

142 FERC ¶ 61,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

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

Docket No. ER11-3027-000

State Line Energy, L.L.C.
Fowler Ridge Wind Farm LLC

ORDER DENYING REQUEST FOR WAIVER

(Issued February 8, 2013)

1. On March 7, 2011, Virginia Electric and Power Company (Dominion Virginia Power) and its market-regulated power sales affiliates (Dominion Marketing Affiliates¹) (collectively with Dominion Virginia Power, the Dominion Companies) filed a request

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. March 7, 2011 Filing at n.1 (March 7 Filing).

for waiver of the market-based rate affiliate restrictions to permit the Dominion Companies to continue sharing resource planning employees. In this order, we deny the Dominion Companies' request for waiver of the market-based rate affiliate restrictions.

I. Request for Waiver

2. The Dominion Companies state that Dominion Virginia Power is a public utility with captive wholesale and retail customers, and an affiliate of the Dominion Marketing Affiliates. They also state that Dominion Virginia Power provides electric service to captive retail customers located in Virginia and North Carolina.² The Dominion Companies represent that the Dominion Marketing Affiliates are all authorized by the Commission to make sales of energy, capacity and certain ancillary services at market-based rates.³

3. The Dominion Companies request waiver of the affiliate restrictions so that they may continue to share the following three groups of employees for resource planning purposes: (1) employees who “provide analyses and data for various parts of the resource planning process for both Dominion Virginia Power and for the Dominion Marketing Affiliates” and who “perform support functions, and are not involved in making any strategic decisions with respect to the development or acquisition of generation”; (2) employees who “are involved in implementing resource planning decisions” and who “perform support functions, and are not involved in making any strategic decisions with respect to the development or acquisition of generation”; and (3) “executives responsible for deciding whether or not to build or acquire a new generator and where to build such generation (in each case subject to the final approval of senior officers and the board of directors).”⁴

4. The Dominion Companies state that their requested waiver would permit them “to continue to share the employees who perform functions to support resource planning including accounting, construction, engineering, environmental, finance, legal, operations, maintenance, permitting, real estate, safety and siting functions – e.g., to

² Although the Dominion Companies do not provide information regarding their captive wholesale customers in their waiver request filed in this docket, in Docket No. ER11-2774-000, which concerned a request for waiver of the affiliate restrictions to permit them to share fuel procurement employees, they explained that Dominion Virginia Power has three captive wholesale customers located in Virginia, North Carolina and West Virginia, respectively. *Va. Elec. & Power Co.*, 136 FERC ¶ 61,215, at P 9 (2011).

³ March 7 Filing at 7.

⁴ *Id.* at 4-5; *see id.* at 18-19.

perform or assist with modeling, financial analysis, construction planning, and site acquisition.”⁵ In this regard, the Dominion Companies state that the first group of employees provides analyses and data for various parts of the resource planning process for both Dominion Virginia Power and the Dominion Marketing Affiliates, and that such data and analyses include: (1) transmission analyses for new transmission construction, generation retirements, and generation additions; (2) forward commodity market prices for fuel, energy, non-energy commodities and fuel transportation; (3) plant revenue forecasting; (4) interest rate forecasts; (5) Environmental Protection Agency analysis; and (6) load forecasts.⁶ The Dominion Companies state that the second group of employees implements resource planning and other strategic decisions resulting from the data analyses. They state that this second resource planning function requires, for example, certain employees to handle site evaluation, acquisition, and permitting for both Dominion Virginia Power and for the Dominion Marketing Affiliates.⁷ The Dominion Companies state that they “request a waiver to permit the sharing of all support employees involved in the resource planning process.”⁸

5. In support of their request for waiver, the Dominion Companies state that sharing these three groups of resource planning employees does not adversely affect Dominion Virginia Power’s captive customers because the policies of the Dominion Companies prevent Dominion Virginia Power from competing for any resource planning opportunity with any of the Dominion Marketing Affiliates. Specifically, they represent that pursuant to their own policy, the Dominion Companies may only consider generation development and acquisition opportunities for Dominion Virginia Power within Virginia, West Virginia and North Carolina. They state that the Dominion Companies may only consider generation development and acquisition opportunities for the Dominion Marketing Affiliates outside of those states.⁹ The Dominion Companies represent that this policy ensures that Dominion Virginia Power and the Dominion Marketing Affiliates cannot compete for potential resources and “cannot compete for potential generation opportunities,”¹⁰ and thus “eliminat[es] the subsidization concerns” raised by the

⁵ *Id.* at 30.

⁶ *Id.* at 18-19.

⁷ *Id.* at 19.

