer Advocates argue the Commission's determination abandons its long-standing policy promoting peak shaving and demand response.<sup>105</sup> We disagree. First, Dominion demonstrated that voluntary load reduction during the coincident peak obscures actual transmission usage and results in cost shifting and avoidance among customers, as well as yearly volatility in service charges.<sup>106</sup> Second, accepting Dominion's proposed 12-CP allocation method is not a rejection of peak shaving and demand response. On the contrary, it recognizes transmission peak shaving and demand response in every month of the year, not just the peak month.

45. While we agree with Microsoft and Customer Advocates that voluntary demand response decreases the use of the transmission system at the coincident peak, that is

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<sup>103</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 60. In the Coincident Peak Order, the Commission explained that certain wholesale customers were voluntarily reducing demand during the 1-CP events and returning to normal levels of demand

during off-peak times. This type of activity indicates that those certain wholesale customers were only utilizing demand reduction during the 1-CP event.

<sup>104</sup> Customer Advocates Rehearing Request at 24-25; Microsoft Rehearing Request at 5-6.

<sup>105</sup> *Id.*

<sup>106</sup> *See, e.g.*, Hewett Testimony, Exhibit No. DEV-5 at 5-7; Exhibits Nos. DEV-6 and DEV-7; July 15 Deficiency Letter Response at Exhibit Nos. 2(a), 2(c), and 3(c).

beside the point. Dominion provided evidence of customers engaging in discretionary load reductions at the hour of the system peak.<sup>107</sup> Dominion's exhibits show that these customers significantly reduced demand on the 1-CP day but did not make similar reductions on the next four highest Dominion Zone peak days and returned to normal levels of transmission usage during off-peak times.

46. As the Commission recognized in the Coincident Peak Order, "voluntary load reductions during the 1-CP events are obscuring the level of transmission usage by Dominion's customers."<sup>108</sup> The Commission found that Dominion's detailed examples show that "certain wholesale customers are voluntarily reducing demand during the 1-CP events and returning to normal levels of demand during off-peak times."<sup>109</sup> Such load reductions provide Dominion with an inaccurate depiction of transmission usage because such artificially lowered demand at the annual peak is not representative of actual customer demand.<sup>110</sup> The Commission explained that such an inaccurate depiction of transmission usage with which to plan the transmission system could impair reliability.<sup>111</sup> Moreover, Dominion provided ample evidence that such load reductions lead to yearly volatility in transmission usage charges, and to cost avoidance and cost shifting by its Network Customers.<sup>112</sup>

47. Next, contrary to Microsoft's and Customer Advocates' allegations, Dominion's 12-CP allocation method is consistent with Commission policy and precedent regarding peak shaving and demand response programs. The 12-CP allocation method does not limit opportunities for peak shaving, but recognizes peak shaving every month instead of just one hour during the peak month of the year. Customer Advocates assert that under a 12-CP method, customers would require a 36-fold increase in the number of hours of load curtailment to achieve the same result as under the 1-CP method, "practically extinguishing the opportunity to engage in peak shaving."<sup>113</sup> However, with respect to

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<sup>107</sup> See generally Exhibits Nos. DEV-6 and DEV-7 to its April 24 Filing and in Exhibits 2(a), 2(c), and 3(c) to its July 15 Deficiency Letter Response.

<sup>108</sup> Coincident Peak Order, 169 FERC ¶ 61.041 at P 60.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> See Jackson Testimony, Exhibit Nos. DEV-1 at 8-14, DEV-4, Table 2.

<sup>113</sup> Customer Advocates Rehearing Request at 27-28.

PJM Programs, as Dominion has made clear, nothing in its 12-CP allocation method places any kind of restriction on a customer's ability to reduce energy usage or participate in PJM's Peak Shaving Adjustment Program<sup>114</sup> or any other PJM demand response programs in response to directed and verified load reductions. Even if Microsoft's and Customer Advocates' assertions regarding the burden of employing peak shaving during 12 monthly peaks are accurate, because Dominion is planning its system based on 12 monthly peaks, we nonetheless find Dominion's proposed 12-CP cost allocation method to be just and reasonable.

