145 FERC ¶ 61,066
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 25, 2013

In Reply Refer To:
Virginia Power Energy Marketing, Inc.
Docket No. RP13-1358-000

Troutman Sanders LLP
401 9th Street, NW, Suite 1000
Washington, DC 20004

Attention: M. Lisanne Crowley, Esquire
Counsel for Virginia Power Energy Marketing, Inc.

Dear Ms. Crowley:

1. On September 27, 2013, Virginia Power Energy Marketing, Inc. (Virginia Power) filed a request for temporary and limited waiver of the Commission's capacity release regulations, requirements, and related policies to facilitate the release and reassignment of transportation and storage service agreements[1] as part of Virginia Power's exit from its natural gas marketing and trading business. Virginia Power also requests temporary and limited waiver of the applicable provisions of the tariffs of the affected pipelines.[2] Virginia Power requests the waiver become effective October 25, 2013, and continue for the 180 days following the date of a Commission order granting the waiver. For the reasons discussed below, the Commission grants in part and denies in part the requested waivers.

2. Virginia Power, a subsidiary of Dominion Resources, Inc. (Dominion), is an energy marketing and trading company. Virginia Power states that its current activities include two lines of business. First, Virginia Power provides energy management and fuel procurement services for its affiliated operating companies. Second, Virginia Power engages in commercial natural gas marketing and trading activities with various third

[1] A list of the service agreements is attached as Appendix A.

[2] The affected pipelines are Algonquin Gas Transmission, LLC (Algonquin), Dominion Transmission, Inc. (DTI), Iroquois Gas Transmission System, L.P. (Iroquois), Columbia Gas Transmission, LLC (Columbia), Transcontinental Gas Pipe Line Company, LLC (Transco), and Central New York Oil and Gas Company, LLC (Central NY).

parties. Virginia Power states that it plans to exit this second line of business, referred to as the U.S. Natural Gas Marketing Business, through a series of asset transactions with third parties.

3. Virginia Power states that it initially planned to exit its U.S. Natural Gas Marketing Business through a single asset transfer comprising the entirety of its physical and financial commodity agreements as well as the transportations and storage agreements. Virginia Power states that after conducting a competitive sales process, however, it determined that various components of its commercial marketing and trading assets (Gas Book) were valued differently by different buyers. Therefore, to preserve the value of its Gas Book, it determined that it may need to enter into a series of asset transfers of various inter-related subsets of its Gas Book. Virginia Power states that it has made substantial progress in this process although negotiations have not been completed with any particular buyer. Virginia Power also states that while it anticipates that many of the transactions will be implemented with an effective date of November 1, 2013, some components of its Gas Book will take longer. Therefore, Virginia Power requests 180 days in order to complete the orderly transfer of as much of its Gas Book as possible. Virginia Power further states that any transactions it is not able to finalize within 180 days will be wound down as quickly and efficiently as possible in order to complete its full exit from the U.S. Natural Gas Marketing Business.

4. Specifically, Virginia Power requests temporary and limited waiver of the following: (1) the capacity release posting and bidding requirements (with an exception discussed below); (2) the prohibition on the release of capacity above the maximum recourse rate; (3) the prohibition against tying; and (4) the shipper must have title policy. In addition, Virginia Power requests temporary and limited waiver of the applicable provisions of the FERC Gas Tariffs of Algonquin, DTI, Iroquois, Columbia, Transco, and Central NY for the service agreements listed in Appendix A of this letter order. Virginia Power states that in order to protect and preserve the value of its Gas Book, it may have to enter into a limited number of additional transportation or storage transactions while it is working to effectuate the transfers.

