

149 FERC ¶ 61,154
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

November 24, 2014

In Reply Refer To:
Mulberry Farm, LLC
Selmer Farm, LLC
Docket Nos. ER14-2140-000
ER14-2140-001
ER14-2140-002
ER14-2141-000
ER14-2141-001
ER14-2141-002

Dominion Resources Services, Inc.
Attn: Cheri Yochelson
Senior Counsel
120 Tredegar Street, RS-2
Richmond, VA 23219

Reference: Market-Based Rate Authorization and Requests for Waiver

Dear Ms. Yochelson:

1. On June 6, 2014, as amended July 28, 2014, September 25, 2014, September 26, 2014, and November 7, 2014, Mulberry Farm, LLC (Mulberry Farm) and Selmer Farm, LLC (Selmer Farm) (collectively, Applicants) filed an application 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

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. (NYISO), ISO New England Inc. (ISO-NE), California Independent System Operator Corp. (CAISO), and Midcontinent Independent System Operator, Inc. (MISO), and Southwest Power Pool, Inc. (SPP). Applicants also request authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

restrictions under 18 C.F.R. § 35.39 (2014), described further below. In addition, Applicants request that the Commission accept the Selmer Farm tariff effective September 29, 2014 and the Mulberry Farm tariff effective October 1, 2014.

2. In this order, the Commission conditionally accepts and suspends, for a nominal period, Selmer Farm's and Mulberry Farm's market-based rate tariffs, to become effective September 29, 2014 and October 1, 2014, respectively, subject to refund and subject to the outcome of a pending proceeding in Docket No. ER10-1511-005.² 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. Applicants represent that they are each constructing a 16 megawatt (MW) photovoltaic solar facility located in Selmer, Tennessee that will be interconnected to transmission facilities operated by Pickwick Electric Cooperative. The two solar generating facilities will be located in the Tennessee Valley Authority (TVA) balancing authority area in the Southeast region and Applicants state that, upon completion, their output will be fully committed under a long-term power purchase agreement with TVA.

4. Applicants represent that they are 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 state that they are affiliated with Dominion Virginia Power,

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).

which is a franchised electric utility, and other entities that own and operate generation assets, electric transmission and natural gas facilities within the Northeast and Central regions. Applicants state that an affiliate of Dominion Resources owns the 9.7 MW Azalea Solar Power facility located 60 miles southwest of Augusta, Georgia, the output of which is dedicated under a long-term power purchase agreement. Applicants further represent that Dominion Virginia Power, a subsidiary of Dominion Resources, owns approximately 6,000 miles of transmission facilities that are subject to an OATT on file with the Commission and are under the operational control of PJM.⁴

5. Notices of Applicants' June 6, 2014, July 28, 2014, September 25, 2014, September 26, 2014, and November 7, 2014, filings were published in the *Federal Register*,⁵ with interventions and protests due on or before November 14, 2014. None was filed.

6. Notice of Selmer Farm's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*, 79 Fed. Reg. 36,508 (2014), with interventions and protests due on or before July 10, 2014. None was filed. Notice of Mulberry Farm's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*, 79 Fed. Reg. 36,510 (2014), with interventions and protests due on or before July 10, 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.⁶ The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.⁷ 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.⁸

⁴ Applicants' June 6, 2014 Filing at 3, Attachment A.

⁵ 79 Fed. Reg. 33,915 (2014); 79 Fed. Reg. 45,188 (2014); 79 Fed. Reg. 59,765 (2014); 79 Fed. Reg. 68,431 (2014).

⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

⁷ *Id.* P 62.

⁸ *Id.* PP 33, 62-63.

