

125 FERC ¶ 61,070  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Dominion Energy Marketing, Inc.	Docket Nos.	ER01-468-006 ER01-468-007 ER01-468-008
Dominion Nuclear Connecticut, Inc.	Docket Nos.	ER00-3621-007 ER00-3621-008 ER00-3621-009
Dominion Nuclear Marketing III, L.L.C. Dominion Energy Kewaunee, Inc.	Docket Nos.	ER00-3746-009 ER04-318-002 ER04-318-003 ER04-318-004
Dominion Energy Brayton Point, LLC	Docket Nos.	ER05-36-003 ER05-36-004 ER05-36-005
Dominion Energy Manchester Street, Inc.	Docket Nos.	ER05-37-003 ER05-37-004 ER05-37-005
Dominion Energy New England, Inc.	Docket Nos.	ER05-34-003 ER05-34-004 ER05-34-005
Dominion Energy Salem Harbor, LLC	Docket Nos.	ER05-35-003 ER05-35-004 ER05-35-005
Dominion Retail, Inc.	Docket Nos.	ER04-249-003 ER04-249-004 ER04-249-005
Elwood Energy, LLC	Docket Nos.	ER99-1695-008 ER99-1695-009 ER99-1695-010 ER01-2763-001
Fairless Energy, LLC	Docket Nos.	ER02-23-009 ER02-23-010 ER02-23-011

Kincaid Generation, LLC	Docket Nos.	ER97-30-004 ER97-30-005 ER97-30-006 ER99-1432-009
State Line Energy, LLC	Docket Nos.	ER96-2869-011 ER96-2869-012 ER96-2869-013 ER02-1342-003
Virginia Electric and Power Company	Docket Nos.	ER97-3561-004 ER97-3561-005 ER98-3771-001 ER00-1737-009 ER00-1737-010 ER00-1737-011 ER00-2839-005 ER04-834-004
NedPower Mt. Storm, LLC	Docket Nos.	ER07-1306-003 ER07-1306-004

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS,  
ORDER NO. 697 COMPLIANCE FILING, AND CHANGE IN STATUS FILING,  
AND DIRECTING FURTHER COMPLIANCE FILING

(Issued October 16, 2008)

1. In this order, the Commission accepts Dominion Resources Services' (Dominion Services) updated market power analysis on behalf of Dominion Companies.<sup>1</sup> As discussed below, the Commission concludes that Dominion Companies satisfy the

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<sup>1</sup> Dominion Companies are Dominion Energy Marketing, Inc. (Dominion Marketing), Dominion Nuclear Connecticut, Inc., Dominion Nuclear Marketing III, L.L.C. (Dominion Nuclear Marketing), 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, LLC, State Line Energy, LLC, Virginia Electric and Power Company (VEPCO), and NedPower Mt. Storm, LLC.

Commission's standards for market-based rate authority. The Commission also accepts, subject to a further compliance filing, Dominion Companies' proposed market-based rate tariff revisions to incorporate provisions as adopted in Order No. 697.<sup>2</sup>

2. Additionally, the Commission finds that the Dominion Companies meet the criteria for a Category 2 seller in the Northeast region and are so designated. Dominion Companies' next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.<sup>3</sup>

## **I. Background**

3. On January 8, 2008, Dominion Services filed revisions to the Dominion Companies' market-based rate tariffs as required by Order No. 697.<sup>4</sup> On January 14, 2008, Dominion Services filed, on behalf of the Dominion Companies, an updated market power analysis in accordance with the regional reporting schedule adopted in Order No. 697.<sup>5</sup>

4. On April 4, 2008, the Director, Division of Tariffs and Market Development – West, acting under delegated authority, requested additional information in relation to the updated market power analyses filed by numerous filers within PJM (PJM RTO Filers). Specifically, the request noted that the identified PJM RTO Filers had failed to provide a Simultaneous Import Limitation (SIL) study with their updated market power analyses as required by the Commission in Order No. 697. The April 4, 2008 request for information directed the PJM RTO Filers to provide a SIL study consistent with the requirements of

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<sup>2</sup> *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 P 914-918, *clarified*, 121 FERC ¶ 61,260 (2007) (Order Clarifying Final Rule), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008).

