

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Virginia Electric and Power Company	Docket Nos. ER00-1737-007 ER00-2839-003 ER04-834-002
Armstrong Limited Partnership, LLLP	ER02-24-006
Dominion Energy Marketing, Inc.	ER01-468-004
Dominion Nuclear Connecticut, Inc.	ER00-3621-005
Dominion Nuclear Marketing I, Inc.	ER00-3620-004
Dominion Nuclear Marketing II, Inc.	ER00-3619-004
Dominion Nuclear Marketing III, L.L.C.	ER00-3746-007
Dresden Energy, LLC	ER02-22-005
Elwood Energy LLC	ER99-1695-006
Fairless Energy, LLC	ER02-23-007
Kincaid Generation, L.L.C.	ER99-1432-007
Pleasants Energy, LLC	ER02-26-005
State Line Energy, L.L.C.	ER96-2869-009
Troy Energy, LLC	ER02-25-005
Virginia Electric and Power Company, Armstrong Limited Partnership, LLLP, Dominion Energy Marketing, Inc., Dominion Nuclear Connecticut, Inc., Dominion Nuclear Marketing III, L.L.C., Dresden	EL05-118-000

Energy, LLC, Elwood Energy LLC,
Fairless Energy, LLC, Kincaid Generation, L.L.C.,
Pleasants Energy, LLC, State Line Energy, L.L.C.,
Troy Energy, LLC

ORDER ON COMPLIANCE FILING, ACCEPTING TARIFF REVISIONS, AND
TERMINATING SECTION 206 PROCEEDING

(Issued August 25, 2005)

1. In this order, the Commission acts on the filing submitted by the Dominion Companies¹ in compliance with the Commission's order in *Virginia Electric and Power Co.*² The Commission finds that the Dominion Companies satisfy the affiliate abuse and reciprocal dealing prong of the Commission's four-part market-based rate analysis. Further, the Commission accepts the revised tariff sheets filed by the Dominion Companies, which incorporate the change in status reporting requirement,³ and the revised tariff sheets filed by VEPCO, which modify its affiliate sales provision to state that sales to affiliates are prohibited without first receiving authorization for the transaction by the Commission under section 205 of the FPA.⁴ This order also terminates the proceeding in Docket No. EL05-118-000, which was instituted in the May 25 Order

¹ The Dominion Companies are Virginia Electric and Power Company (VEPCO) and its affiliates, which include Armstrong Limited Partnership, LLLP (Armstrong), Dominion Energy Marketing, Inc. (Marketing), Dominion Nuclear Connecticut, Inc. (Nuclear Connecticut), Dominion Nuclear Marketing I, Inc. (Nuclear Marketing I), Dominion Nuclear Marketing II, Inc. (Nuclear Marketing II), Dominion Nuclear Marketing III, L.L.C. (Nuclear Marketing III), Dresden Energy, LLC (Dresden), Elwood Energy LLC (Elwood), Fairless Energy, LLC (Fairless), Kincaid Generation, L.L.C. (Kincaid), Pleasants Energy, LLC (Pleasants), State Line Energy, L.L.C. (State Line), and Troy Energy, LLC (Troy). Notices of cancellation of market-based rate tariffs for Nuclear Marketing I and Nuclear Marketing II were accepted in *Dominion Nuclear Marketing I*, Docket No. ER04-189-000. (January 22, 2004) (unpublished letter order).

² 111 FERC ¶ 61,241 (May 25 Order).

³ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

⁴ 16 U.S.C. § 824d (2000).

pursuant to section 206 of the Federal Power Act⁵ to determine whether the Dominion Companies may continue to charge market-based rates and established a refund effective date.

Background

2. In the May 25 Order, the Commission conditionally accepted the Dominion Companies' updated market power analysis, subject to the Commission's acceptance of the compliance filing directed therein. The Commission stated that the Dominion Companies' updated market power analysis did not address the affiliate abuse and reciprocal dealing prong of the Commission's four-part market-based rate analysis. As a result, the Commission instituted a section 206 proceeding to determine whether the Dominion Companies may continue to charge market-based rates, and directed the Dominion Companies to file, within 30 days of the date of that order, a compliance filing to address the Commission's concerns regarding affiliate abuse and reciprocal dealing. The Commission also directed the Dominion Companies to incorporate the change in status reporting requirement into their market-based rate tariffs.⁶

3. In the May 25 Order, the Commission also acted on a compliance filing by VEPCO, which was submitted in response to an order granting the Dominion Companies authority to sell energy and capacity at market-based rates within VEPCO's service territory, subject to VEPCO's integration into PJM Interconnection, L.L.C. (PJM), and subject to American Electric Power Company's (AEP) and Dayton Power & Light's (DP&L) integration into PJM.⁷ The September 16 Order further noted that VEPCO's filing eliminated any reference to the Virginia Retail Access Pilot Program, participation in which had been the basis for the Commission's prior authorization for VEPCO to make market-based rate sales to affiliates.⁸ The September 16 Order noted that by

⁵ 16 U.S.C. § 824e (2000).

⁶ *See supra* note 3.

⁷ *Virginia Electric and Power Co.*, 108 FERC ¶ 61,242 (2004) (September 16 Order). As of May 1, 2005, AEP, DP&L and VEPCO are all integrated into PJM.