8. Applicants rely on Louisville Gas and Electric Company's pending market power analysis in Docket No. ER10-1511-005⁹ to demonstrate that Applicants pass both the pivotal supplier and the wholesale market share screens for the TVA balancing authority area. However, the screen analysis for Louisville Gas and Electric Company, on which Applicants rely, is pending before the Commission. Therefore, the Commission will determine whether Applicants pass the indicative screens in the TVA balancing authority area upon completion of its review of Docket No. ER10-1511-005. In this regard, we direct Applicants to make a compliance filing in Docket Nos. ER14-2140-002 and ER14-2141-002 updating the record in these proceedings to reflect the results of the Commission's determination(s) with respect to the horizontal market power analysis in Docket No. ER10-1511-005 within 30 days after an order has been issued in that proceeding.

9. Thus, our preliminary analysis indicates that Applicants' requests for market-based rate authorization have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed market-based rate tariffs for filing, suspend them for a nominal period, and make the Selmer Farm tariff effective September 29, 2014 and the Mulberry Farm tariff effective October 1, 2014, subject to refund and subject to the outcome of the Louisville Gas & Electric Company pending proceeding in Docket No. ER10-1511-005.

10. 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.¹⁰

11. 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. 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

⁹ *E.g.*, Mulberry Farm July 25, 2014 Filing at Revised Market Screens (citing Louisville Gas & Electric Company, Triennial Market Power Update for the Southeast Region, Docket No. ER10-1511-005 (filed June 30, 2014)).

¹⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

facilities is provided pursuant to the PJM OATT¹¹ and, therefore, any transmission market power is mitigated.¹²

12. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹³ 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 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).¹⁴ 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.¹⁵

13. Regarding other barriers to entry, Applicants represent that their affiliates own or hold interests in natural gas local distribution companies and interstate gas pipeline companies in the Northeast and Central regions.¹⁶ 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 Applicants' affiliates own or control rights to generation capacity development in the CAISO and PJM markets.

14. Applicants affirmatively state that neither they nor their affiliates have erected barriers to entry in any region or relevant market and that neither Applicants nor their affiliates will erect barriers to entry in any region or relevant market.

15. 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

¹¹ See *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,012 (2004).

¹² Applicants' June 6, 2014 Filing at 5.

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

¹⁴ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

¹⁶ Applicants' November 7, 2014 Filing at 2. Applicants detail that their affiliates own or hold interests in interstate gas pipeline facilities. We interpret this to mean Applicants are disclosing that their affiliates own or hold interests in intrastate natural gas pipeline facilities. See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

otherwise.¹⁷ Based on Applicants' representations, we find that Applicants satisfy the Commission's requirements for market-based rates regarding vertical market power.

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

17. We will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.¹⁸ 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.

18. Blanket authorization 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

¹⁷ *Id.* P 446.

¹⁸ 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")).

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.

19. Applicants also request waiver of the Commission's affiliate restrictions under 18 C.F.R. § 35.39 (2014) that apply to other Dominion market-regulated power sales affiliates, namely a waiver granted in *Virginia Elec. & Power Co.*¹⁹ regarding the sharing between existing Dominion affiliates and Dominion Virginia Power of certain employees who conduct front-end generation resource planning activities.²⁰ 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.²¹ 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 Elec. & Power Co.*²³

20. Based on Applicants' representations, we will grant Applicants' request for waiver of the Commission's affiliate restrictions under 18 C.F.R. § 35.39 (2014) with regard to generation resource planning personnel, consistent with the Commission's decision in *Virginia Elec. & 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

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

²⁰ Applicants' June 6, 2014 Filing at 6.

²¹ *E.g.*, Mulberry Farm September 26, 2014 Filing at 2.

²² *E.g.*, Mulberry Farm July 25, 2014 Filing at 2.

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

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.

21. 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 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.

22. 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 an Applicant's market-based rate tariff falls within a quarter of the year that has already expired, the Applicant's EQRs for the expired quarter are due within 30 days of the date of this order.

23. 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

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).

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.

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

24. 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 in the Southeast region, the only region in which Applicants own generation. Furthermore, neither Applicants nor their affiliates own, operate, or control any transmission facilities in the Southeast region, other than the limited equipment necessary to connect their individual generation facilities to the transmission grid. Lastly, 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.

25. 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

26. 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.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁷ 18 C.F.R. § 35.36(a) (2014).

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

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).