48. Moreover, while Microsoft and Customer Advocates contend that the real purpose behind the proposal is to enable Dominion to justify additional transmission system upgrades and expenses to increase its rate base,<sup>115</sup> the record indicates that customers' discretionary load reductions at the 1-CP have not enabled Dominion to reduce its transmission expenditures, particularly as that load resurfaces during non-peak hours throughout the year.<sup>116</sup> Reducing load on Dominion's system during a single yearly peak

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<sup>114</sup> Details of this program can be found at Demand Side Analytics, LLC. PJM Summer Peak Shaving Program Report at 5, available at: [https://0201.nccdn.net/1\\_2/000/000/0fc/01f/Summer-Peak-Shaving-Adjustment-Programs-at-PJM--03.07.2019-3-.pdf](https://0201.nccdn.net/1_2/000/000/0fc/01f/Summer-Peak-Shaving-Adjustment-Programs-at-PJM--03.07.2019-3-.pdf).

<sup>115</sup> Microsoft Rehearing Request at 6; Customer Advocates Rehearing Request at 25-26.

<sup>116</sup> See Dominion August 20 Answer at 8 ("As Mr. Jackson explained in his testimony, 'with respect to transmission facilities in the Dominion Zone, there are no identifiable transmission cost savings that would accrue from Network Customers' discretionary load reductions at the time of the 1-CP'<sup>□</sup> given that such reductions may not occur repeatedly or permanently, and because such reductions are driven by the Customer's economic considerations rather than actual transmission needs.") (quoting Jackson Testimony, Exhibit No. DEV-1 at 13; See also *id.* at 5 ("While cost shifts between network customers are certain to occur when discretionary peak load reductions occur at the hour of the system peak, what is highly uncertain is whether such reductions will reduce future transmission system costs."); *id.* at 6 ("Microsoft has provided no explanation as to how these reductions reduce the forecast, especially if the level of total discretionary reductions increases and decreases year-over-year. Nor has Microsoft identified any changes in future transmission costs attributable to discretionary load reductions at the hour of the system peak."). See also July 15 Deficiency Letter Response at 9-10.

hour does not mitigate the need for transmission when that load continues to manifest at other times during the year.<sup>117</sup>

**C. Retroactive Ratemaking, Filed Rate Doctrine, Due Process**

**1. Rehearing Requests**

49. Customer Advocates highlight the fact that the Commission granted Dominion's request to waive the notice requirements and make its proposed Tariff revisions effective January 1, 2020, which was more than 120 days after the April 24, 2019 date when the proposal was filed.<sup>118</sup> Customer Advocates argue the January 1, 2020 effective date of the 12-CP method violates the rule against retroactive ratemaking and the filed rate doctrine because the new rates are based on system peaks and load patterns occurring prior to the issuance of the Coincident Peak Order.<sup>119</sup> Customer Advocates contend that the January 1, 2020 effective date of the 12-CP method violates due process because customers did not have the opportunity to adjust their load patterns and operations in advance of the rate change.

50. Customer Advocates assert the Commission did not engage in the substantive arguments<sup>120</sup> or recognize the significant cost impact of the alleged retroactive rule change on customers. Customer Advocates explain that a customer's average 12-CP allocation factor is based on the average of the 12-CPs established in the prior 12 months ending September 30 prior to the calendar year that is used for billing. Customer Advocates assert that the use of consumption patterns that occurred prior to Dominion's April 24, 2019 filing constitutes retroactive ratemaking and violates the premise that customers must have notice and an opportunity be heard before rates go into effect.<sup>121</sup>

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<sup>117</sup> See Dominion May 30 Answer at 8 & n.30 (“[R]educing load 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.”) (quoting Jackson Testimony, Exhibit DEV-1 at 13).

<sup>118</sup> Customer Advocates Rehearing Request at 14-15.

<sup>119</sup> *Id.* at 15, 17-21.

<sup>120</sup> Customer Advocates object that, instead of addressing the retroactive ratemaking argument raised in protests, the Commission simply found it “unnecessary to clarify that peak loads occurring prior to or during this proceeding should not be considered when implementing the new 12-CP methodology.” *Id.* at 15 & n.59 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 65).