⁸ *See Virginia Electric and Power Company*, 91 FERC ¶ 61,209 (2000). These sales were limited by certain provisions, termed the *Detroit Edison* provisions. *See Detroit Edison Co.*, 80 FERC ¶ 61,348 (1997) (*Detroit Edison*).

eliminating that reference, VEPCO effectively expanded its authority to make market-based rate sales to affiliates. Among other things, in the September 16 Order, the Commission directed VEPCO to provide support for how its proposal to expand its authority to make affiliate sales satisfies our affiliate abuse concerns.

4. In the May 25 Order, the Commission reviewed VEPCO's compliance filing submitted in response to the September 16 Order and determined that the basis on which the Commission granted VEPCO authority to sell to its affiliates within its service territory no longer exists. The Commission directed VEPCO to amend its tariffs⁹ to state that sales to affiliates are prohibited without first receiving authorization for the transaction by the Commission under section 205 of the FPA, and to delete the provision allowing sales to affiliates within its service territory.

5. On June 24, 2005, the Dominion Companies submitted a compliance filing (June 24 compliance filing) in response to the May 25 Order.

Notice of Filing and Responsive Pleadings

6. Notice of the Dominion Companies' June 24 compliance filing was published in the *Federal Register*, 70 Fed. Reg. 39,765 (2005), with interventions or protests due on or before July 15, 2005. North Carolina Electric Membership Corporation (North Carolina Membership) filed a timely motion to intervene raising no substantive issues.

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion to intervene of North Carolina Membership serves to make it a party to this proceeding.

Affiliate Abuse

8. The Dominion Companies state that if the Commission accepts VEPCO's tariff revisions contained in the June 24 compliance filing, all of the Dominion Companies will have provisions in their market-based rate tariffs prohibiting sales to affiliates without first receiving Commission authorization. The Dominion Companies further state that all VEPCO affiliates have codes of conduct in their market-based rate tariffs that govern

⁹ FERC Electric Tariff, Original Volume No. 6, and FERC Electric Tariff, Third Revised Volume No. 4.

their conduct with VEPCO. Hence, the Dominion Companies state that they have demonstrated an absence of affiliate abuse and reciprocal dealing. In addition, no intervenor has raised concerns regarding affiliate abuse. Based on these representations, the Commission finds that the Dominion Companies satisfy the Commission's concerns with regard to affiliate abuse and reciprocal dealing.¹⁰

Compliance Filing

9. In the May 25 Order, the Commission determined that the basis on which the Commission originally granted VEPCO authority to sell to its affiliates within its service territory no longer existed, and directed VEPCO to amend its tariffs to state that sales to affiliates are prohibited without first receiving authorization for the transaction by the Commission under section 205 of the FPA,¹¹ and to delete the provision allowing sales to affiliates within its service territory. VEPCO has complied with this directive, and the Commission accepts the revised tariff sheets along with proposed designations, effective June 25, 2005, as requested.¹²

10. The Dominion Companies' revised tariff sheets incorporating the change in status reporting requirement comply with the Commission's order and are accepted for filing, effective March 21, 2005.¹³

¹⁰ In the May 25 Order, the Commission found that the Dominion Companies satisfy the Commission's standards regarding generation market power, transmission market power and barriers to entry.

¹¹ *See Aquila, Inc.*, 101 FERC ¶ 61,331 (2002).

¹² FERC Electric Tariff, Third Revised Volume No. 4, First Revised Sheet No. 10, and FERC Electric Tariff, Original Volume No. 6, First Revised Sheet No. 5.

¹³ The following sheets are accepted with the proposed designations: VEPCO, FERC Electric Tariff, Third Revised Volume No. 4, Original Sheet No. 13, and FERC Electric Tariff, Original Volume No. 6, Original Sheet No. 12;. The following sheets are accepted with the listed designations as the proposed designations were incorrect: Armstrong, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 9; Marketing, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 6; Nuclear Connecticut, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 5; Nuclear Marketing III, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 5; Elwood, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 8; Dresden, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 9; Fairless, FERC

(continued)

Docket No. EL05-118-000

11. The Commission terminates Docket No. EL05-118-000. The proceeding in this docket was established to determine whether the Dominion Companies may continue to charge market-based rates and establish a refund-effective date. As the Commission has accepted the Dominion Companies' compliance filing above, there is no further need for the proceeding in this docket.

The Commission orders:

(A) The Dominion Companies' compliance filing is hereby accepted for filing, as discussed in the body of this order.

(B) VEPCO's tariff revisions are hereby accepted, as discussed in the body of this order.

(C) The Dominion Companies' tariff revisions incorporating the change in status reporting requirement adopted in Order No. 652 are hereby accepted, as discussed in the body of this order.

(D) The section 206 proceeding in Docket No. EL05-118-000 is terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

Electric Tariff, Original Volume No. 1, Original Sheet No. 9; Kincaid, FERC Electric Tariff, Second Revised Volume No. 1, Original Sheet No. 5; State Line, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 9; Pleasants, FERC Electric Tariff, Original Volume No. 1, Original No. 9; and Troy, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 9.