<sup>3</sup> *Id.* P 882-893, App. D; Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 9, 10, App. D-1.

<sup>4</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914-18.

<sup>5</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882. The Commission stated that “both the Commission and market participants will benefit from greater data consistency that will result from regional examination of updated market power analyses and a methodical study of all sellers in the same region. This will give the Commission a more complete view of market forces in each region and the opportunity to reconcile conflicting submissions, enhancing our ability to ensure that sellers' rates remain just and reasonable.” *See also* Order Clarifying Final Rule, 121 FERC ¶ 61,260 at P 13.

Order No. 697, or in the alternative to provide a SIL study done by PJM that adequately addresses the Order No. 697 principles for how to measure transmission import capability.

5. On April 30, 2008, the PJM RTO Filers submitted a partial response to the April 4, 2008 request for information stating that PJM was submitting a SIL study for the PJM market at the request of the PJM RTO filers and requested an extension of time to file their individual responses to the April 4, 2008 request for information.

6. On April 30, 2008, PJM Interconnection, LLC (PJM) filed a motion to intervene out-of-time in the above-captioned dockets and a SIL study for the entire PJM region (PJM SIL Study). On June 2, 2008, as amended on July 14, 2008, PJM filed a SIL study for the PJM-East submarket (PJM-East SIL study). On August 6, 2008, the Commission found in *PSEG Energy Resources & Trade LLC*, 124 FERC ¶ 61,147 (2008) (PJM SIL Order),<sup>6</sup> that the PJM SIL Study and PJM-East SIL Study meet the Commission's requirements for SIL studies as discussed in Appendix E of the April 14 Order<sup>7</sup> and Order No. 697. In the PJM SIL Order, the Commission gave the PJM RTO Filers the following three options: (1) choose to rely on the PJM SIL Study and the PJM-East SIL Study; (2) conduct sensitivity studies on the PJM SIL Study and the PJM-East SIL Study, which they would submit along with the PJM SIL Study or PJM-East SIL Study; or (3) perform their own SIL studies.<sup>8</sup>

7. On September 2, 2008, Dominion Services revised its updated market power analysis to take into account the PJM and PJM-East SIL Studies approved by the Commission in the PJM SIL Order.

#### **A. Dominion Companies**

8. Dominion Services states that it is a subsidiary of Dominion Resources, Inc. (Dominion Resources), which is a holding company under the Public Utility Holding Company Act of 2005.<sup>9</sup>

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<sup>6</sup> The entire history and findings relating to the PJM SIL Study and the PJM-East SIL Study are detailed in the PJM SIL Order and are not repeated here.

<sup>7</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004).

<sup>8</sup> PJM SIL Order, 124 FERC ¶ 61,147 at P 22.

<sup>9</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1261 *et seq.*, 119 Stat. 594 (2005).

9. VEPCO, a subsidiary of Dominion Resources, is a vertically-integrated public utility engaged in the generation, distribution and sale of electric energy. It owns and/or operates 15,500 MW of generation in PJM. It also purchases the output of approximately 2,700 MW from other generators located in PJM.

10. Dominion Marketing and Dominion Nuclear Marketing are also Dominion Resources subsidiaries. Dominion Services states that they are power marketers that do not directly own, operate or control any electric generation facilities, but it acknowledges that Dominion Marketing manages approximately 900 megawatts of generation in PJM.

11. Dominion Services also states that Dominion Resources indirectly owns various subsidiaries that own and operate electric generating facilities, including approximately 3,000 MW in PJM, 4,700 MW in ISO New England Inc. (ISO-NE), and approximately 500 MW in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).<sup>10</sup>

12. Dominion Resources also indirectly owns non-utility generators holding interests in qualifying facilities: Rumford Cogeneration Company in ISO-NE and Morgantown Energy Associates in PJM.

13. Dominion Services states that Dominion Resources owns natural gas reserves, and owns or holds an interest in three local distribution companies: East Ohio Gas Company; Peoples Natural Gas Company; and Hope Gas Company. These companies provide retail gas service to customers in Ohio, Pennsylvania and West Virginia, respectively. Dominion Resources also owns or holds an interest in four interstate gas pipeline companies: Dominion Transmission, Inc.; Dominion Iroquois, Inc., which owns a 24.72 percent interest in Iroquois Gas Transmission System, LP; Dominion Cove Point, LNG, LP; and Dominion South Pipeline Company LP. Dominion Resources also owns Dominion Retail, Inc., a retail marketing entity that sells energy services, natural gas and electric power at retail.

