

132 FERC ¶ 61,164
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Virginia Electric and Power Company
Dominion Energy Marketing, Inc.
Dominion Nuclear Connecticut, Inc.
Dominion Energy Kewaunee, Inc.
Dominion Energy Brayton Point, LLC
Dominion Energy Manchester Street, Inc.
Dominion Energy New England, Inc.
Dominion Energy Salem Harbor, LLC
Dominion Retail, Inc.
Elwood Energy, LLC
Fairless Energy, LLC
Kincaid Generation, L.L.C.
NedPower Mt. Storm, LLC
State Line Energy, L.L.C.
Fowler Ridge Wind Farm LLC

Docket No. ER10-1635-000

ORDER DISMISSING REQUEST FOR WAIVER OF CERTAIN AFFILIATE
RESTRICTION REQUIREMENTS

(Issued August 24, 2010)

1. On June 29, 2010, Virginia Electric and Power Company (Dominion Virginia Power) and its market-regulated power sales affiliates (collectively, the Dominion Marketing Affiliates,¹ together with Dominion Virginia Power, the Dominion

¹ The Dominion Marketing Affiliates are Dominion Energy, Marketing Inc., Dominion Nuclear Connecticut, Inc., Dominion Energy Kewaunee, Inc., Dominion Energy Brayton Point, LLC, Dominion Energy Manchester Street, Inc., Dominion Energy New England, Inc., Dominion Energy Salem Harbor, LLC, Dominion Retail, Inc. Elwood Energy, LLC, Fairless Energy, LLC, Kincaid Generation, L.L.C., NedPower Mt. Storm, LLC, State Line Energy, L.L.C., and Fowler Ridge Wind Farm LLC.

Companies) filed a request for waiver of the prohibition on sharing fuel procurement employees by franchised public utilities with captive customers and their market-regulated power sales affiliates. In this order, the Commission dismisses the Dominion Companies' request for waiver in light of the fact that the Commission recently granted an extension of time to comply with this prohibition² until such time as the Commission issues a final rule in the Market Based Rate Affiliate Restrictions Notice of Proposed Rulemaking (NOPR) proceeding.³

I. Background

2. In an order issued on April 15, 2010 the Commission addressed the Compliance Working Group's request for clarification of the market-based rate affiliate restrictions, among other things, providing guidance and clarifying that franchised public utilities with captive customers are prohibited from sharing employees that engage in fuel procurement or resource planning with their market-regulated power sales affiliates.⁴ In the Market Based Rate Affiliate Restrictions NOPR, which was issued concurrently with the April 15 Clarification Order, the Commission proposed to revise its regulations on those affiliate restrictions in order to reflect that franchised public utilities with captive customers are prohibited from sharing employees that determine the timing of scheduled outages, or that engage in economic dispatch, fuel procurement or resource planning with their market-regulated power sales affiliates. On July 2, 2010, the Commission granted an extension of time to comply with the guidance provided in the April 15 Clarification Order regarding employees that engage in fuel procurement or resource planning until such time as the Commission issues a final rule in the Market-Based Rate Affiliate Restrictions NOPR proceeding.⁵ The Commission explained that affected entities must continue to comply with the currently effective market-based rate affiliate restrictions adopted in Order No. 697 and as clarified in Order No. 697-A.⁶

² *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services By Public Utilities*, 132 FERC ¶ 61,014 (2010) (July 2 Order).

³ *Market-Based Rate Affiliate Restrictions*, 75 Fed. Reg. 20,796 (Apr. 21, 2010), Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,657 (2010) (Market-Based Rate Affiliate Restrictions NOPR).

⁴ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services By Public Utilities*, 131 FERC ¶ 61,021 (2010) (April 15 Clarification Order).

⁵ July 2 Order, 132 FERC ¶ 61,014.

⁶ *Id.* P 5.

3. The Dominion Companies request waiver of the prohibition on sharing fuel procurement employees in order to permit them to continue to use their shared affiliate fuel procurement arrangements. The Dominion Companies assert that state regulation of their fuel procurement activities ensures that captive customers are protected from potential affiliate abuse, and they submit that specific state-approved arrangements result in ratepayer protection. Additionally, the Dominion Companies claim that creating a stand-alone fuel procurement function will impose significant additional costs on captive customers. The Dominion Companies also argue that shared fuel procurement arrangements provide substantial benefits to captive customers such as labor efficiencies, market expertise and consolidated market presence. The Dominion Companies explain that they would be willing to make the safe harbor filing that is proposed by Dominion Resources Services, Inc. in its comments on the Market Based Rate Affiliate Restrictions NOPR. In the event the Commission does not grant the requested waiver, the Dominion Companies request that the Commission grant the Dominion Companies a period of 12 months to create stand-alone fuel procurement operations.

II. Notice of Filing and Responsive Pleadings

4. Notice of the Dominion Companies' filing was published in the *Federal Register*, 75 Fed. Reg. 39,236 (2010), with interventions and protests due on or before July 20, 2010. None was filed.

III. Discussion

5. We will dismiss the Dominion Companies' request for waiver of the prohibition against the sharing of fuel procurement employees in light of the fact that in the July 2 Order, the Commission granted an extension of time to comply with the guidance provided in the April 15 Clarification Order regarding employees that engage in fuel procurement or resource planning until such time as the Commission issues a final rule in the Market-Based Rate Affiliate Restrictions NOPR proceeding.⁷ We therefore find that the Dominion Companies' request for waiver is unnecessary at this time.

6. The Dominion Companies must continue to comply with the currently effective market-based rate affiliate restrictions adopted in Order No. 697 and as clarified in Order No. 697-A,⁸ including the prohibition against the sharing of market information between a franchised public utility with captive customers and its market-regulated power sales

⁷ *Id.*

⁸ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, at P 253 (2008).

affiliate.⁹ In addition, the extension of time to comply granted in the July 2 Order does not change the Commission's findings in prior orders clarifying the market-based rate affiliate restrictions.¹⁰

The Commission orders:

The Dominion Companies' request for waiver is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ See 18 C.F.R. § 35.39(d)(1) (2010) ("A franchised public utility with captive customers may not share market information with a market-regulated power sales affiliate if the sharing could be used to the detriment of captive customers, unless simultaneously disclosed to the public.").

¹⁰ July 2 Order, 132 FERC ¶ 61,014 at P 5; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 253.