5. Virginia Power states that its objective is to effectuate the permanent release of the service agreements listed in Appendix A, with one exception. Virginia Power states that the one exception is a transportation service agreement (with Transco), which it currently uses to serve its U.S. Natural Gas Marketing Business but which it must retain to serve an affiliated electric generation plant in later years in its more limited “services company” role. Virginia Power states that it will seek to temporarily release that service agreement with associated gas supply agreements, rather than permanently assign it, “[s]ubject to its receipt of the necessary waivers.”[3] With respect to its other transportation and storage contracts, Virginia Power states that, in the event that it cannot secure a permanent

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[3] Request for waiver at n.1.

release, it "will pursue temporary releases of the capacity in compliance with all applicable Commission and pipeline tariff requirements (or seek further waivers if necessary)."[4]

6. Virginia Power states that it will submit an information report on the progress of the divestiture 90 days after the date of the Commission's order granting the requested waivers. Virginia Power states that the report will reflect: (1) the removal of any agreements that were released without reliance on the waivers; (2) the identification of any agreements that were released with reliance on the waivers; and (3) the limited addition of any other agreements.

7. Public notice of the filing was issued on October 1, 2013. Interventions and protests were due October 4, 2013. Pursuant to Rule 214,[5] all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

8. With respect to the transportation and service agreements listed in Appendix A to this order, the Commission has reviewed Virginia Power's request for temporary and limited waivers for the purpose of making permanent capacity releases and finds that the requests are adequately supported and consistent with previous waivers that the Commission has granted to permit the permanent release of capacity under similar circumstances.[6] It is well established, "that a releasing shipper that is attempting to exit the gas transportation business, should, within certain limitations, be permitted to exit in a rational and orderly fashion, if such action is open and will not unduly discriminate against other shippers."[7] Moreover, the approval of the requested temporary and limited

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[4] *Id.*

[5] 18 C.F.R. § 385.214 (2013).

[6] *Big Sandy Pipeline, LLC,* 141 FERC ¶ 61,151 (2012); *Antero Resources Corp.*, 139 FERC ¶ 61,258 (2012); *Salmon Resources, LTD,* 138 FERC ¶ 61,059 (2012); *Big Sandy Pipeline, LLC,* 136 FERC ¶ 61,130 (2011), *BHP Billiton Petroleum (Fayetteville LLC),* 135 FERC ¶ 61,088 (2011); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010); *Sequent Energy Mgmt., L.P., et al.*, 129 FERC ¶ 61,188 (2009); *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009) (*North Baja*); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

[7] *E.g., Duke Energy Marketing America, LLC, et al.*, 114 FERC ¶ 61,198, at P 8 (2006).

waivers is consistent with decisions in other proceedings where the Commission has granted similar waivers.[8]

9. With respect to the service agreements listed in Appendix A, Virginia Power has provided the information required for approval of such waivers: (1) identification of the regulations and policies for which waiver is sought; (2) identification of the pipeline service agreements and capacity to be transferred; and (3) description of the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine whether granting the requested waivers is in the public interest. Accordingly, the Commission grants the requested waivers so as to permit Virginia Power to make permanent capacity releases as part of larger transactions necessary to exit its U.S. Natural Gas Marketing Business.

10. However, the Commission denies the requested waiver for the Transco capacity contract that Virginia Power seeks to release on a temporary basis. As the Commission has previously explained, the rationale for granting waivers from Commission capacity release policy does not exist when the petitioner is not completely exiting the market, such as when capacity is being temporarily released.[9] While Virginia Power is exiting its U.S. Natural Gas Marketing Business, it will continue to provide energy management and fuel procurement services for its affiliated operating companies. Virginia Power states that it must retain the subject Transco contract in order to serve an affiliated electric generation plant in the future. Therefore, that contract must be treated as primarily a part of Virginia Power's "services company" business, which it is not exiting, rather than its U.S. Natural Gas Marketing Business. The fact Virginia Power is not currently using that contract in order to serve the affiliated electric generation plant does not distinguish that contract from the ordinary capacity release situation where a shipper is releasing capacity it does not currently need. Accordingly, the Commission finds that Virginia Power has not demonstrated on balance that its interest in tying the temporary release to gas supply contracts outweighs the Commission's requirement that the release be posted for bidding so that interested parties are made aware that the capacity is available so that it can be awarded to the shipper who values it most.[10] Moreover, because Virginia Power would remain liable under the contract during a temporary release, Transco would retain the same revenue no matter at what rate the capacity is released, so waiving the prohibition on the release of capacity above the maximum recourse rate is unnecessary.[11]

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[8] *See, e.g.*, *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009).