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<sup>10</sup> The Dominion Resources subsidiaries include, in ISO-NE, Dominion Nuclear Connecticut, Inc. (which owns and operates the Millstone Nuclear Power Station), Dominion Energy Brayton Point, LLC, Dominion Energy Manchester Street, Inc., and Dominion Energy Salem Harbor, LLC; in PJM, Elwood Energy, LLC (which owns a 50 percent interest in generating facilities in PJM), Kincaid Generation, LLC; Fairless Energy, LLC, and State Line Energy, LLC; and in Midwest ISO, Dominion Energy Kewaunee, Inc. During the study period, the output of the Elwood Energy, LLC, Kincaid Generation, LLC, and State Line Energy, LLC generation facilities was sold under long-term contract to Exelon Generation Company, L.L.C.

**B. Change of Status Filing**

14. On September 21, 2007, Dominion Companies submitted a notice of change in status notifying the Commission that they acquired the 540 MW Possum Point Generating Unit 6 (Possum Point Unit) in Virginia.

**II. Notice and Responsive Pleadings**

15. Notices of Dominion Companies' January 8, 2008, January 14, 2008 and September 2, 2008 filings were published in the *Federal Register*,<sup>11</sup> with interventions or protests due on or before January 29, 2008, March 14, 2008, and September 23, 2008, respectively. Exelon Corporation (Exelon) filed a timely motion to intervene, and PJM Industrial Customer Coalition (PJM Industrial Customers) filed a timely motion to intervene and protest.

16. Notice of the change in status filing for Possum Point Unit was published in the *Federal Register*, 72 Fed. Reg. 56,072 (2007), with interventions or protests due on or before October 12, 2007. No comments or protests were filed.

**III. Discussion****A. Procedural Matters**

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), PJM Industrial Customer's and Exelon's timely, unopposed motions to intervene serve to make them parties to this proceeding.<sup>12</sup>

**B. Market-Based Rate Authorization**

18. 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.<sup>13</sup> As discussed below, the Commission concludes that Dominion Companies satisfy the Commission's standards for market-based rate authority.

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<sup>11</sup> 73 Fed. Reg. 2905 (2008); 73 Fed. Reg. 5540 (2008); 73 Fed. Reg. 53,214 (2008).

<sup>12</sup> As noted above, PJM filed a motion to intervene out of time in the above captioned dockets. In the PJM SIL Order, the Commission granted PJM's late-filed motion to intervene. 124 FERC ¶ 61,147 at P 11.

<sup>13</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

## 1. Horizontal Market Power

19. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.<sup>14</sup> Dominion Companies have prepared the pivotal supplier and wholesale market share screens for the PJM market, PJM-East submarket, ISO-NE market, and the Connecticut submarket, consistent with the requirements of Order No. 697.<sup>15</sup>

### a. PJM and PJM-East

20. Dominion Companies state that they are not pivotal and that their market shares in the relevant geographic markets of PJM and PJM-East range from 10 percent to 14 percent. Specifically, Dominion Companies' market shares range from 13 percent to 14 percent in the PJM market, and from 10 percent to 13 percent in the PJM-East submarket. Dominion Companies did not submit a SIL study for the PJM or PJM-East market. Instead, they state that they took into account the SIL study for the entire PJM Region and the SIL study for the PJM-East submarket approved by the Commission.<sup>16</sup>

21. In their change in status filing submitted on September 21, 2007, as explained above, Dominion Companies inform the Commission that they acquired the 540 MW Possum Point Unit located within the PJM market.<sup>17</sup> Dominion Companies represent that the acquisition associated with the Possum Point Unit does not affect the conditions the Commission relied on when granting Dominion Companies market-based rate authority. Dominion Companies included the capacity associated with the Possum Point Unit in their updated market power analysis.

22. Our review of Dominion Companies' pivotal supplier screens and wholesale market share screens demonstrates that Dominion Companies pass the pivotal supplier screens and the wholesale market share screens in the PJM market and PJM-East submarket. We also accept Dominion Companies' change in status filing.