<sup>121</sup> Noting the Coincident Peak Order's conclusion that customers had sufficient



Customer Advocates argue the Commission conflated transparency and notice, and that a commitment to provide transparency regarding the underlying calculations of a rate (after the rate has already been established) does not provide sufficient notice to a customer in advance of the time period used to calculate the new rate change. Customer Advocates state that, if the rules are changed without sufficient notice, then customers' due process rights are infringed because customers have not had an opportunity to adjust their load patterns, inculcate any rule changes into their operations, and make any necessary economic, business or operational changes.<sup>122</sup> Customer Advocates assert that large customers will realize substantial rate increases, hundreds of thousands to several million dollars, based on consumption that occurred prior to constructive notice of the potential for a rate change and entirely before any Commission order accepting such change.<sup>123</sup>

51. Customer Advocates further argue the Commission's citation to precedent is inapt. Customer Advocates state that, in concluding that the 12-CP method's use of historic consumption patterns and peaks occurring prior to the Commission's approval of the 12-CP method does not constitute retroactive ratemaking, the Commission cites *Town of Norwood v. FERC* for the proposition that "the retroactive ratemaking doctrine prohibits the Commission from authorizing or requiring a utility to adjust current rates to make up for past error in projections. If a utility includes an estimate of certain costs in its rates and subsequently realizes the estimate was too low, it cannot adjust future rates to recoup past losses."<sup>124</sup> Customer Advocates note that next, the Coincident Peak Order concludes that Dominion's proposed effective date for the 12-CP method does not constitute retroactive ratemaking because Dominion is not proposing to make up for over- or under-collections in prior periods. Customer Advocates contend that protestors did not raise the over- or under-collections argument and that *Norwood* involved deferred expenses, which is not at issue in this case.<sup>125</sup> Customer Advocates state the issue here is

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notice of the new 12-CP methodology because Dominion made a commitment to provide "calculations for informational purposes upon a customer's request," Customer Advocates argue the Commission confused the concepts of notice and transparency. *Id.* at 15 & n.60 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 65).

<sup>122</sup> *Id.* at 15.

<sup>123</sup> *Id.* at 17 & n.66.

<sup>124</sup> *Id.* at 18 & n.69 (citing Coincident Peak Order, 169 FERC ¶ 61,041 at P 65; (citing *Town of Norwood v. FERC*, 53 F.3d 377, 381 (D.C. Cir. 1995) (additional citations and original emphasis and quotations omitted)).

<sup>125</sup> *Id.* at 18 & n.70 (citing *Norwood*, 53 F.3d at 381-382).

that consumers engaged in consumption patterns during the October 1, 2018 to April 24, 2019 period without any knowledge that those consumption patterns would result in additional costs. Customer Advocates add that, for the period April 24, 2019 through October 17, 2019, “those consumers knew only that their consumption *could* result in increased costs, not that their consumption *would* result in increased costs.”<sup>126</sup> According to Customer Advocates, customers are being charged after-the-fact for prior-period consumption, which Customer Advocates argue is the very essence of retroactive ratemaking.

52. Customer Advocates state that the rule against retroactive ratemaking is not strictly limited to addressing a situation when a utility seeks to make up for over- or under-collections. Customer Advocates argue that together, the filed rate doctrine and the rule against retroactive ratemaking “ensure rate predictability, and by preventing discriminatory pricing, they promote equity.”<sup>127</sup> Customer Advocates assert that, to implement the 12-CP method without retroactively changing the rules and rate design that existed prior to the issuance of the Coincident Peak Order, the 12-CP method cannot take effect until January 1, 2022.<sup>128</sup> Customer Advocates argue, for billing beginning on January 1, 2021, the new Attachment M-2 for the 12-CP rate cannot use load patterns and peak data from the October 1, 2018 to September 30, 2019 period.<sup>129</sup> Additionally, the 12-CP rate period beginning January 1, 2022 is likewise tainted and cannot be used because the new Attachment M-2 would use consumption during the period of October 1, 2019 until the order was issued on October 17, 2019.<sup>130</sup>

53. Customer Advocates state that appellate courts have recognized that a rate adjustment may take effect prior to a section 205 filing in two narrow circumstances: (1) when parties have notice that a rate is tentative and may be later adjusted or (2) when parties have agreed to make a rate effective retroactively.<sup>131</sup> Customer Advocates argue that neither circumstance applies here, as customers were not provided sufficient notice

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<sup>126</sup> *Id.* at 18.

<sup>127</sup> *Id.* at 19 & n.72 (quoting *Consol. Edison of N.Y.*, 347 F.3d at 964, 969 (D.C. Cir. 2003) (internal citations omitted); *Oxy USA v. FERC*, 64 F.3d 679, 668-669 (D.C. Cir. 1995)).

