

149 FERC ¶ 61,150
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 21, 2014

In Reply Refer To:
RE Columbia Two LLC and
RE Camelot LLC
Docket Nos. ER14-2465-000
ER14-2465-001
ER14-2466-001

Mr. William M. Keyser
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Reference: Market-Based Rate Authorization and Requests for Waiver

Dear Mr. Keyser:

1. On July 18, 2014, as amended on September 24, 2014, RE Columbia Two LLC (RE Columbia) and RE Camelot LLC (RE Camelot) (collectively, Applicants) filed applications for market-based rate authority with accompanying tariffs. Each of the proposed market-based rate tariffs provides for the sale of electric energy, capacity, and ancillary services at market-based rates.¹ Applicants request that the Commission grant waivers commonly granted to similar market-based rate applicants as well as waiver of the Commission's affiliate restrictions under 18 C.F.R. § 35.39 (2014), described further below. In addition, Applicants request waiver of the 60-day prior notice requirement and that the Commission accept their respective tariffs, effective September 7, 2014.

¹ Applicants request authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corp. (CAISO), Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. Applicants also request authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

2. In this order, the Commission grants Applicants authority to make wholesale sales of energy, capacity, and ancillary services at market-based rates, effective September 7, 2014, as requested.² We also grant Applicants' request for waivers commonly granted to similar market-based rate applicants as well as waiver of the Commission's affiliate restrictions, as described herein. Additionally, based on Applicants' representations, Applicants are designated as Category 1 sellers in all regions.³

3. RE Columbia states that it will own and operate an approximately 15 megawatt (MW) solar photovoltaic generation facility. RE Camelot states that it will own and operate an approximately 45 MW solar photovoltaic generation facility. Applicants state their facilities will be located in Kern County, California and interconnected to the wholesale distribution system owned by Southern California Edison Company via an approximately 7.5 mile 66 kilovolt generation tie-line.⁴

² We note that Applicants are not being granted authority to make third-party sales of operating reserves to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff (OATT) requirements to offer ancillary services to its own customers. If Applicants seek such authority, they must make the required showing and receive Commission authorization prior to making such sales. *See Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

³ *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007) (Clarification Order), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

⁴ *E.g.*, RE Camelot July 18, 2014 Filing at 2 n.1. Applicants note that the generation tie-line is owned by their affiliate RE Columbia, LLC (Columbia) and will be used to interconnect their facilities and generation facilities owned by RE Yakima LLC and RE Clearwater LLC (together with Applicants, "the Project Companies"). Applicants state that the Project Companies jointly own Columbia, with each Project Company's ownership interest in Columbia based on its *pro rata* share of the Project Companies' combined generating capacity. Applicants note that, on July 14, 2014, in Docket No. ER14-2420, Columbia filed a shared facilities agreement governing the construction, ownership and operation of the generation tie-line. In that filing, Columbia also requested waiver of the requirements to file an OATT, to establish and maintain an
(continued...)

4. Applicants represent that they are direct, wholly-owned subsidiaries of Dominion Solar Holdings, Inc., which is a direct, wholly-owned subsidiary of Dominion Energy, Inc., which is a direct, wholly-owned subsidiary of Dominion Resources, Inc. (Dominion Resources). Applicants further state that Dominion Resources is the parent company of Virginia Electric and Power Company⁵ (Dominion Virginia Power), which is a vertically integrated public utility that owns and/or operates nuclear, fossil fuel, and hydroelectric generating units with an aggregate generating capacity of approximately 19,600 MW in Virginia, North Carolina, and West Virginia, and approximately 5,700 miles of electric distribution lines. Dominion Virginia Power also owns approximately 6,400 miles of transmission facilities that are under the operational control of PJM pursuant to PJM's OATT.⁶

5. Notices of Applicants' July 18, 2014 and September 24, 2014 filings were published in the *Federal Register*,⁷ with interventions and protests due on or before October 15, 2014. None was filed.

6. Notice of Applicants' request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,⁷⁹ Fed. Reg. 44,027 (2014), with interventions or protests due on or before August 12, 2014. None was filed.

7. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.⁸ The Commission has adopted two indicative screens for assessing horizontal

Open Access Same-Time Information System, and to comply with the Commission's Standards of Conduct. The Commission recently accepted the filed agreements and granted the requests for waiver in that proceeding. *See Dominion Solar Gen-Tie, LLC*, 148 FERC ¶ 61,167 (2014).

⁵ Applicants' filings refer to "Virginia Electricity and Power Company," but Commission records list it as "Virginia Electric and Power Company."

⁶ *E.g.*, RE Camelot July 18, 2014 Filing at 5 (citing *PJM Interconnection, L.L.C. and Virginia Electric & Power Company*, 109 FERC ¶ 61,012 (2004)).

⁷ 79 Fed. Reg. 44,167 (2014); 79 Fed. Reg. 59,260 (2014).

⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

market power: the pivotal supplier screen and the wholesale market share screen.⁹ The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess generation market power, while failure of either screen creates a rebuttable presumption that the applicant has generation market power.¹⁰

8. Applicants rely on NRG Power Marketing LLC's recently accepted market power analysis¹¹ to demonstrate that they pass both the pivotal supplier and the wholesale market share screens for the CAISO market. Based on Applicants' representations, we find that Applicants satisfy the Commission's requirements for market-based rate authority regarding horizontal market power.

9. With regard to vertical market power, in cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.¹²

10. Applicants represent that they do not own, operate, or control any transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid.¹³ However, Applicants state that they are affiliated with Dominion Virginia Power, which owns transmission facilities that are under the operational control of PJM. Applicants state that transmission service over these facilities is provided pursuant to the PJM OATT and, therefore, any transmission market power is mitigated.

11. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁴ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, intrastate natural gas storage or distribution

⁹ *Id.* P 62.

¹⁰ *Id.* PP 33, 62-63.

¹¹ *NRG Power Marketing LLC*, Docket No. ER10-1569-007 (Apr. 22, 2014) (delegated letter order).

¹² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹³ *Dominion Solar Gen-Tie, LLC*, 148 FERC ¶ 61,167 at P 19 (granting request for waiver of the requirements to file an OATT).

¹⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

facilities; sites for new generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).¹⁵ The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.¹⁶

12. Regarding other barriers to entry, Applicants state that their affiliates own or hold an interest in natural gas local distribution companies and interstate gas pipeline companies in the Northeast and Central regions. Applicants also state that Dominion Virginia Power leases railroad cars for coal transportation and owns and leases switchyard locomotives for moving coal within its generation facility coal yards in the Northeast region. Applicants further state that their affiliates own or control rights to generation capacity development in the CAISO market, PJM market and the Tennessee Valley Authority balancing authority area. Applicants explain that the sites for generation capacity development described above cannot be used to restrict downstream competitors' access to upstream supply markets or to increase competitors' costs.

13. Applicants affirmatively state that they have not erected barriers to entry into the CAISO market or any other markets, and will not erect barriers to entry into the CAISO market or any other markets.¹⁷

14. The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.¹⁸ Based on Applicants' representations, we find that Applicants satisfy the Commission's requirements for market-based rates regarding vertical market power.

15. Applicants' request the following waivers and authorizations: (1) waiver of the filing requirements of subparts B and C of Part 35 of the Commission's regulations, except sections 35.12(a), 35.13(b), 35.15 and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101, and 141 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA

¹⁵ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

¹⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

¹⁷ We interpret this statement to apply to Applicants and their affiliates, and our authorizations herein are predicated on Applicants complying with this commitment. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

¹⁸ *Id.* P 446.

and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

16. We will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.¹⁹ Notwithstanding the waiver of the accounting and reporting requirements here, Applicants are expected to keep its accounting records in accordance with generally accepted accounting principles.

17. Blanket authorizations under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is granted. Applicants are hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object with the corporate purposes of Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes. The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Applicants' issuances of securities or assumption of liability.