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<sup>14</sup> *Id.* P 62.

<sup>15</sup> *Id.* P 235.

<sup>16</sup> *See* PJM SIL Order, 124 FERC ¶ 61,147 (2008).

<sup>17</sup> The related disposition of jurisdictional facilities was accepted by the Commission in *PPL Energy Plus, LLC.*, 123 FERC ¶ 62,170 (2008).

**b. ISO-NE and Connecticut**

23. Dominion Companies did not submit a SIL study for the ISO-NE market and the Connecticut submarket, but instead based its import analysis on the ISO-NE 2006 Regional System Plan. As the Commission explained in the April 14 Order, an applicant is required to provide a reasonable approximation of simultaneous import capability that would have been available to suppliers in surrounding first-tier markets during each seasonal peak.<sup>18</sup> The Commission has concluded that the ISO-NE's 2006 Regional System Plan satisfies these requirements.<sup>19</sup>

24. Dominion Companies state that they are not pivotal in the ISO-NE market and Connecticut submarket. They state that their market shares in the ISO-NE market range from 12 percent to 15 percent. In the Connecticut submarket, however, the Dominion Companies' market shares exceed 20 percent in all seasons.<sup>20</sup>

25. Our review of Dominion Companies' pivotal supplier screen and wholesale market share screens in the ISO-NE market demonstrates that Dominion Companies pass the pivotal supplier screen and the wholesale market share screens in the ISO-NE market.<sup>21</sup> Our review of Dominion Companies pivotal supplier screen and wholesale market share screen in the Connecticut submarket demonstrates that Dominion Companies pass the pivotal supplier screen, but fail the wholesale market share screen in all seasons in the Connecticut submarket.

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<sup>18</sup> April 14 Order, 107 FERC ¶ 61,018, at P 84 (2004). *See also Pinnacle West Capital Corp.*, 117 FERC ¶ 61,316 (2006).

<sup>19</sup> *See Niagara Mohawk Power Corp.*, 123 FERC ¶ 61,175, at P 20-21 (2008); *Northeast Utilities Service Co.*, 123 FERC ¶ 61,172, at P 11 (2008).

<sup>20</sup> Dominion Companies use an import capability of 2,846 MW into the Connecticut submarket, which is a higher amount than the 2,500 MW of import capability into the Connecticut submarket that the Commission has previously accepted. *See Northeast Utilities Service Co.*, 123 FERC ¶ 61,172, at P 11 (2008). When we apply the previously accepted import capability of 2,500 MW, Dominion Companies continue to pass the pivotal supplier screen and fail the market share screen in the Connecticut submarket.

<sup>21</sup> As stated above, the Possum Point Unit was included in the updated market power analysis.

26. The Commission has established a rebuttable presumption that a seller possesses horizontal market power if it fails either screen.<sup>22</sup> Although Dominion Companies fail the market share screen in the Connecticut submarket, Dominion Services states that the Dominion Companies' only generation asset in that submarket is the Millstone Power Station (Millstone), a nuclear facility that provides base-load power. As Dominion Services notes, nuclear facilities are "difficult to ramp down or up so as to withhold output during the most profitable time periods."<sup>23</sup> Accordingly, "the operational characteristics of, and regulatory scrutiny over, nuclear units virtually eliminate the possibility of withholding output to drive up prices."<sup>24</sup> Dominion Services points out that the Commission has made this determination with respect to Millstone itself.<sup>25</sup> Dominion Services states that the Independent Market Monitor for ISO-NE has reached a similar conclusion with respect to nuclear generators in the Connecticut market.<sup>26</sup> Furthermore, Dominion Services states that the Commission-approved market monitoring and mitigation rules administered by ISO-NE are more than adequate to protect against the potential exercise of market power in the Connecticut submarket.

27. The Commission stated in Order No. 697 that with respect to market concentration within RTO/ISO submarkets, it will consider any existing Commission-approved market monitoring and mitigation regime already in place within the RTO/ISO that provides for

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<sup>22</sup> 18 C.F.R. § 35.37(c)(1) (2008).