⁸ *Id.* at n.32.

⁹ *Id.* at 12.

¹⁰ *Id.* at 28

Commission.¹¹ In the case of the third group of employees (generation executives who make strategic decisions regarding whether, when and where to build or acquire generation resources), Dominion asserts that, because of the Dominion Companies' policies regarding geographic separation of their resource planning activities and state oversight, such shared employees cannot favor the Dominion Marketing Affiliates at the expense of the captive customers of Dominion Virginia Power. Dominion states that, "if a shared executive identifies a favorable generation development opportunity in Virginia, North Carolina or West Virginia, it cannot transfer that opportunity to a Dominion Marketing Affiliate, and if the opportunity is developed, it must be on behalf of Dominion Virginia Power."¹²

6. The Dominion Companies also state that the regulation of the Virginia State Corporation Commission (Virginia Commission) and the North Carolina Utilities Commission (North Carolina Commission) protects Dominion Virginia Power's captive customers. They state that these state commissions oversee resource planning for both retail and wholesale customers because the Dominion Companies do not operationally divide resource planning activities between retail and wholesale.¹³ The Dominion Companies explain that they are required to file with each state commission an integrated resource plan. They represent that in Virginia, the integrated resource plan "provides a forecast of its load obligations and a plan to meet these obligations by supply-side and demand-side resources over the ensuing 15 years to promote reasonable prices, reliable service, energy independence, and environmental responsibility."¹⁴ The Dominion Companies state that the Virginia Commission has authority to determine whether the integrated resource plan is reasonable and in the public interest.¹⁵

7. The Dominion Companies state that through the integrated resource plan and certificate of public convenience and necessity processes, the Virginia Commission and the North Carolina Commission evaluate all of Dominion Virginia Power's resource plans for cost-effectiveness, reliability, need, and consistency with the public interest. They state that the Virginia Commission and the North Carolina Commission require Dominion Virginia Power to demonstrate that the costs associated with such development were prudently incurred and that the resources developed were the least-cost option

¹¹ *Id.* at 12.

¹² *Id.* at 31.

¹³ *Id.* at 13.

¹⁴ *Id.* at 13-14.

¹⁵ *Id.* at 14.

available to meet Dominion Virginia Power's expected load obligations before such costs can be passed through to ratepayers.¹⁶

8. The Dominion Companies explain that both the Virginia Commission and the North Carolina Commission have authority to: (1) investigate and oversee affiliate relationships; (2) oversee resource planning and resource acquisition; and (3) disallow in rates any costs related to such activities deemed to be imprudent. They state that this state commission oversight will protect any captive customers of Dominion Virginia Power from harm.¹⁷ The Dominion Companies also state that the issue presented in their waiver request is similar to the recent Standards of Conduct rulemaking proceeding wherein the Commission was reluctant to "interfere with legitimate planning activities."¹⁸

9. The Dominion Companies further explain that Dominion Virginia Power is required to file an integrated resource plan with the Virginia Commission every other year. They state that the Virginia Commission must grant a certificate of public convenience and necessity in order for Dominion Virginia Power to construct and operate generation facilities over five megawatts, and that the Virginia Commission is required to deny a certificate of public convenience and necessity where it deems that such a facility is not needed or is not otherwise in the public interest.¹⁹ The Dominion Companies state that the Virginia Commission retains additional authority to protect customers against imprudently incurred expenses, such as unjustified cost overruns, through its review of annual rate adjustment clauses.²⁰ The Dominion Companies state that the North Carolina Commission has integrated resource planning requirements similar to those of the Virginia Commission. They explain that the North Carolina Commission has a host of guidelines and requirements designed to protect any captive customers, beginning with the requirement to obtain a certificate of public convenience and necessity from the North Carolina Commission.²¹

¹⁶ *Id.* at 28.

¹⁷ *Id.* at 17.

¹⁸ *Id.* at 18 (citing *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280, at P 135 (2008)).

¹⁹ *Id.* at 14-15.

²⁰ *Id.* at 15-16.

²¹ *Id.* at 16.