18. Applicants also request waiver of the Commission's affiliate restrictions under 18 C.F.R. § 35.39 that apply to other Dominion market-regulated power sales affiliates,

¹⁹ We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations, as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities in Part 34 of the Commission's regulations. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985 (regarding waiver of Parts 41, 101, and 141) and PP 999-1000 (regarding blanket approval under Part 34). However, waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 C.F.R. Part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA. We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from its accounting responsibilities as a licensee under Part I of the FPA. *See Seneca Gen., LLC*, 145 FERC ¶ 61,096, at P 23 n.20 (2013) (citing *Trafalgar Power, Inc.*, 87 FERC ¶ 61,207, at 61,798 (1999) (noting that "all licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under [s]ections 4(b), 10(d) and 14 of the FPA")).

namely a waiver granted in *Virginia Electric & Power Co.*²⁰ regarding the sharing between existing Dominion affiliates and Dominion Virginia Power of certain employees who conduct front-end generation resource planning activities.²¹ Applicants state that these employees are involved in early stage planning activities for both Dominion Virginia Power and its market-regulated power sales affiliates and evaluate the economic, environmental, technical, risk, and regulatory factors for potential generation projects. Applicants further state that, consistent with prior representations and commitments made to the Commission, sharing of these employees will not result in harm to captive customers. Applicants are not seeking any change in the existing waiver previously granted by the Commission and assert that the waiver will apply to the exact same shared personnel, who will perform exactly the same functions described in the original waiver requests and Commission order.²² Applicants further assert that they will adopt and incorporate each and every commitment made by the existing Dominion market-regulated power sales affiliates in *Virginia Electric & Power Co.*²³

19. Based on Applicants' representations, we will grant Applicants' request for waiver of the Commission's affiliate restrictions under 18 C.F.R. § 35.39 with regard to generation resource planning personnel, consistent with the Commission's decision in *Virginia Electric & Power Co.* The waiver granted herein is limited to the specific facts, representations, policies and procedures presented by Applicants and applies only to the generation resource planning employees discussed in Applicants' filings. To the extent there is any material change in circumstances that would reflect a departure from the facts, representations, policies and procedures that we have relied upon in granting the requested waiver, Applicants will be required to inform the Commission within 30 days of any such change. With the exception of the limited waiver specifically granted herein, all of the other affiliate restrictions continue to apply to Applicants.

20. Consistent with the procedures the Commission adopted in Order Nos. 2001 and 768,²⁴ an entity with market-based rate authorization must electronically file an Electric

²⁰ 147 FERC ¶ 61,011 (2014) (granting waiver regarding generation resource planning personnel).

²¹ *E.g.*, RE Camelot July 18, 2014 Filing at 16.

²² *Id.*

²³ *See Virginia Elec. & Power Co.*, 147 FERC ¶ 61,011.

²⁴ *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

Quarterly Report (EQR) with the Commission containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter. Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.

21. Applicants are required to file EQRs in compliance with Order Nos. 2001 and 768. Applicants must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.²⁵ If the effective date of Applicants' market-based rate tariffs fall within a quarter of the year that has already expired, Applicants' EQRs for the expired quarter are due within 30 days of the date of this order.

22. In Order No. 697, the Commission created two categories of sellers.²⁶ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.²⁷ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.²⁸

23. Applicants represent that they meet the criteria for Category 1 sellers in all regions because Applicants and their affiliates own or control less than 500 MW of generation in the Southwest region, and Applicants do not own or control any generation in any other regions. Furthermore, neither Applicants nor their affiliates own, operate, or control any transmission facilities in the Southwest region, other than the limited equipment necessary to connect their individual generation to the transmission grid. Lastly,

²⁵ *Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

²⁶ Order No. 697, FERC Stats & Regs. ¶ 31,252 at P 848.

²⁷ 18 C.F.R. § 35.36(a) (2014).

²⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

Applicants represent that they are not affiliated with a franchised public utility in the same region as their generation assets, and they do not raise other vertical market power issues.

24. Based on Applicants' representations, we designate them as Category 1 sellers in the Southwest, Southwest Power Pool, Southeast, Northeast, Northwest, and Central regions; however, the Commission reserves the right to require an updated market power analysis at any time for any region.²⁹

25. Additionally, Applicants must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.³⁰

By direction of the Commission.

Kimberly D. Bose,
Secretary.

²⁹ *See id.* P 853.

³⁰ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2014).