<sup>128</sup> *Id.* at 19.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 19 & n.73 (citing *Consol. Edison of N.Y.*, 347 F.3d at 969).

that their consumption prior to October 17, 2019 could result in a transmission rate other than one calculated based on a 1-CP methodology. Customer Advocates add that, moreover, challengers have not agreed to make the rate (that is, application of the 12-CP method) effective retroactively.

54. Customer Advocates state that the Commission recently evaluated the applicability of the filed rate doctrine and the rule against retroactive ratemaking in *Old Dominion*,<sup>132</sup> where a customer argued that ODEC's revised cost allocation retroactively changed the rates for demand response that PJM had previously paid to the customer.<sup>133</sup> Customer Advocates state that in *Old Dominion*, the Commission on December 2, 2013 accepted and suspended ODEC's revised formula rate to become effective January 1, 2014, subject to refund, and established hearing and settlement judge procedures.<sup>134</sup> The Commission found that customers had adequate notice of the revised cost allocation, and, although based on demand response provided during the preceding year, the revised allocation did not violate the rule against retroactive ratemaking or the filed rate doctrine. The Commission explained that when ODEC filed its formula rates in September 2013, ODEC put all parties on notice that the formula rates and future calculations of customer capacity costs would change in 2014.<sup>135</sup> Further, the Commission observed that the use of past data to determine prospective costs is not retroactive ratemaking and that evaluating historical data from a test period to allocate future costs is a common and long-standing ratemaking practice.<sup>136</sup> Nonetheless, Customer Advocates assert that *Old Dominion* is distinguishable because in *Old Dominion* the Commission held that the reallocation of capacity costs did not retroactively change the rates for demand response during the test period or the prospective rates for capacity proposed in the filing, because the add-backs based on the prior year's activity were already used to determine future capacity requirements under PJM's rates.<sup>137</sup> Further, Customer Advocates argue that, in

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<sup>132</sup> *Old Dominion Elec. Coop.*, 162 FERC ¶ 61,262 (2018).

<sup>133</sup> *Id.* at 20 & n.75 (citing *Old Dominion Elec. Coop.*, 162 FERC ¶ 61,262 at P 25).

<sup>134</sup> *Id.* at 20 & n.76 (citing *Old Dominion Elec. Coop.*, 162 FERC ¶ 61,262 at P 47).

<sup>135</sup> *Id.* at 20 & n.77 (citing *Old Dominion Elec. Coop.*, 162 FERC ¶ 61,262 at P 53).

<sup>136</sup> *Id.* at 20 & n.78 (citing *Old Dominion Elec. Coop.*, 162 FERC ¶ 61,262 at P 50).

<sup>137</sup> *Id.* at 20 & n.82 (citing *Old Dominion Elec. Coop.*, 162 FERC ¶ 61,262

contrast to *Old Dominion*, in this proceeding, the Commission did not issue a suspension order or set an effective date for new rates, subject to refund. Customer Advocates state that, in fact, in this proceeding there was no acceptance of the new Dominion Attachment M-2 until October 17, 2019. Customer Advocates argue that consequently, Dominion customers were not provided notice of any effective date for the new rates until October 17, 2019.

## 2. Commission Determination

55. We disagree with Customer Advocates' contentions and continue to find that using a 12-CP allocation method effective January 1, 2020 does not constitute retroactive ratemaking, nor is it a violation of due process.<sup>138</sup> The filed rate doctrine and the rule against retroactive ratemaking "together bar a utility from charging a rate other than that properly filed with the Commission, and similarly bar the retroactive imposition of an increased rate for a service already provided."<sup>139</sup> The filed rate doctrine requires the regulated utility to charge the rate on file with the Commission and prohibits the Commission from retroactively imposing a rate increase for power already sold.<sup>140</sup> And, as the Commission explained in the Coincident Peak Order, the rule against retroactive ratemaking "prohibits the Commission from adjusting current rates to make up for a utility's over- or under-collection in prior periods . . . ."<sup>141</sup>

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at PP 57-58). ODEC's formula rate requires an annual true-up. PJM imposes an annual assessment to the capacity charge of all load-serving entities for demand response add-backs representing the demand response activity occurring on the coincident peaks of the preceding year. PJM adds back demand response activity to prevent double counting: paying the demand responder as a capacity resource and at the same time reducing the capacity obligation of the load serving entity. ODEC revised its rate design to match the PJM billing method by directly assigning to each of its Member Cooperatives the

add-backs associated with demand response in their service areas. *Old Dominion Elec. Coop.*, 162 FERC ¶ 61,262 at PP 15-17.

