

152 FERC ¶ 61,014  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Dominion Solar Gen-Tie, LLC  
RE Columbia, LLC

Docket Nos. ER14-2414-001  
ER14-2420-001

ORDER GRANTING REHEARING

(Issued July 2, 2015)

1. On October 6, 2014, RE Columbia, LLC (Columbia) and Dominion Solar Gen-Tie, LLC (Dominion Solar Gen-Tie) (collectively, Applicants) filed a request for rehearing of the Commission's order of September 5, 2014.<sup>1</sup> As discussed below, we grant the Applicants' request for rehearing regarding the Commission's denial of the Applicants' request for blanket authorization of the issuance of securities and assumptions of liability under 18 C.F.R. Part 34.

**I. Background**

2. As described in the application, Columbia will construct, own, and operate an approximately 7.5 mile, 66 kV generation tie-line (Gen-Tie Line) and related interconnection facilities (together, the Shared Facilities) that will be used by four solar photovoltaic projects owned by Columbia's affiliates (Project Companies)<sup>2</sup> to interconnect to Southern California Edison Company's distribution system. Columbia is an exempt wholesale generator (EWG) by virtue of its ownership of the Shared Facilities

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<sup>1</sup> *Dominion Solar Gen-Tie, LLC, et al.*, 148 FERC ¶ 61,167 (2014) (September 5 Order).

<sup>2</sup> The Project Companies are RE Columbia Two LLC (Columbia Two), RE Camelot LLC (Camelot), RE Yakima LLC (Yakima), and RE Clearwater LLC (Clearwater).

that will be used solely to permit the Project Companies to engage in wholesale power sales.<sup>3</sup> Dominion Solar Gen-Tie is the Manager of Columbia.

3. In the September 5 Order, the Commission accepted for filing under section 205 of the Federal Power Act (FPA)<sup>4</sup> a Shared Facilities Agreement dated March 14, 2014 by and between Columbia and the Project Companies, and the Clustering Large Generator Interconnection Agreement (Interconnection Agreement) Co-Tenancy Agreement by and between Columbia and the Project Companies, dated March 14, 2014. Under the Shared Facilities Agreement, Columbia will construct, own, and operate the Shared Facilities for the benefit of the Project Companies, and the Project Companies will reimburse Columbia for the costs that Columbia incurs to construct, operate, and maintain the Shared Facilities and related real property rights, based on each Project Company's *pro rata* share of the combined capacity of the four solar photovoltaic projects. Under the Co-Tenancy Agreement, each of the Project Companies has an undivided interest in the Interconnection Agreement and Wholesale Distribution Service Agreement to permit the interconnection of its respective Project.

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<sup>3</sup> See *RE Columbia, LLC*, Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG13-54-000 (filed Aug. 16, 2013); *Buffalo Dunes Wind Project LLC, et al.*, Notice of Effectiveness of Exempt Wholesale Generator Status, Docket No. EG13-49-000, *et al.* (Nov. 15, 2013); *RE Columbia, LLC*, Notice of Material Change in Fact, Docket No. EG13-54-000 at 2 (filed Mar. 12, 2014) (explaining that, as a result of restructuring the ownership of generation and interconnection facilities among Columbia and the Project Companies, Columbia will develop, own and operate the Shared Facilities, and Camelot will develop, own, and operate the generating facilities previously planned to be owned by Columbia).

<sup>4</sup> 16 U.S.C. § 824d (2012).

4. In the September 5 Order, the Commission also granted the Applicants waivers of Order Nos. 888,<sup>5</sup> 889,<sup>6</sup> 890,<sup>7</sup> 2004,<sup>8</sup> and 717<sup>9</sup> and Part 358 to file an Open Access Transmission Tariff, establish an Open Access Same-Time Information System ,

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<sup>5</sup> *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, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>6</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>7</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>8</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standard of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

<sup>9</sup> *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

and comply with the Standards of Conduct<sup>10</sup>; Subparts B and C of Part 35 (except sections 35.12(a), 35.13(b), 35.15, and 35.16);<sup>11</sup> and Parts 101 and 141 (with the exception of sections 141.14 and 141.15) of the Commission's regulations.<sup>12</sup> The Commission also granted waiver of the requirements of sections 41.10 through 41.12,<sup>13</sup> but denied waiver of the balance of the requirements of Part 41.<sup>14</sup>

5. Finally, at issue here, the Commission denied the Applicants' request for blanket authorization for the issuance of securities and assumptions of liability under Part 34 of the Commission's regulations.<sup>15</sup> The Commission stated that under Order No. 697, the Commission's practice is "to grant blanket authorization under Part 34 where the seller is not a franchised public utility providing electric service to customers under cost-based regulation and has market-based rate authority."<sup>16</sup> Because the Applicants did not file to obtain market-based rate authority, the Commission denied their request for blanket authorization under Part 34.<sup>17</sup>

## II. Request for Rehearing

6. On rehearing, the Applicants argue that, while the Commission's finding in Order No. 697 confirmed that where an entity engaging in wholesale power sales seeks market-based rate authority and does not serve customers at cost-based rates, it will be granted

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<sup>10</sup> 18 C.F.R. pt. 358 (2014).

<sup>11</sup> 18 C.F.R. pt. 35 (2014).

<sup>12</sup> 18 C.F.R. pts. 101,141 (2014).

<sup>13</sup> September 5 Order at PP 14, 19-20, 22-25.

<sup>14</sup> *Id.* at P 25.

<sup>15</sup> *Id.* at P 26.

