

133 FERC ¶ 61,207
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.

Domtar Maine, LLC

Docket Nos. ER10-2345-000

ER10-2345-001

Woodland Pulp LLC

ER10-2345-002

ORDER ON REQUEST FOR MARKET-BASED RATE AUTHORIZATION AND
ACCEPTING NOTICE OF CHANGE IN STATUS

(Issued December 10, 2010)

1. In this order, the Commission conditionally grants market-based rate authorization to Domtar Maine, LLC (Domtar Maine), effective September 23, 2010, subject to a compliance filing, as discussed below. Additionally, we find that Domtar Maine meets the criteria for a Category 1 seller in all regions and is so designated.¹ Also in this order, we accept a notice of change in status filed with an accompanying tariff reflecting a change in upstream ownership and a name change from Domtar Maine to Woodland Pulp LLC (Woodland Pulp).²

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, *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).

² Our use of the term “Applicant” refers to the entity named Domtar Maine prior to September 30, 2010 and subsequently named Woodland Pulp.

I. Background

2. On August 24, 2010, as amended on September 21, 2010, September 29, 2010, and October 13, 2010, pursuant to section 205 of the Federal Power Act (FPA),³ Domtar Maine filed an initial application for market-based rate authority with an accompanying tariff providing for the sale of energy, capacity, and ancillary services at market-based rates.⁴ The application includes a request for waivers commonly granted to market-based rate applicants.

3. Domtar Maine states that its primary business is ownership and operation of an industrial pulp manufacturing facility in Baileyville, Maine. Domtar Maine also states that it owns and operates generation facilities that produce electricity primarily for consumption by its pulp manufacturing facility. Domtar Maine states in its August 24, 2010 filing that Domtar Corporation⁵ holds all of the membership interests in Domtar Maine.⁶

4. On September 21, 2010, Domtar Maine supplemented its filing to provide additional information concerning Domtar Corporation's market-based rate authority and compliance with the Commission's reporting requirements.

5. On September 22, 2010, Commission staff requested additional information pertaining to sales of energy from Domtar Maine's generation facilities. On September 29, 2010, Domtar Maine submitted a response to the request and an amended tariff.

6. On October 13, 2010, Woodland Pulp submitted an amendment to the application for market-based rate authorization and a notice of change in status wherein it states that

³ 16 U.S.C. § 824d (2006).

⁴ The application includes a request for authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc. (ISO New England), California Independent System Operator Corp., and the Midwest Independent Transmission System Operator, Inc., as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁵ Domtar Corporation is authorized to make sales at market-based rates. *See Domtar Corp.*, Docket No. ER07-515-000 (March 1, 2007) (delegated letter order).

⁶ As discussed below, Domtar Corporation is no longer the owner of these facilities.

on September 30, 2010, the International Grand Investment Corporation (International Grand) acquired Domtar Maine and then changed its name from Domtar Maine to Woodland Pulp. Woodland Pulp states that as of September 30, 2010, Woodland Pulp is a wholly-owned subsidiary of International Grand.

7. With respect to ownership of generation, Domtar Maine, in its initial application, states that it owns and operates a 17 megawatt (MW) condensing-steam turbine; a 26 MW backpressure turbine; and two hydroelectric generating facilities with a total nameplate capacity of 18.9 MW. Applicant represents that these facilities meet the criteria for qualifying facility status under the Public Utility Regulatory Policies Act of 1978.⁷

8. With respect to ownership of transmission, Domtar Maine represents that neither it nor its affiliates own or control transmission facilities in the United States, other than the limited equipment necessary to interconnect generation facilities to the transmission grid. It also represents that it and its affiliates do not have franchised electric utility service territories or captive customers.

9. In the October 13, 2010 amendment and notice of change in status, Woodland Pulp renews the initial request for market-based rate authorization and request for an effective date for the proposed tariff of September 23, 2010. Woodland Pulp states that the notice of change in status does not affect the conditions submitted in support of the initial application filed August 24, 2010.⁸

II. Notice and Responsive Pleadings

10. Notice of Domtar Maine's August 24, 2010 request for market-based rate authority was published in the *Federal Register*, 75 Fed. Reg. 53,287 (2010), with interventions or protests due on or before September 14, 2010. None was filed.

11. Notice of Domtar Maine's request for blanket authorization under Part 34 was separately published in the *Federal Register*, 75 Fed. Reg. 53,965 (2010), with interventions or protests due on or before September 16, 2010. None was filed.

⁷ 16 U.S.C. § 2601 *et seq.* (2006).

⁸ We note that our analysis of Applicant's representations and our finding of the lack of market power hereafter apply equally to Applicant in either its old or its new corporate families.