<sup>138</sup> See Coincident Peak Order, 169 FERC ¶ 61,041 at P 65.

<sup>139</sup> *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1227 (D.C. Cir. 2018).

<sup>140</sup> *Id.*

<sup>141</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 65.

56. Changing to the 12-CP method is not a violation of the filed rate doctrine because Dominion is not collecting a rate other than the rate on file with the Commission when Dominion began applying the 12-CP allocation method prospectively, beginning January 1, 2020. Moreover, the date of Dominion's filing afforded the appropriate notice the FPA requires before implementing a change in rates, conditions and terms of service.

Dominion filed its proposal on April 24, 2019, and sought waiver of the notice rules,<sup>142</sup> to permit an effective date of January 1, 2020, in order to provide a transition period during 2019 when Dominion would continue to calculate each Network Customer's Network Service Peak Load contribution using the then-current 1-CP methodology.<sup>143</sup> Parties, therefore, had more than sufficient notice of the potential impending change to the 12-CP method.

57. Nor does the 12-CP method constitute retroactive ratemaking because it is not a rate adjustment to make up for over- or under-collection in a prior period. Rather, it involves an allocation method for costs that will be incurred beginning January 1, 2020, which is prospectively from the April 24, 2019 filing date. Customer Advocates' contention that protestors did not raise the issue of over- or under-collection is immaterial. The Commission is not restricted to considering only the arguments raised by parties, but it also makes its own independent evaluation of a case to ensure compliance with the statute.

58. Customer Advocates also argue Dominion's proposal constitutes retroactive ratemaking and violates the filed rate doctrine because the billing determinants associated with the 12-CP allocation method use data from October 1, 2018 to September 30, 2019. We disagree. Longstanding practice, Commission and court precedent allow the use of reasonably representative historic test period data to craft rates, terms and conditions of service.<sup>144</sup>

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<sup>142</sup> 18 C.F.R. § 35.3(a)(1) (2019) (requiring a proposed rate to be filed with the Commission "not less than sixty days nor more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective").

<sup>143</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 9.

<sup>144</sup> See 18 C.F.R. § 35.13(d)(3)(i) (2019) (permitting rates to be set based on a "Period I" historical test year); 18 C.F.R. § 35.13.(d)(4) (allowing submission of historical data as a forward-looking test year); *Midcontinent Indep. Trans. Sys. Op., Inc.*, 131 FERC ¶ 61,174, at P 128 (2010) (finding rate for point-to-point transmission service between MISO and PJM that used historical test year 2002-2003 to establish the rate

59. We further disagree with Customer Advocates' arguments attempting to distinguish *Old Dominion* from the present case on the basis that: (1) *Old Dominion* involved add-backs for demand response activity for which ODEC's customers had already been compensated; and (2) the Commission in *Old Dominion* issued a suspension order giving notice of the effective date of the new rates.

60. These distinctions are irrelevant. First, in *Old Dominion*, the Commission did not base its decision on the fact that ODEC's customers had already been compensated for the demand response previously provided. Rather, in *Old Dominion*, as here, the Commission focused on whether customers had sufficient notice of the prospective rate change.<sup>145</sup> ODEC filed its rate revisions in September 2013, requesting a January 1, 2014 effective date, using data from 2013 to determine 2014 load. The Commission concluded that ODEC's filing constituted a prospective change in the capacity calculation for 2014, regardless of the use of historic data.<sup>146</sup> This is akin to the April 2019 notice customers received in this proceeding of the prospective January 1, 2020 change to the 12-CP cost allocation method, based on their historic transmission usage patterns. Indeed, *Old Dominion* supports, rather than conflicts with the Coincident Peak Order.