10. The Dominion Companies explain that the entity responsible for developing electric generation facilities on behalf of both Dominion Virginia Power and the Dominion Marketing Affiliates is the Business Development and Generation Construction group, and specifically, the business development subgroup.²² They state that the integrated resource planning process governs the need for specific generation supply development for Dominion Virginia Power, and that senior management and the board of directors review and approve decisions to construct generation for the Dominion Marketing Affiliates.²³ The Dominion Companies explain that under their integrated resource planning process, a team from the Business Development and Generation Construction group identifies the type and timing of resources needed to meet forecast resource requirements, and “final approval of identified resources is determined by the board of directors and then proposed to the applicable state commission.”²⁴ The Dominion Companies also state that the integrated resource plan is not a commitment to any single long-term development plan, but is instead a guide for future Dominion Virginia Power actions. The Dominion Companies state that their Business Development and Generation Construction group also develops merchant generation facilities based on opportunities that may arise outside of Virginia, North Carolina, and West Virginia.²⁵

11. The Dominion Companies also state that the majority of generation developed by Dominion Virginia Power has been located within its service territory. They state that Dominion Virginia Power has developed some limited generation in Virginia outside of its service territory and in West Virginia, which is why the geographic separation of development activities assigns all of Virginia, North Carolina and West Virginia to Dominion Virginia Power. The Dominion Companies claim that limiting Dominion Virginia Power’s development activities to the three identified states represents a reasonable and conservative approach in light of the “significant regulatory and commercial difficulties (e.g. tax nexus issues)” for Dominion Virginia Power to develop resources in other states.²⁶ In addition, the Dominion Companies note that, to the extent the integrated resource plan identifies a long-term purchase of energy and capacity as the optimal means to satisfy the load requirements of Dominion Virginia Power, such a

²² *Id.* at 21. The Dominion Companies represent that all of the employees within the Business Development and Generation Construction group are employees of Dominion Resources Services, Inc. *Id.* at 22.

²³ *Id.* at 22.

²⁴ *Id.* at 20.

²⁵ *Id.* at 25.

²⁶ *Id.* at n.29.

purchase would be negotiated and executed by Dominion Virginia Power employees involved in power marketing activities. The Dominion Companies state that those employees are not part of the resource planning function, shared, or the subject of their waiver request.²⁷

12. Finally, the Dominion Companies state that their request for waiver should be granted because requiring them to develop separate resource planning functions for Dominion Virginia Power and for the Dominion Marketing Affiliates will harm captive customers. They state that this harm will result because Dominion Virginia Power's captive customers enjoy benefits arising from labor efficiencies and lower administrative costs that result from the shared planning functions of the Dominion Companies.²⁸ The Dominion Companies also assert that the changes necessary to create a stand-alone resource planning function for Dominion Virginia Power will impose additional costs on Dominion Virginia Power's captive customers.²⁹

13. The Dominion Companies request that if the Commission declines to grant waiver to permit them to share individuals who are responsible for strategic-decision making, it instead grant partial waiver permitting them to share all other employees involved in shared resource planning activities, which either provide analyses and data for the resource plans or implement those plans once decisions have been made.³⁰ The Dominion Companies maintain that such employees do not make any strategic decisions and, as a result, are not in a position to harm captive customers under any circumstances. If the Commission denies their request for waiver, the Dominion Companies request six months from the date of the order denying waiver to comply with the separation of functions requirement.³¹ They state that the implementation of two separate resource planning functions on a schedule more accelerated than six months creates a risk of even higher costs being passed to Dominion Virginia Power's ratepayers.

II. Notice of Filing and Responsive Pleadings

14. Notice of the Dominion Companies' March 7 Filing was published in the *Federal Register*, 76 Fed. Reg. 14,005 (2011), with interventions and comments due on or before March 28, 2011. None was filed.

²⁷ *Id.* at n.28.

²⁸ *Id.* at 32.

²⁹ *Id.* at 33.

³⁰ *Id.* at 32.

³¹ *Id.* at 33.

III. Discussion

15. As discussed below, we will deny the Dominion Companies' request for limited waiver of the separation of functions provision in 18 C.F.R. 35.39(c)(2)(i) (2012).

16. In Order No. 697, the Commission codified certain affiliate restrictions in its regulations to protect captive customers from the potential for a franchised public utility to interact with a market-regulated power sales affiliate in ways that transfer benefits to the affiliate and its stockholders to the detriment of the captive customers.³² Captive customers are defined as "any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation."³³ The affiliate restrictions govern, among other things, the separation of functions, the sharing of market information, sales of non-power goods or services, and power brokering. The Commission requires that, as a condition of receiving and retaining market-based rate authority, sellers comply with these affiliate restrictions unless explicitly permitted by Commission rule or order granting waiver of the affiliate restrictions.³⁴ Failure to satisfy the conditions set forth in these affiliate restrictions constitutes a violation of a seller's market-based rate tariff.³⁵

17. Under the separation of functions requirement in the affiliate restrictions (section 35.39(c)(2)(i)), employees of market-regulated power sales affiliates must operate separately, to the maximum extent practical, from employees of affiliated

³² *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 467, 490, 513, *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. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Public Citizen, Inc. v. FERC*, 133 S. Ct. 26 (2012).