12. Notice of Domtar Maine's September 29, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 62,374 (2010), with interventions or protests due on or before October 8, 2010. None was filed.

13. Notice of the October 13, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 65,315 (2010), with interventions or protests due on or before October 27, 2010. None was filed.

III. Discussion

A. Market-Based Rate Authorization

14. 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.⁹ As discussed below, we find that Domtar Maine conditionally satisfies the Commission's standards for market-based rate authority. As discussed further below, we also accept Woodland Pulp's October 13, 2010 amendment and notice of change in status.

1. Horizontal Market Power

15. Domtar Maine represents that it owns four generation facilities, each located in the New Brunswick System Operator balancing authority area, comprised of a 17 MW condensing-steam turbine; a 26 MW backpressure turbine; and two hydroelectric generating facilities with a total nameplate capacity of 18.9 MW. Domtar Maine represents that these facilities use their output primarily to supply Domtar Maine's manufacturing operations, with any excess committed under a long-term bilateral wholesale agreement to New Brunswick Power Generation Corporation.¹⁰ Domtar Maine has several affiliates that own generation facilities across the country. None of these affiliates' facilities are in the New Brunswick System Operator balancing authority area or a market directly interconnected to it.

⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

¹⁰ We note that Woodland Pulp states that sales from the facilities have been made in the past and that Woodland Pulp is currently making sales of excess power. However, it states that all of the past and current sales of excess power by Domtar Maine or Woodland Pulp are attributable to either the two hydroelectric plants or the condensing-steam turbine generating facility. Woodland Pulp states that the sales from these 20 MW or smaller qualifying facilities are exempt from section 205 of the FPA. *See* 18 C.F.R. § 292.601(c)(1) (2010). Applicant represents that it has not and will not make sales from the 26 MW backpressure turbine until it receives market-based rate authority.

16. Based on the representation that a long-term bilateral wholesale agreement commits the surplus generation capacity from Domtar Maine's facilities and thus it has no uncommitted capacity, we find that Domtar Maine satisfies the Commission's requirements for market-based rates regarding horizontal market power.

2. Vertical Market Power

17. 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 Open Access Transmission Tariff on file before granting a seller market-based rate authorization.¹¹ Domtar Maine states that it and its affiliates do not own or control any electric transmission facilities in the United States, other than the limited equipment necessary to interconnect generation facilities to the transmission grid.

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹² 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 generation capacity development; physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).¹³ 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.¹⁴

19. Regarding barriers to entry, Domtar Maine states that it and its affiliates do not presently own or control any plant sites (other than those for their own generation facilities), fuel supplies, fuel transportation systems, other inputs to generation, or other essential resources or inputs that could be used to restrict market entry by competing power suppliers. In addition, Domtar Maine represents that it is not affiliated with any entities that have control over any such resources, assets or inputs that could be used to restrict market entry by competing power suppliers.

¹¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹² *Id.* P 440.

¹³ *Id.* P 447; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

¹⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

20. Consistent with Order No. 697, Domtar Maine affirmatively states that neither it nor its affiliates have erected barriers to entry into any of the relevant markets, and will not erect barriers to entry into the relevant markets.

21. Based on Domtar Maine's representations, we find that Domtar Maine satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Waiver Requests

22. Applicant requests the following waivers and authorizations: (1) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except as to sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting requirements; and (3) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

23. The Commission will grant these requested waivers and authorizations, with the exception of sections 35.12(a), 35.13(b), 35.15, 35.16, and 141.14 and 141.15 (which pertain to the filing by hydropower licensees of Form No. 80, Licensed Hydropower Development Recreation Report, and the Annual Conveyance Report), consistent with those granted to other entities with market-based rate authorizations.¹⁵ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Applicant to keep accounting records in accordance with generally accepted accounting principles.

C. Reporting Requirements

24. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report (EQR) 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.¹⁶

¹⁵ We note that the Commission has examined and approved the continued applicability of waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141), as well as the continued applicability of blanket authorization for the issuance of securities and the assumption of liabilities (18 C.F.R. Part 34). *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 984-85 (regarding waiver of Parts 41, 101, and 141), and P 999-1000 (regarding blanket approval under Part 34).

¹⁶ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g*

(continued...)

Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.¹⁷

25. Additionally, entities with market-based rate authorization 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.¹⁸ This includes the timely submission of land acquisition reports.¹⁹

26. In Order No. 697, the Commission created two categories of sellers.²⁰ 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; 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

denied, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹⁷ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2010). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹⁸ *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 (2010).