61. Second, the Commission's issuance of a suspension order in *Old Dominion* had no bearing on the Commission's determination in that proceeding that basing future rates on past usage does not violate the rule against retroactive ratemaking. Moreover, the suspension order in *Old Dominion* did not provide ODEC's customers any more notice of

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effective December 2004 did not violate the filed rate doctrine); *see also* *Cities of Anaheim v. FERC*, 941 F.2d 1234, 1288 (D.C. Cir. 1991) (affirming use of test-year data in calculating wholesale rate of return as consistent with court-approved Commission practice of relying on test-year estimates in defining just and reasonable rates, even when actual data for projected test-year becomes available) (citing *Cities of Batavia v. FERC*, 672 F.2d 64, 74 (D.C. Cir. 1982); *Boroughs of Elwood City v. FERC*, 731 F.2d 959, 965-66 D.C. Cir. 1984)). The Commission relies on test-year data unless it is shown to be "substantially in error" or "yields unreasonable results." *Boroughs of Elwood City v. FERC*, 731 F.2d at 966 (quoting *Southern Cal. Edison Co.*, 8 FERC ¶ 61,099, at 61,375 (1979)). *See also* *Cities of Batavia v. FERC*, 672 F.2d 64, 74 (D.C. Cir. 1981); *Villages of Chatham v. FERC*, 662 F.2d 23, 29-30 (D.C. Cir. 1981); *Am. Pub. Power Ass'n v. FPC*, 522 F.2d 142 (D.C. Cir. 1975).

<sup>145</sup> *Old Dominion Elec. Coop.*, 162 FERC ¶ 61,262 at PP 62-64.

<sup>146</sup> *Id.* PP 63-65.

the rate change than Dominion's customers received in this proceeding because in both instances, customers were put on notice of the change as of the date of filing.<sup>147</sup>

62. Customer Advocates also assert that the January 1, 2020 effective date in this proceeding violates their due process rights. We disagree. Customer Advocates have been on notice since April 23, 2019 of the potential new 12-CP allocation method. Attachment M-2 to Dominion's filing provided a detailed explanation of the new 12-CP allocation method, and Dominion's transition period gave customers additional time to understand how it would affect their Network Service Peak Loads prior to its implementation. In sum, Customer Advocates present no reason for the Commission to depart from its conclusion in the Coincident Peak Order that Dominion provided sufficient notice of the new cost allocation method.<sup>148</sup>

#### **D. Rate Increase and Cost Causation**

##### **1. Rehearing Requests**

63. Customer Advocates argue the application of the 12-CP method in 2020 will cause industrial customers, especially high load factor customers, "rate shock."<sup>149</sup> Customer Advocates assert PJM failed to meet its burden under section 205 of the FPA to show the increased rate is just and reasonable.<sup>150</sup> Customer Advocates state that, instead of evaluating the cost impact of the 12-CP methodology on high load, peak-shaving customers, the Coincident Peak Order merely stated that it was convinced by Dominion's argument on costs shifts. Customer Advocates state that the Coincident Peak Order finds it "unnecessary" to clarify that any peak loads that occurred prior to or during this proceeding should not be considered when implementing the new 12-CP method.<sup>151</sup> Customer Advocates assert the Coincident Peak Order is arbitrary and capricious because it undervalues the substantial rate increase that the new 12-CP method will impose on

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<sup>147</sup> *Old Dominion Elec. Coop.*, 162 FERC ¶ 61,262 at P 53 ("When ODEC filed its formula rate revisions in September 2013, it put all parties on notice that the future calculation of . . . capacity costs would change for 2014.").

<sup>148</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 65.

<sup>149</sup> Customer Advocates Rehearing Request at 6, 22-23 & n.90 (citing *Boston Edison Co.*, 109 FERC ¶ 61,300 at P 29 (2004) ("a large and sudden" increase can produce "rate shock") (quotation omitted)).

<sup>150</sup> *Id.* at 8, 22.