<sup>23</sup> *Commonwealth Edison Co.*, 91 FERC ¶ 61,036, at 61,134, n.42 (2000) (*Commonwealth*); *see also Ohio Edison Co.*, 94 FERC ¶ 61,291, at 62,044 (2001) (*Ohio Edison*) ("it is difficult to engage in strategic dispatch of nuclear units").

<sup>24</sup> *Exelon Corp.*, 112 FERC ¶ 61,011, at P 135 (2005); *see also Ohio Edison*, 94 FERC ¶ 61,291 at 62,044; *Commonwealth*, 91 FERC ¶ 61,036 at 61,134, n.42.

<sup>25</sup> *USGen New England, Inc.*, 109 FERC ¶ 61,361, at P 23 (2004) (rejecting the argument that Dominion's portfolio would give it an incentive and an opportunity to engage in strategic bidding and dispatch at Millstone).

<sup>26</sup> The Independent Market Monitor stated that "Nuclear generators cannot be dispatched up and down in a way that would allow the owner of the unit to profitably withhold. Thus, the owner of nuclear generation would have to also own significant amounts of non-nuclear capacity that could be withheld from the market." 2006 Assessment of the Electricity Markets in New England, Potomac Economics, Ltd., Independent Market Monitoring Unit, ISO New England Inc. 141 (June 2007), *available at* [http://www.iso-ne.com/pubs/spcl\\_rpts/2006/2006\\_immu\\_report.pdf](http://www.iso-ne.com/pubs/spcl_rpts/2006/2006_immu_report.pdf).

mitigation of the submarket.<sup>27</sup> The Commission finds that ISO-NE market monitoring and mitigation are sufficient to address market power concerns in the Connecticut submarket.<sup>28</sup>

## 2. Vertical Market Power

28. 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 (OATT) on file before granting a seller market-based rate authorization.<sup>29</sup>

29. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.<sup>30</sup> 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, storage or distribution facilities; and sites for generation capacity development; sources of coal supplies and equipment for the transportation of coal supplies such as barges and rail cars (collectively, inputs to electric power production).<sup>31</sup> 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.<sup>32</sup>

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<sup>27</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 242, 290.

<sup>28</sup> We note that in Order No. 697-A, the Commission adopted a rebuttable presumption that existing Commission-approved RTO/ISO marketing monitoring and mitigation is sufficient to address any market power concerns. Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 111.

<sup>29</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

<sup>30</sup> *Id.* P 440.

<sup>31</sup> *Id.* P 447. In Order No. 697-A, the Commission revised the definition of inputs to electric power production to include “physical coal supply sources and ownership of or control over who may access transportation of coal supplies.” Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

<sup>32</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

30. Dominion Services states that, although VEPCO owns transmission assets, those assets are under the control of PJM, which has an OATT on file with the Commission.<sup>33</sup>

31. Further, Dominion Services states that Dominion Companies do not own or control intrastate natural gas transportation or intrastate natural gas storage (except with respect to laterals to the Dominion Companies' owned generation or owned gathering lines), but do operate natural gas distribution facilities in the PJM market. In addition, Dominion Companies do not own or control sites for generation capacity, or sources of coal supply, except via coal supply contracts. They do own or lease transportation facilities for coal supplies such as barges and rail cars, but such facilities are used only to transport coal to Dominion-owned generation facilities.

32. The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers, but will allow intervenors to demonstrate otherwise.<sup>34</sup>

33. Dominion Services, on behalf of Dominion Companies, affirmatively states that Dominion Companies have not erected barriers to entry into PJM or ISO-NE, and will not erect barriers into PJM or ISO-NE.

34. Based on Dominion Companies' representations, we find that they satisfy the Commission's requirements for market-based rates regarding vertical market power.

### **3. Other Matters**

35. PJM Industrial Customers repeat arguments they raised on rehearing of Order No. 697 that the Commission fails to answer a threshold question of whether the PJM market rules and structure result in a competitive market for electric energy and capacity. PJM Industrial Customers thus assert that Order No. 697 is unlawful and, therefore, the approval or continuation of a seller's market-based rate authority is unlawful. PJM Industrial Customers further assert that unless and until the Commission identifies the characteristics of a competitive market and finds that such a market actually exists, the Commission cannot approve the instant request for authorization to continue making sales at market-based rates.