³³ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 202; 18 C.F.R. § 35.36(a)(6) (2012).

³⁴ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, 131 FERC ¶ 61,021, at P 2 (April 15 Clarification Order), *order granting in part request for extension of time to comply*, 132 FERC ¶ 61,014 (2010) (July 2 Order), *order denying reh'g*, 134 FERC ¶ 61,046 (2011) (Rehearing Order).

³⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 549-550.

franchised public utilities with captive customers.³⁶ On April 15, 2010, in response to a request for clarification, the Commission provided guidance regarding which employees may not be shared under the affiliate restrictions unless otherwise permitted by Commission rule or order.³⁷ Specifically, the Commission clarified that, consistent with Order No. 697-A, a franchised public utility with captive customers and its market-regulated power sales affiliate may not share employees that make economic dispatch decisions or that determine the timing of scheduled outages.³⁸ The Commission also clarified that franchised public utilities with captive customers are prohibited from sharing with their market-regulated power sales affiliates employees that engage in fuel procurement or resource planning. With respect to resource planning employees, the Commission explained that if a franchised public utility and its market-regulated power sales affiliate were permitted to share employees that make strategic decisions about future generation supply, such strategic decision-making by a shared employee could result in generation being built or acquired for the benefit of the market-regulated power sales affiliate at the expense of the captive customers of the franchised public utility.³⁹ The Commission noted that the prohibition on sharing employees that engage in resource planning applies only to the sharing of employees between a franchised public utility and its market-regulated power sales affiliate, and is not intended to alter resource planning activities by transmission providers that are permitted under the Standards of Conduct.⁴⁰ The Commission denied rehearing of the April 15 Clarification Order, and required that market-based rate sellers comply with the guidance in the April 15 Clarification Order within 90 days, or by April 20, 2011.⁴¹ The Commission has also explained that, to the extent that affected entities believe they need additional guidance concerning compliance with the currently effective market-based rate affiliate restrictions, they may submit a request for a no-action letter regarding specific proposed transactions, practices or

³⁶ 18 C.F.R. § 35.39(c)(2)(i) (2012).

³⁷ April 15 Clarification Order, 131 FERC ¶ 61,021 at P 2. In Order No. 697-A, the Commission clarified that “shared employees may not be involved in decisions regarding the marketing or sale of electricity from the facilities, may not make economic dispatch decisions, and may not determine the timing of scheduled outages for facilities.” Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 253.

³⁸ April 15 Clarification Order, 131 FERC ¶ 61,021 at P 40.

³⁹ *Id.* P 41.

⁴⁰ *Id.* P 41, n.69.

⁴¹ Rehearing Order, 134 FERC ¶ 61,046 at P 28.

situations⁴² or may seek waiver of the market-based rate affiliate restrictions on a case-by-case basis.⁴³

18. We will deny the Dominion Companies' request for waiver of the requirement in section 35.39(c)(2)(i) of the Commission's regulations. The Dominion Companies have not satisfied us that the sharing of the three groups of resource planning employees as proposed in their application will not result in harm to captive customers. The Dominion Companies represent that the employees they seek to share provide analyses of loads, future energy prices and revenues, among other data; make strategic executive decisions based on this data regarding when and where to build or acquire generation resources through purchase; and implement these strategic decisions, including operation and maintenance of resources, for both Dominion Virginia Power and the Dominion Marketing Affiliates. While the Dominion Companies argue that their internal policy should allay the Commission's concerns by eliminating the possibility of competition for potential resources between Dominion Virginia Power and the Dominion Marketing Affiliates, we conclude that this policy alone is not sufficient to ensure that the sharing of resource planning employees proposed by Dominion Companies will not harm captive customers. Dominion Companies have not satisfied us that sharing these employees will not result in generation being built or acquired for the benefit of the market-regulated power sales affiliate at the expense of the captive customers of the franchised public utility.⁴⁴ In addition, it is not clear how the Commission could monitor compliance with the Dominion Companies' commitment that "if a shared executive identifies a favorable generation development opportunity in Virginia, North Carolina or West Virginia, it cannot transfer that opportunity to a Dominion Marketing Affiliate," and thus that commitment is of little practical value. Further, though not disclosed in the Dominion Companies' application, we note that one of the Dominion Marketing Affiliates, NedPower Mt. Storm, LLC, is located in West Virginia, a state in which the Dominion Companies represent their internal policy prevents the Dominion Marketing Affiliates from competing for potential generation opportunities.⁴⁵ This fact not only undermines our confidence in the Dominion Companies' commitments in this proceeding, but it also

⁴² See July 2 Order, 132 FERC ¶ 61,014 at P 5 (citing *Interpretative Order Modifying No-Action Letter Process and Reviewing Other Mechanisms for Obtaining Guidance*, 123 FERC ¶ 61,157 (2008)).