<sup>151</sup> *Id.* at 22.

customers. Customer Advocates provide an example showing the 12-CP method will result in a 300% rate increase for a particular customer.<sup>152</sup>

64. Although Customer Advocates assert the 12-CP method should be rejected, they reiterate their request that, if the Commission does not reject the 12-CP method on rehearing, then the new method should not be implemented until 2022.<sup>153</sup> Customer Advocates assert that delaying the effective date of the 12-CP methodology – which they state would still not provide long-term relief and stable rates – would at least help mitigate the sudden and unexpected rate shock. Customer Advocates argue “[g]radual recognition of sudden, dramatic increases in rate levels allows time for customers to adjust to an otherwise sharp increase in rates.”<sup>154</sup> Customer Advocates assert that the Commission has wide discretion to mitigate financial harm to parties and to lessen the impact of rate shock.<sup>155</sup>

## 2. Commission Determination

65. Customer Advocates raise, for the first time, on rehearing, the argument that the 12-CP allocation method will cause “rate shock” to Dominion’s industrial customers. They claim that the Commission erred by failing to consider this possibility in the Coincident Peak Order.<sup>156</sup> Customer Advocates also argue for the first time that the Commission failed to consider the possibility of “rate shock” when it concluded that it was not necessary to clarify that peak loads occurring prior to or during this proceeding should not be considered when implementing the new 12-CP allocation method.<sup>157</sup>

66. Customer Advocates’ new assertions disregard the salient fact that the 12-CP allocation method is not a rate increase, but rather a change in allocation methodology. When an allocation methodology changes, generally some customers will pay more and

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<sup>152</sup> *Id.* at 23.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 24 & n.91 (citing *Union Elec. Co.*, 40 FERC ¶ 61,046, at 61,132 (1987), *rev’d and remanded on other grounds by Union Elec. Co. v. FERC*, 890 F.2d 1193 (D. C. Cir. 1989)).

<sup>155</sup> *Id.* at 21 & n.92 (citing *Cal. Indep. Sys. Op. Corp.*, 111 FERC ¶ 61,337, at P 27 (2005), *Sw. Power Pool, Inc.*, 156 FERC ¶ 61,245, at P 25 (2016)).

<sup>156</sup> See Customer Advocates Rehearing Request at 22-24.

<sup>157</sup> *Id.* at 22.



others will pay less. As discussed above, we agree with the Commission's determination in the Coincident Peak Order that the 12-CP method reflects Dominion's transmission planning. Moreover, as Dominion showed, the 12-CP allocation method diminishes the incentive for Network Customers to reduce significantly their use of the transmission system solely at the coincident peak in order to avoid annual transmission charges. The Commission accepted the 12-CP allocation method because it agreed with Dominion that this method provided a more accurate reflection of customers' actual demand.<sup>158</sup>

Challengers have not shown how, under the circumstances, increased costs for some transmission customers would be unreasonable, given that this allocation method reflects their transmission usage.

67. Moreover, the record supports the Commission's conclusion that the 12-CP allocation method is consistent with cost causation principles because, by measuring system peaks more frequently and by reducing customers' ability to reduce demand at the system peak only to return to normal levels of demand at off-peak times, it more accurately depicts customers' demand on Dominion's system.<sup>159</sup>

68. As Dominion has explained, the 12-CP allocation method is narrowly tailored to address two problems that Dominion has documented in the record: (1) annual volatility in transmission charges to Network Customers within the Dominion Zone; and (2) inappropriate cost-shifting among Dominion's network customers, triggered by customers that are able to reduce their own transmission service charges by decreasing demand at the coincident peak. Customer Advocates contend for the first time on rehearing that the 12-CP allocation method unfairly shifts costs from low to high load-factor customers, but in doing so ignores the fact that a 1-CP allocation enabled high load-factor customers to curtail load at the system peak to reduce or avoid a full year's worth of transmission charges. While we continue to support and recognize the important role demand response plays in managing electricity usage and expenses, utilizing demand response to provide an inaccurate representation of typical energy consumption, which leads to other customers bearing more than their fair share of costs, is not appropriate. The record demonstrates that the 12-CP allocation methodology will reduce yearly volatility in cost responsibility and yield more accurate depictions of

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<sup>158</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at PP 58, 60.

<sup>159</sup> See *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004) (“[N]ot surprisingly, we have never required a ratemaking agency to allocate costs with exacting precision.”) (citing *Sithe/Indep. Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002)).

customers' demand on Dominion's system. The Commission did not err by relying on this evidence to support its acceptance of Dominion's 12-CP allocation method.