<sup>16</sup> *Id.* (citing *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 nn.1126, *clarified*, 121 FERC ¶ 61,260 (2007), *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)).

<sup>17</sup> *Id.*

blanket authorization under Part 34, Order No. 697 did not address the situation in this case, where the Applicants own no generation, do not intend to engage in wholesale power sales, and thus, do not intend to seek market-based rate authority, but are still not franchised public utilities serving customers at cost-based rates.<sup>18</sup> The Applicants reiterate their statement in their filings that “[n]either Columbia nor Dominion Solar Gen-Tie is a franchised utility, and neither entity is obligated to serve captive customers.”<sup>19</sup> The Applicants assert that, to the extent that the Project Companies reimburse Columbia for its costs of constructing and operating the Shared Facilities, the Project Companies are not captive customers without any opportunity to negotiate for alternate rates, but instead, are owners of Columbia who pay the cost of construction and operation of the Shared Facilities based on their ownership interest in Columbia.<sup>20</sup>

7. The Applicants assert that Order No. 697 does not require that non-franchised public utilities without captive customers obtain market-based rate authority before they can qualify for the blanket authorization.<sup>21</sup> The Applicants contend it is arbitrary and capricious for the Commission to grant blanket authorization only where an entity engages in market-based wholesale power sales, but deny blanket authorization in situations where an entity does not intend to engage in power sales, and its purpose is limited to owning and operating limited and discrete generation interconnection lines used to deliver the output of affiliated generation.<sup>22</sup> Thus, Applicants argue they should be granted blanket authorization because they are not franchised public utilities and will not, and do not intend to, serve captive customers.<sup>23</sup>

8. The Applicants further argue that the Commission erred in failing to follow the Commission’s established policy of, according to the Applicants, granting blanket authorizations under Part 34 to interconnection-only companies that are not franchised public utilities, i.e., companies formed to own and operate limited generation interconnection facilities that do not have and do not seek market-based rate

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<sup>18</sup> Rehearing Request at 5.

<sup>19</sup> *Id.* (citing Dominion Solar Gen-Tie Transmittal Letter at 11; Columbia Transmittal Letter at 11).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 6.

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

<sup>23</sup> *Id.* at 7.

authorization.<sup>24</sup> The Applicants assert that they are similar to other entities that have been granted blanket authorization.<sup>25</sup>

### III. Discussion

9. Upon reconsideration, we find it is appropriate to grant the Applicants' request for blanket authorization because the Applicants are interconnection-only entities that serve only their own affiliates.<sup>26</sup>

10. A review of the legislative history pertaining to section 204 of the FPA<sup>27</sup> shows that the section was intended to protect the public from unsound financial choices by public utilities. As noted in Senate Report No. 621, "[c]ontrol over the capitalization of operating utilities is plainly an essential means of safeguarding the public against the unsound financial practices which make impossible the proper and most economical performance of public utility functions."<sup>28</sup> As the Commission previously has noted, FPA section 204 serves to ensure that public utilities do not, by issuing securities or

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<sup>24</sup> *Id.* at 8 (citing *Bishop Hill Interconnection LLC*, 138 FERC ¶ 61,159 (2012); *Invenergy Wind Development Michigan LLC*, 136 FERC ¶ 61,209 (2011); and *Wolverine Creek Goshen Interconnection, LLC*, Docket No. ER06-267-000 (Jan. 13, 2006) (delegated letter order), *errata* (Jan. 27, 2006)).

<sup>25</sup> *Id.* at 8-9.

<sup>26</sup> While we grant the Applicants' request, we disagree with the Applicants that the Commission has generally granted blanket authorization for issuance of securities and assumptions of liability under Part 34 to entities that do not have market-based rate authorization. *See, e.g., Conjunction LLC*, 103 FERC ¶ 61,198, at P 27 (2003) ("while the Commission has traditionally waived non-statutory regulatory requirements in the past for certain entities, such as power sellers with market-based rates, it has not done so for transmission providers"). *See also Energia Sierra Juarez U.S. Transmission, LLC*, 149 FERC ¶ 61,052 (2014); *Spring Canyon Energy LLC, et al.*, 149 FERC ¶ 61,106 (2014) (where request for blanket authorization is associated with entities that own generation with the authority to sell electric power at market-based rates, the request should be included in applications for market-based rate authority under section 205 of the FPA).

<sup>27</sup> 16 U.S.C. § 824c (2012).

<sup>28</sup> S. Rep. No. 621, 74th Cong., 1st Sess. 50 (1935).

assuming obligations or liabilities, put at risk their ability to provide service to customers that depend on that service.<sup>29</sup>

11. Applying the foregoing principles here, we find that it is appropriate to grant the Applicants' request for rehearing and grant the Applicants' request for blanket authorization for issuance of securities and assumptions of liability under Part 34. The Applicants are interconnection-only entities whose sole customers will be Columbia's affiliates. However, the Applicants must notify the Commission if the circumstances providing the basis for the blanket authorization change.<sup>30</sup>

The Commission orders:

(A) The Applicants' request for rehearing of the September 5, 2014 Order is hereby granted, as discussed in the body of this order.

(B) The Applicants' request for blanket authorization for issuance of securities and assumptions of liability under Part 34 is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>29</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 999.

<sup>30</sup> We further note that if the Commission subsequently grants a request by a non-affiliated entity to use the Applicants' facilities, Applicants would no longer qualify for blanket authorization and the Commission may revoke the blanket authorization at that time.