

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

December 10, 2004

In Reply Refer To:

Dominion Energy New England, Inc.
Dominion Energy Salem Harbor, LLC
Dominion Energy Brayton Point, LLC
Dominion Energy Manchester Street, Inc.

Docket No. ER05-34-000
Docket No. ER05-35-000
Docket No. ER05-36-000
Docket No. ER05-37-000

Step toe & Johnson LLP
Attn: Mr. Steven J. Ross, Esq.
Counsel for Applicants
1330 Connecticut Avenue, N.W.
Washington, DC 20036-1795

Dear Mr. Ross:

1. On October 8, 2004, Dominion Energy Salem Harbor, LLC, Dominion Energy Brayton Point, LLC, Dominion Energy Manchester Street, Inc. (jointly, Dominion Generating Subsidiaries), and Dominion Energy New England, Inc., (DENE) (collectively Applicants) filed applications for market-based rate authority, with accompanying tariffs and codes of conduct. The proposed market-based rate tariffs provide for the sale of capacity, energy and ancillary services at market-based rates and the resale of firm transmission rights.¹ They also include the Commission's market behavior rules.² The Applicants' submittals, as discussed below, satisfy the

¹ The Applicants plan to sell certain ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), and ISO New England, Inc. (ISO-NE).

² *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003).

Commission's standards for market-based rate authority and are accepted for filing, as modified, effective upon the closing date of the purchase of certain jurisdictional facilities, as requested.³

2. DENE is a Massachusetts corporation and the Dominion Generating Subsidiaries are Virginia companies. Each applicant has its principal place of business in Richmond, Virginia. The Dominion Generating Subsidiaries are wholly-owned subsidiaries of DENE, which is an indirect wholly-owned subsidiary of Dominion Resources, Inc. (DRI). DRI's principal subsidiaries are Virginia Electric and Power Company (Dominion Virginia Power),⁴ Consolidated Natural Gas Company,⁵ and Dominion Energy, Inc. (DEI). The Applicants are also affiliated with Dominion Energy Marketing, Inc. (DEMI), an electric power marketer, which is a wholly-owned subsidiary of DEI.

3. Applicants state that DENE was established to purchase certain fossil generating assets from USGen New England, Inc. (USGenNE).⁶ DENE has agreed to purchase the assets pursuant to a Fossil Asset Purchase and Sale Agreement entered into on September 3, 2004. Upon the closing of that transaction, Dominion Energy Salem Harbor, LLC will own the Salem Harbor Station,⁷ Dominion Energy Brayton Point, LLC

³ Dominion Energy New England, Inc., FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-9. Dominion Energy Salem Harbor, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-9. Dominion Energy Brayton Point, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-9. Dominion Energy Manchester Street, Inc., FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-9. Waiver of section 35.3 of the Commission's regulations is granted to allow for the effective date noted above. Rate Schedule FERC No. 1, First Revised Sheet No. 1 (Supersedes Original Sheet No. 1).

⁴ Applicants state that Dominion Virginia Power is a regulated public utility engaged in the generation, transmission, distribution and sale of electric energy.

⁵ Consolidated Natural Gas Company is the parent company of local distribution facilities, interstate gas pipeline companies, and Dominion Retail, Inc., a retail marketing entity that sells other energy services, natural gas, and electric power at retail.

⁶ Concurrently with this filing, the Applicants and USGenNE filed with the Commission in Docket No. EC05-4-000 an application seeking authorization for the sale of the jurisdictional facilities.

⁷ This facility, which is located in Salem, Massachusetts, consists of three coal-fired units and one oil-fired unit with a net capacity of 745 MW.

will own the Brayton Point Station⁸ and Dominion Energy Manchester Street, Inc. will own the Manchester Street Station.⁹ The Applicants note that these facilities are all located within the ISO-NE market, and that DENE will operate these facilities for the Dominion Generating Subsidiaries. Applicants state that they currently contemplate that they will either sell the output of these facilities to DEMI or have DEMI serve as their agent to market the output of the fossil generating assets.

Procedural Matters

4. Notice of the Applicants' filing was published in the *Federal Register*, 69 Fed. Reg. 61,823 (2004), with comments, protests, and interventions due on or before October 29, 2004. None was filed.

Discussion

Market-Based Rate Authorization

5. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.¹⁰ As discussed below, the Commission concludes that the Applicants satisfy the Commission's standards for market-based rate authority.

6. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. The Applicants have prepared both the pivotal supplier and the wholesale market share screens for the ISO-NE market. The screens include the generation which will be acquired by the Applicants and the existing generation of their affiliates within the ISO-NE market. The Commission has reviewed Applicants' generation market power screens for the ISO-NE market, which indicate that

⁸ This facility, which is located in Somerset, Massachusetts, consists of three coal-fired units, one oil/gas-fired unit, and a 10 MW diesel/oil unit with a net capacity of 1,594 MW.

⁹ This facility, which is located in Providence, Rhode Island, consists of three gas-fired combined cycle units with a net capacity of 495 MW.

¹⁰ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996), Letter Order Approving Settlement, 79 FERC ¶ 61,149 (1997); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

the Applicants pass both the pivotal supplier and wholesale market share screens in that geographic market. Accordingly, the Commission finds that the Applicants satisfy the Commission's generation market power standard for the grant of market-based rate authority.

