145 FERC ¶ 61,132
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Old Dominion Electric Cooperative Docket No. ES13-55-000

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued November 15, 2013)

1. On September 17, 2013, Old Dominion Electric Cooperative (Old Dominion) filed an application pursuant to section 204 of the Federal Power Act (FPA)[1] (Application) requesting that the Commission authorize Old Dominion to: (1) issue short-term debt in an amount not to exceed $1 billion outstanding at any one time; (2) issue long-term debt in an amount not to exceed $1.8 billion; and (3) provide guarantees and other credit support for the obligations of TEC Trading, Inc. (TEC) and other affiliates in an amount not to exceed $200 million. We will grant the authorizations as discussed below.

I. **Background**

2. Old Dominion is a not-for-profit power supply cooperative that supplies capacity and energy to 11 member distribution cooperatives in Maryland, Delaware, and Virginia. It supplies substantially all of the member distribution cooperatives' power requirements under long-term wholesale power contracts.[2] Old Dominion is owned entirely by its members who are customer-owned electric distribution cooperatives engaged in the retail sale of power to their respective member consumers (Class A members) and TEC (Class B members). TEC is owned by Old Dominion's 11 member distribution cooperatives.[3]

3. Old Dominion is currently authorized by the Commission to: (1) issue short-term debt in an amount not to exceed $1 billion outstanding at any one time; (2) issue long-

[1] 16 U.S.C. § 824c (2012).

[2] *See* Old Dominion Electric Cooperative, Application for Acceptance of Second Amended and Restated Wholesale Power Contract and Changes to Rate Formula, Docket No. ER08-1498-000 (filed Sept. 4, 2008); *Old Dominion Electric Cooperative*, Docket No. ER08-1498-000 (Nov. 4, 2008) (unpublished letter order).

[3] Application at 1-2.

term debt in an amount not to exceed $1 billion; and (3) provide guarantees and other credit support for the obligations of TEC and other affiliates in an amount not to exceed $200 million.[4] Old Dominion states that its current authorization terminates on November 15, 2013.[5]

II. Application

4. Old Dominion requests authorization to engage in the financing activities described, from November 16, 2013 to November 15, 2015.

A. Short-Term Debt Issuance

5. Old Dominion states that the short-term debt will be unsecured or secured, short-term notes, commercial paper or other obligations issued to various financial institutions or investors. It states that the amount of short-term debt outstanding at any one time shall not exceed $1 billion. The short-term debt securities will be issued at an interest rate no greater than the higher of: (i) the sum of an adjusted London Interbank Offered Rate (LIBOR) plus up to 315 basis points, where adjusted LIBOR is determined by dividing (a) the higher of one-month, two-month, three-month, six-month or 12-month LIBOR by (b) one minus the reserve requirement for LIBOR loans (as determined from time-to-time by the Board of Governors of the Federal Reserve System); (ii) the sum of the Prime Rate as published in The Wall Street Journal plus up to 100 basis points; (iii) the sum of the Federal Funds Rate plus up to 200 basis points; or (iv) in the event of default by Old Dominion, the default rate of interest prescribed by Old Dominion's various loan agreements on file in Old Dominion's financial records.[6]

B. Long-Term Debt Issuance

6. Old Dominion states that the long-term debt will be secured or unsecured notes, bonds, or other obligations issued to various financial institutions or investors. With

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[4] Old Dominion states that its current authorization was issued in Docket No. ES11-45-000.

[5] Application at 2.

[6] Old Dominion states that the *pro forma* financial information and computation of interest coverage included in Exhibits C, D, and E assumed an interest rate of 3.82 percent, which is the 12-month LIBOR, as of August 31, 2013, plus 315 basis points. Application at 4-5.

respect to long-term debt, the interest rate Old Dominion will pay is the sum of the interest rate on 30-year U.S. Treasury bonds plus up to 400 basis points.[7]

C. Guarantees and Other Credit Support

7. Old Dominion states that the amount of guarantees and other credit support outstanding at any one time shall not exceed $200 million. It states that it will charge TEC and affiliates an annualized rate of 0.50 percent or less of the amount of such guarantees and other credit support.[8]

D. Waiver Request

8. With regard to long-term debt and guarantees and other credit support, Old Dominion requests a waiver from the Commission's competitive bidding and negotiated placement requirements found at 18 C.F.R. § 34.2 (2013).[9]

9. It further requests Commission action no later than November 15, 2013.

III. Notice of Filing

10. Notice of Old Dominion's filing was published in the *Federal Register*, 78 Fed. Reg. 59,014 (2013), with protests or interventions due on or before October 8, 2013. None was filed.