¹⁹ *See* Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 at P 18 (requiring market-based rate sellers to report the acquisition of control of sites for new generation capacity development on a quarterly basis instead of within 30 days of the acquisition); Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 at P 21-24; 18 C.F.R. § 35.42(d) (2010); *Notice of New Docket Prefix "LA" for Land Acquisition Reports and Guidelines for Filing Under Order No. 697-C*, Docket No. RM04-7-006, 75 Fed. Reg. 22,125 (2010).

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

waiver of the requirements of Order No. 888²¹); are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; are not affiliated with a franchised public utility in the same region as the seller's generation assets; and do not raise other vertical market power issues.²² Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analysis.²³

27. Domtar Maine states that it meets the criteria for Category 1 seller status in all regions. It represents that it and its affiliates own or control less than 500 MW of generation. Domtar Maine represents that it and its affiliates do not own, operate, or control transmission facilities, other than the limited equipment necessary to interconnect generation facilities to the transmission grid. It represents that it and its affiliates do not have a franchised service area for the sale of electricity to captive customers. Domtar Maine further represents that it does not raise any other vertical market power concerns.

28. Based on Domtar Maine's representations, we find that it meets the criteria for a Category 1 seller in all regions and is so designated. The Commission reserves the right to require an updated market power analysis from any market-based rate seller at any time, including for those sellers that fall within Category 1.²⁴

D. Notice of Change in Status and Market-Based Rate Tariff

29. In the October 13, 2010 notice of change in status and amendment to the market-based rate application, Woodland Pulp states that on September 30, 2010, Domtar Corporation completed the sale of Domtar Maine to International Grand. Woodland Pulp states that immediately after the closing of this transaction,

²¹ *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).

²² 18 C.F.R. § 35.36(a)(2) (2010).

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

²⁴ *Id.* P 853.

Domtar Maine changed its name to Woodland Pulp. Woodland Pulp states that this change in status does not affect the conditions submitted in support of Domtar Maine's initial application. In particular, Woodland Pulp represents that International Grand and its affiliates own no other generation facilities that sell electricity. Woodland Pulp further states that it and its affiliates do not own or control any electric transmission facilities in the United States other than the limited equipment necessary to interconnect generation facilities to the transmission grid.

30. Based on Woodland Pulp's representations, we find that Woodland Pulp satisfies the Commission's requirements for market-based rate authority.

31. Applicant's new proposed tariff filed on October 13, 2010 defines Seller as Woodland Pulp.²⁵ However, given that prior to September 30, 2010, Woodland Pulp was known as Domtar Maine, in order for Applicant's tariff to be effective as of September 23, 2010, we will require Applicant to submit a compliance filing containing a tariff revision to reflect that Woodland Pulp was known as Domtar Maine prior to September 30, 2010.²⁶ This compliance filing is due within 30 days of the date of this order. Our acceptance of Applicant's request for market-based rate authority and accompanying tariff with a September 23, 2010 effective date is conditioned upon Applicant submitting this compliance filing.

32. Last, we note that the proposed tariff does not reflect that we are granting waiver of 18 C.F.R. Part 141 with the exception of sections 141.14 and 141.15. Therefore, we direct Woodland Pulp to submit a compliance filing, within 30 days of the date of this order, containing tariff revisions in its limitations and exemptions section reflecting this limitation.

The Commission orders:

(A) We hereby conditionally accept Applicant's request for market-based rate authority, effective September 23, 2010, subject to a compliance filing, as discussed in the body of this order.

²⁵ We note that the market-based rate tariff records submitted in this proceeding on August 24, 2010 and September 29, 2010 have been overtaken by events (i.e., the October 13, 2010 tariff filing), and thus there is no tariff of record listing Domtar Maine as the Seller. Therefore, the tariff record filed on October 13, 2010 is the only tariff record actively before the Commission in this proceeding.

²⁶ For instance, the Availability section of the tariff could read "Woodland Pulp LLC, known as Domtar Maine, LLC prior to September 30, 2010, (Seller) makes electric energy, capacity, and ancillary services available under this tariff...."

(B) We direct Applicant to submit a compliance filing, within 30 days of the date of this order, containing tariff revisions, as discussed in the body of this order.

(C) We hereby accept Applicant's notice of change in status, as discussed in the body of this order.

(D) We hereby grant waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16.

(E) We hereby grant waiver of Parts 41, 101, and 141 of the Commission's regulations, with the exception of sections 141.14 and 141.15.

(F) We grant blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability. We hereby authorize Applicant 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 within the corporate purposes of Applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) 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 Applicant's issuances of securities or assumptions of liabilities.

(H) We require Applicant to file EQRs in compliance with Order No. 2001. If the effective date of the market-based rate tariff falls within a quarter of the year that has already expired, the EQRs for the expired quarter are due within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.