[9] *North Baja*, 128 FERC ¶ 61,082 at P 15. *See also Anadarko Petroleum Corp., et al.*, 119 FERC ¶ 61,031, at PP 10-12 (2007) (waiver denied where petitioner is exiting Canadian market, but not U.S. market).

[10] *Id.*

[11] *Id.*

11. Finally, Virginia Power states that it generally intends to comply with competitive bidding and other applicable tariff rules in the case of capacity releases of transportation/storage contracts that are not part of a complex, multi-party transaction. It states that the only exception would be in the case of a permanent release of capacity where Virginia Power is required to make a payment to the replacement shipper in order to effectuate the release at the contract rate and gain the pipeline's acceptance of the permanent release. Virginia Power states that it understands that such a permanent release would require the waivers it is seeking herein. As the Commission has previously explained, such lump sum payments by the releasing shipper are an acceptable method of enabling the capacity to be released at its market value, while maintaining the original contract rate, so that the pipeline would remain financially neutral. However any payment or rebate must be considered a discount, and therefore the release must be posted for bidding.[12] When such a release is not part of a complex, multi-party transaction and the replacement shipper is not going to use the capacity for the same purpose as the releasing shipper did, there is no basis to waive the bidding or other requirements of our capacity release regulations. However, the Commission has held that a reverse auction, open to any shipper qualified to bid under the applicable pipelines' existing tariff requirements, provides a transparent mechanism in which the value of the transportation capacity to a replacement shipper may be ascertained consistent with the capacity release regulations. Therefore, the Commission has granted waiver of pipeline tariffs to allow such a reverse auction, where the pipeline's tariff does not provide for such a reverse auction.[13] Accordingly, we grant waiver of any tariff rules that may prevent Virginia Power from posting for bidding and executing a reverse auction for a permanent release which is not part of a larger transaction, subject to the condition that these releases otherwise comply with the Commission's policies on capacity release.[14]

12. For good cause shown, the Commission grants Virginia Power's request for a temporary and limited waiver of the specified capacity release regulations, policies, and tariff provisions for the limited purpose of facilitating the permanent release of the service agreements listed in Appendix A, subject to the conditions discussed above. Specifically, the Commission grants limited, temporary waiver of section 284.8 of its regulations, which governs the capacity release posting and bidding requirements, the prohibition on the release of capacity above the maximum recourse rate, the prohibition

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[12] *See Northwest Pipeline Corp., et al.*, 109 FERC ¶ 61,044, at PP 14-16, 30-31 (2004), and *Duke Energy Marketing America, LLC, et al.*, 114 FERC ¶ 61,309, at P 19 (2006).

[13] *Northwest Pipeline Corp.*, 109 FERC ¶ 61,044 at P 14.

[14] *E.g., Gas Transmission Northwest LLC, et al.*, 143 FERC ¶ 61,186 (2013) (granting waiver of tariff provisions so that the petitioners may conduct a reverse auction that otherwise complies with the Commission's policies on capacity release).

against tying, and the shipper must have title policy for permanent releases made as part of a larger transaction. In addition, the Commission grants limited, temporary waiver of those sections of FERC Gas Tariff provisions of Algonquin, DTI, Iroquois, Columbia, Transco, and Central NY as described above in order to allow for Virginia Power's exit from its natural gas marketing and trading business. The waivers shall remain in effect for 180 days from the date of this order.

13. Virginia Power must file in this docket (1) an information report on the progress of the divestiture 90 days after the date of this order, and (2) an informational notice in this docket once the actual date of assignment has been established.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Pipeline	Contract	Rate Schedule
Algonquin	510625-R2	AFT-1
DTI	5B5377	FT
Iroquois	R-247002	RTS
	R-247029	RTS
	R-247028	RTS
	R-247030	RTS
Columbia	14255	FTS
Transco	1038143	FT
	1038142	FT
	1044181	FT
	9050773	ESS
Central NY	VPEM_SC00447FS	FSS