IV. Discussion

11. FPA section 204(a) provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and

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[7] Old Dominion states that the *pro forma* financial information and computation of interest coverage included in Exhibits C, D, and E assumed an interest rate of 7.70 percent, which is the interest rate on the 30-year U.S. Treasury bond, as of August 31, 2013, plus 400 basis points. *Id.*

[8] *Id.*

[9] Section 34.2 sets forth the Commission's method of issuance requirements. It states, in part, that the utilities may issue securities by either a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers or underwriters or negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters. *See* 18 C.F.R. § 34.2(a).

which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.[10]

12. Typically, the Commission utilizes an interest coverage ratio calculation in order to determine under FPA section 204 that the undertaking "will not impair [a public utility's] ability to perform" service as a public utility. And, typically, the Commission bases its finding that a proposed issuance of securities will not impair an applicant's ability to perform service as a public utility in part upon the applicant's demonstration that it will have an interest coverage ratio that is 2.0 or higher.[11]

13. Old Dominion states that it has filed, as Exhibits C, D, and E to the Application, actual and *pro forma* financial statements for the 12-month period ended June 30, 2013. In this case, the actual and *pro forma* interest coverage ratio of Old Dominion is below the Commission's traditional 2.0 interest coverage guideline, but other factors persuade us that the proposed issuances by Old Dominion will not impair its ability to provide service. First, unlike investor-owned utilities, cooperatives, such as Old Dominion, are owned by their customers. Old Dominion is thus owned by its 11 member distribution cooperatives (which are in turn owned by their own members) who, by virtue of being both the owners as well as the customers, are responsible for Old Dominion's expenses. Second, cooperatives, like Old Dominion, by virtue of their ownership structure, do not have a need for the same equity and capital structure as a traditional investor-owned utility because they do not issue stock and do not have equity owners. Third, cooperatives, like Old Dominion, often have a tariff on file with the Commission that provides a methodology for calculating cost of service rates for the sale of power to its members.[12] And, here, Old Dominion states that it has a deed of trust with Branch Banking and Trust Company under which it is required to establish and collect rates, rents, charges, fees, and other compensation that are reasonably expected to yield "Margins for Interest" for each fiscal year equal to at least 1.10 times "Interest Charges" for such fiscal year.[13] In light of this requirement, Old Dominion states that it collects revenues under its tariff that will achieve a "times interest earned" ratio of up to 1.20 times.[14] Fourth, cooperatives, like Old Dominion, may have institutional long-term debt

[10] 16 U.S.C. § 824c(a) (2012).

[11] *Startrans IO, LLC,* 122 FERC ¶ 61,253, at P 18 (2008) (stating that "this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer against unforeseen, adverse financial events that might impair Startrans IO's ability to perform as a public utility").

[12] *See* Old Dominion Electric Cooperative, Sale for Resale Rate Schedule, Volume 1, Rate Formula; *accord supra* note 2.

[13] *Id.*

[14] Application at 8.

ratings which can aid the evaluation of their ability to meet their obligations. Here, Old Dominion states that its long-term debt has ratings of A, A, and A3 from Standard and Poor's Rating Services, Fitch, Inc., and Moody's Investors Services respectively.[15] These ratings indicate a strong capacity to meet financial commitments and a low default risk. These factors support a conclusion that the proposed issuances and assumptions of obligations and liabilities by Old Dominion will not impair its ability to provide service.