7. The Applicants state that neither the Applicants nor any of their affiliates own or operate transmission facilities in New England.¹¹ They note that transmission service in that market is provided under the ISO-NE Open Access Transmission Tariff. Based on this representation, the Commission finds that the Applicants satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

8. The Applicants state that although their affiliate Dominion Iroquois, Inc. (Dominion Iroquois)¹² has a 24.72 percent ownership interest in the pipeline owned by Iroquois Gas Transmission System, LP, Dominion Iroquois does not operate the pipeline and cannot use its minority interest to block capacity expansions or other operational decisions that would enhance access to competitors. The Applicants note that Dominion Iroquois provides less than 15 percent of the gas supplies into the ISO-NE market. Further, the Applicants also note that when the Commission approved DRI's acquisition of Consolidated Natural Gas Company, the Commission imposed strict limitations on communications between the DRI energy affiliates including Dominion Iroquois, Inc. Moreover, the Applicants note that the DRI companies do not control sites for new capacity development, other fuel inputs to generation, or any equipment suppliers or facilities used to transport fuels in New England or other inputs to generation. Based on this representation, the Commission is satisfied that the Applicants cannot erect barriers to entry. However, should Applicants or their affiliates deny, delay or require unreasonable terms, conditions or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of the Applicants' authority to sell power at market-based rates.¹³

¹¹ They state that their transmission-owning affiliate, Dominion Virginia Power, has an OATT on file with the Commission. We note that upon Dominion Virginia Power's integration into PJM, it transferred functional control of its transmission facilities operating at 69 kV or above to PJM, with all transmission service over these facilities thereafter to be provided by PJM under the PJM OATT. *See PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,012 (2004), *reh'g pending*.

¹² Dominion Iroquois is owned by Consolidated Natural Gas Company.

¹³ *See Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

9. The Applicants have submitted codes of conduct to govern their relationship with their affiliated public utility, Dominion Virginia Power. The Applicants have also included an affiliate sales prohibition in their market-based rate tariffs that prohibit sales to their affiliated public utility unless the Commission approves the transaction in a separate section 205 filing under the Federal Power Act (FPA).¹⁴ However, the proposed tariff language does not state that they will not make sales to their affiliated public utility “without first receiving” Commission authorization of the transaction under section 205 of the FPA.¹⁵ Therefore, consistent with Commission precedent, the Applicants are directed to make a compliance filing within 21 days of the date of issuance of this order to revise their market-based rate tariffs to include such language.

10. The Applicants request authority to engage in the sale of certain ancillary services (listed in the proposed tariff) at market-based rates into the markets administered by the PJM, NYISO, and ISO-NE. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant the Applicants’ request.¹⁶ The Applicants also request authority to resell firm transmission rights. We find these provisions consistent with the Commission’s requirements.¹⁷ Accordingly, we will grant this request.

Other Waivers, Authorizations and Reporting Requirements

11. The Applicants request 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; (3) abbreviated filings with respect to interlocking directorates under Part 45 of the Commission’s regulations; and (4) blanket authorization under Part 34 of the Commission’s regulations for all future issuances of securities and assumptions of liability.

¹⁴ Their tariff refers to Virginia Electric and Power Company.

¹⁵ *See Aquila, Inc.*, 101 FERC ¶ 61,331 (2002).

¹⁶ *See, e.g., Atlantic City Electric Company*, 86 FERC ¶ 61,248, clarified, 86 FERC ¶ 61,310 (1999); *Central Hudson Gas & Electric Corporation*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 (1999); and *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001).

¹⁷ *See California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

12. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁸ Notwithstanding the waiver of the accounting and reporting requirements here, we expect the Applicants to keep their accounting records in accordance with generally accepted accounting principles.

13. Within 30 days of the date of the issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211 and 385.214 (2004).

14. Absent a request to be heard within the period set forth above, the Applicants are hereby authorized 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 the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

15. Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving the Applicants. Any such person instead shall file a sworn application providing the following information:

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

¹⁸ It should be noted that the Commission is examining the issue of continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101 and 141) as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of obligations and liabilities (18 C.F.R. Part 34). *See Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities*, Order No. 627, 67 Fed. Reg. 67,691 at P 23 and P 24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

16. 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 the Applicants' issuances and securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

17. 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 containing: (1) a summary of the contractual terms and conditions in very 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 greater) market-based power sales during the most recent calendar quarter.¹⁹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.²⁰ Accordingly, the Applicants must file their first Electric Quarterly Reports no later than 30 days after the first quarter the Applicants' rate schedules are in effect.²¹

¹⁹ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

²⁰ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

²¹ Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, 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. Applicants are directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to:

(a) ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (b) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.²²

19. Applicants are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

20. The Applicants are directed to inform the Commission of the closing date of the transfer of jurisdictional facilities.

By direction of the Commission.

Magalie R. Salas
Secretary

²² The Commission issued a Notice of Proposed Rulemaking in Docket No. RM04-14-000 in which the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates. *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004). The change in status reporting requirements outlined herein are subject to the outcome of the rulemaking.