⁴³ See *id.* (citing *Cleco Power LLC*, 130 FERC ¶ 61,102 (2010)).

⁴⁴ See April 15 Clarification Order, 131 FERC ¶ 61,021 at P 41.

⁴⁵ See *Dominion Energy Marketing, Inc.*, Updated Market Power Analysis, Docket No. ER01-468-012 (filed Oct. 27, 2010).

establishes the very real possibility of competition for potential resources between Dominion Virginia Power and the Dominion Marketing Affiliates because of the overlapping geographic markets of the two.

19. The Dominion Companies assert that state oversight would be sufficient to prevent the Dominion Marketing Affiliates from building or acquiring generation in Virginia, North Carolina and West Virginia at the expense of Dominion Virginia Power's captive customers. However, the Dominion Companies' discussion of the oversight exercised by the Virginia and North Carolina Commissions focuses on the ability of these commissions to review the resource planning activities of Dominion Virginia Power, and fails to explain the extent to which they would be in a position to review the resource planning activities of the Dominion Marketing Affiliates to see if and how resource decisions that were foregone by Dominion Virginia Power might affect captive customers (e.g., if Dominion Virginia Power passed over opportunities to build generation or purchase power that could be used for low-cost power for native load or off-system sales in order to allow the Dominion Marketing Affiliates to build and make those sales).

20. We also reject the Dominion Companies' claim that Dominion Virginia Power's captive customers enjoy benefits arising from labor efficiencies and lower administrative costs that result from the shared planning functions of the Dominion Companies. Dominion Companies provided no evidence to support this claim. Nor have the Dominion Companies provided information as to how the costs of resource planning functions are currently allocated and shared between Dominion Virginia Power and the Dominion Marketing Affiliates nor how Dominion Virginia Power's cost allocation would increase if the separation of functions is maintained.

21. Finally, while the Dominion Companies claim that the Dominion Marketing Affiliates cannot build generation in Virginia, North Carolina or West Virginia, there is nothing that would prevent them from selling power there or acquiring control over generation there. To the extent that the Dominion Marketing Affiliates and Dominion Virginia Power compete for opportunities to make sales, it is not clear that the internal policy limiting the geographic scope of resource planning for Dominion Virginia Power and the Dominion Marketing Affiliates would be sufficient to protect against these employees directing favorable opportunities for the Dominion Marketing Affiliates to make sales to third parties that Dominion Virginia Power could otherwise have made, to the detriment of Dominion Virginia Power's captive customers.

22. Next, we address Dominion Companies' request that if the Commission declines to grant waiver to permit them to share individuals who are responsible for strategic-decision making, it instead grant partial waiver permitting them to share all other employees involved in shared resource planning activities, who either provide analyses and data for the resource plans or implement those plans once decisions have been made. Although Dominion Companies maintain that these employees "do not make any strategic decisions," Dominion Companies have not adequately supported this assertion.

They state that the first group of employees provides analyses and data for various parts of the resource planning process for both Dominion Virginia Power and the Dominion Marketing Affiliates, including, for example, forward commodity prices and plant revenue forecasts.⁴⁶ The analyses and data provided by this group of employees would then be used as an input for the strategic decisions made by Dominion Virginia Power and the Dominion Marketing Affiliates.⁴⁷ Similarly, Dominion Companies state that the second group of employees is “responsible for implementing resource planning and other strategic decisions resulting from the data analyses” including “site evaluation, acquisition, and permitting for both Dominion Virginia Power and the Dominion Marketing Affiliates.”⁴⁸ Thus, based on Dominion Companies’ representations, we find that Dominion Companies have not demonstrated that these employees will not have a role in making strategic decisions and that sharing these employees will not harm captive customers. Therefore, we deny Dominion Companies’ waiver request to permit them to share these employees.

23. We will, however, give the Dominion Companies six months from the date of this order to allow them to comply with the separation of their resource planning functions in an orderly fashion.

The Commission orders:

(A) The Dominion Companies’ request for waiver of certain of the market-based rate affiliate restrictions is hereby denied, as discussed in the body of this order.

(B) The Dominion Companies are hereby ordered to separate their shared resource planning functions within six months of the date of this order, as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁶ March 7 Filing at 18-19.

⁴⁷ *See id.* at 26.

⁴⁸ *Id.* at 19.