14. We find, based on the facts set forth in the Application, that Old Dominion has demonstrated that Commission approval of the proposed issuance of securities and assumptions of obligations or liabilities sought in this Application: (1) is for a lawful object, within Old Dominion's corporate purposes, necessary or appropriate for Old Dominion's providing service as a public utility, and will not impair Old Dominion's ability to perform such services; and (2) is reasonably necessary or appropriate for such purposes.[16]

15. As explained by Old Dominion, the proceeds from the issuance of short- and long-term debt will be used for Old Dominion's corporate purposes, including capital expenditures, working capital, amortization of Old Dominion's long-term debt, acquisitions, and other lawful purposes. Old Dominion states that the requested issuances are necessary for Old Dominion to continue to provide reliable service to its 11 member distribution cooperatives and their end-use customers in Virginia, Delaware, and Maryland. It states that failure to approve this Application would seriously impair Old Dominion's ability to continue to provide and perform such service.

16. Accordingly, we authorize the following:

a. Old Dominion is authorized to issue short-term debt in an amount not to exceed $1 billion outstanding at any one time.

b. The interest rate on the short-term debt shall be no greater than the higher of: (i**)** the sum of an adjusted London Interbank Offered Rate **(**LIBOR) plus up to 315 basis points, where adjusted LIBOR is determined by dividing (a) the higher of one-month, two-month, three-month, six-month or 12-month LIBOR by (b) one minus the reserve requirement for LIBOR loans (as determined from time to time by the Board of Governors of the Federal Reserve System); (ii) the sum of the Prime Rate as published in The Wall Street Journal plus up to 100 basis points; (iii) the sum of the Federal Funds Rate plus up to 200 basis points; or (iv) in the event of

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[15] Old Dominion states that while its short-term debt is not rated, it expects that its short-term debt ratings would be similar to its long-term debt ratings. Old Dominion further explains that the guarantees and other credit will not be rated, as they are obligations among affiliates. *Id.* at 6.

[16] Application at 7.

default by Old Dominion, the default rate of interest prescribed by Old Dominion's various loan agreements on file in Old Dominion's financial records.

c. Old Dominion is authorized to issue long-term debt in an amount not to exceed $1.8 billion.

d. The interest rate that Old Dominion will pay on its long-term debt shall be the sum of the interest rate on 30-year U.S. Treasury bonds plus up to 400 basis points.

e. Old Dominion is authorized to provide guarantees and other credit support for the obligations of TEC and other affiliates in an amount not to exceed $200 million.

f. The interest rate that Old Dominion will charge TEC and affiliates is an annualized rate of 0.50 percent or less of the amount of such guarantees and other credit support.

17. We will grant the requested waiver for long-term debt from the Commission's competitive bidding and negotiated placement requirements.

18. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.[17] First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility assets. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. We will condition our authorization on Old Dominion abiding by these restrictions.

The Commission orders:

(A) Old Dominion is hereby authorized to issue short-term debt in an amount not to exceed $1 billion outstanding at any one time, at the interest rates stated in the body of this order.

(B) Old Dominion is hereby authorized to issue long-term debt in an amount not to exceed $1.8 billion, at the interest rates stated in the body of this order.

[17] *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at PP 20-21 (2003), *order on reh'g*, 104 FERC ¶ 61,018 (2003) (*Westar*).

(C) Old Dominion is hereby authorized to provide guarantees and other credit support for the obligations of TEC and other affiliates in an amount not to exceed $200 million, at the interest rates stated in the body of this order.

(D) The authorizations granted in this order are effective November 16, 2013 and terminate on November 15, 2015.

(E) The authorizations granted are subject to the restrictions on secured and unsecured debt as outlined above and in *Westar*.

(F) The requested waiver for long-term debt from the Commission's competitive bidding and negotiated placement requirements at 18 C.F.R. § 34.2(a) (2013) is hereby granted.

(G) Old Dominion must file a Report of Securities Issued, under 18 C.F.R. §§ 34.10 and 131.43 and 131.50 (2013), no later than 30 days after the sale or placement of long-term debt securities or the entry into guarantees or assumption of liabilities.

(H) The authorizations granted in Ordering Paragraphs (A), (B) and (C) above are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(I) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.