**E. Hearing**

**1. Rehearing Request**

69. Customer Advocates argue, if the Commission does not grant rehearing, then it should set the 12-CP method for evidentiary hearing and suspend the evidentiary hearing pending the outcome of settlement judge procedures to consider "reasonable alternatives."<sup>160</sup> Customer Advocates assert the Coincident Peak Order did not address protests and comments that, to the extent the Dominion needs to account for peaks other than the single coincident peak, it should utilize "the more reasonable" 5-CP method used by other transmission owners in PJM.<sup>161</sup> Customer Advocates posit that ordering settlement judge procedures could result in an outcome that is amenable to all parties, and better addresses the peak-shaving, rate shock, and cost causation concerns parties have raised.

**2. Commission Determination**

70. We decline to grant the request for hearing and settlement judge procedures. Trial-type hearing and settlement judge procedures are unnecessary where, as here, there is no dispute of material fact that cannot be resolved on the basis of the written record.<sup>162</sup> The specific list of issues Customer Advocates suggest exploring at hearing<sup>163</sup> have either already been resolved based on the written record in this proceeding, such as cost causation, or, as in the case of retail shopping, for example, are beyond the scope of this proceeding. Moreover, as the Commission explained in the Coincident Peak Order, and we reiterate here, the record supports the Commission's determination that Dominion's

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<sup>160</sup> Customer Advocates Rehearing Request at 30-31. Customer Advocates list the issues they assert should be addressed at hearing, ranging from the reasonableness of the cost allocation methodology to impacts on retail shopping and Dominion's load forecast. *Id.* at 30.

<sup>161</sup> *Id.*

<sup>162</sup> See *Ameren Illinois Co.*, 170 FERC ¶ 61,267 at P 17 & n.21 (2020) (citing *Pioneer Trans., LLC*, 130 FERC ¶ 61,044 at P 35 (2010) (citing *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993) (citations omitted)).

<sup>163</sup> See Customer Advocates Rehearing Request at 30-31.

proposed 12-CP allocation method results in a just and reasonable cost allocation that reflects Dominion's transmission planning.

71. In a section 205 proceeding, such as here, Dominion must show that its proposed tariff modification is just and reasonable.<sup>164</sup> Dominion need not show that its proposed Tariff modification is the most reasonable among possible alternatives.<sup>165</sup> We continue to find that Dominion has shown, based on substantial record evidence, that its 12-CP allocation method is a just and reasonable cost allocation method. Consequently, we need not evaluate the reasonableness of parties' proposed alternatives.<sup>166</sup>

72. As to the fact that other PJM transmission owners utilize the 5-CP method, the Commission explained in the Coincident Peak Order that this is irrelevant for purposes of our determination here.<sup>167</sup> Order No. 888 allows transmission providers to adopt a different allocation method than the 1-CP, and the fact that other transmission providers have justified the 5-CP does not detract from the fact that Dominion has demonstrated that the 12-CP method reflects Dominion's planning to accommodate the unique features of its transmission system. For example, Dominion explained how the increase in high-load data centers affects load even during shoulder months and is more conducive to utilizing monthly coincident peaks for cost allocation.<sup>168</sup>

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<sup>164</sup> See 16 U.S.C. § 824d (2018).

<sup>165</sup> See *Oxy*, 64 F.3d at 692); *Emera Maine*, 854 F.3d 9, 23 (D.C. Cir. 2017) (stating that "because statutory reasonableness 'allows a substantial spread' of potentially reasonable rates, a court has no authority to fix a rate different from the one chosen by FERC 'on the ground that, in its opinion, it is the only or the more reasonable one'") (quoting *Montana-Dakota Util. Co. v. Nw. Pub. Serv. Co.*, 341 U.S. 246, 250-52 (1951)); see also *Sw. Power Pool, Inc.*, 166 FERC ¶ 61,109, at P 31 & n.121 (2019)).

<sup>166</sup> *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (when determining whether a proposed rate was just and reasonable, the Commission properly did not consider "when a proposed rate schedule is more or less reasonable than alternative rate designs.").

<sup>167</sup> Coincident Peak Order, 169 FERC ¶ 61,041 at P 56. Cf. *Envtl. Action, Inc. v. FERC*, 939 F.2d 1057, 1064 (D.C. Cir. 1991) ("[I]t is within the scope of the agency's expertise to make such a prediction about the market it regulates, and a reasonable prediction deserves our deference notwithstanding that there might also be another reasonable view.").

<sup>168</sup> See Coincident Peak Order, 169 FERC ¶ 61,041 at P 55.



The Commission orders:

In response to Customer Advocates' and Microsoft's rehearing requests, the Coincident Peak Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.