36. We find that PJM Industrial Customers' arguments are improper in this proceeding. The Commission recently addressed PJM Industrial Customers' arguments

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<sup>33</sup> *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

<sup>34</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

on rehearing of Order No. 697. Specifically, in Order No. 697-A, the Commission rejected the argument that Order No. 697 does not reflect reasoned decision-making because the Commission did not find the existence of a competitive market before relying on market-based rate authority.<sup>35</sup> Thus, we reject PJM Industrial Customers' arguments here.

### **C. Order No. 697 Compliance Filing**

37. In Order No. 697, the Commission adopted two standard required provisions that each seller must include in its market-based rate tariff: a provision requiring compliance with the Commission's regulations and a provision identifying any limitations and exemptions regarding the seller's market-based rate authority.<sup>36</sup> In addition to the required tariff provisions, the Commission adopted a set of standard provisions that must be included in a seller's market-based rate tariff to the extent that they are applicable.<sup>37</sup> In Order No. 697-A, the Commission also required that each seller include in its market based rate tariff a provision identifying which category of seller it qualifies as in each region.<sup>38</sup>

38. Dominion Companies' revised market-based rate tariffs include the Commission's two required provisions, indicating that Dominion Companies intend to comply with the Commission's regulations, including the affiliate restrictions. Dominion Companies' revised market-based rate tariffs also include a set of standard provisions with regard to sales of certain ancillary services in the markets administered by PJM, New York Independent System Operator, Inc., ISO-NE, and California Independent System Operator, Inc., as well as a provision regarding sales of ancillary services as a third-party provider.<sup>39</sup> However, the market-based rate tariffs of Dominion Companies do not include the required provision concerning seller categories. Therefore, we will direct Dominion Companies to submit a compliance filing within 30 days of the date of this

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<sup>35</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 407-12, 425-33.

<sup>36</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 914.

<sup>37</sup> *Id.* P 917.

<sup>38</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 391-93.

<sup>39</sup> Dominion Nuclear Marketing III, L.L.C. cancelled its market-based rate tariff. *See Dominion Nuclear Marketing III, L.L.C.*, Docket No. ER06-778-000 (May 12, 2006) (unpublished letter order). NedPower Mt. Storm, LLC previously revised its market-based rate tariff to comply with Order No. 697. *See NedPower Mt. Storm, LLC*, Docket No. ER07-1306-000, *et al.* (November 7, 2007) (unpublished letter order).

order to include the Category Seller provision, which we address further below, in each market-based rate tariff.

39. Furthermore, although Dominion Services states that Dominion Companies removed provisions concerning the reassignment or sale of transmission capacity or firm transmission rights, Dominion Companies' market-based rate tariffs in fact include provisions concerning the reassignment or sale of transmission capacity or firm transmission rights. In Order No. 697, the Commission determined that provisions concerning the reassignment or sale of transmission capacity or firm transmission rights should be removed from a seller's market-based rate tariff<sup>40</sup> because sellers who seek to reassign transmission capacity should adhere to the provisions of Order No. 890.<sup>41</sup> Accordingly, we will direct Dominion Companies, within 30 days of the date of this order, to remove all provisions governing the reassignment of transmission capacity from its respective market-based rate tariffs.

40. In addition, Dominion Companies have not included a revised market-based rate tariff for Dominion Marketing.<sup>42</sup> Accordingly, we will direct Dominion Companies to submit, within 30 days of the date of this order, a revised market-based rate tariff for Dominion Marketing that complies with Order No. 697.<sup>43</sup>

#### **D. Reporting Requirements**

41. 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 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

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<sup>40</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 920.

<sup>41</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 814-816, n.496 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

<sup>42</sup> Dominion Companies' transmittal in the instant filing states that it includes Dominion Energy Marketing, Inc. in its revised single market-based rate tariff, Original Volume No. 1. However, Dominion Energy Marketing, Inc. is not included in the tariff.

<sup>43</sup> Order No. 697 FERC Stats. & Regs. ¶ 31,252 at P 914-18.

longer) market-based power sales during the most recent calendar quarter.<sup>44</sup> Public utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.<sup>45</sup>

42. Dominion Companies 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.<sup>46</sup>

43. Additionally, in Order No. 697, the Commission created two categories of sellers.<sup>47</sup> 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; that 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 waiver of the requirements for Order No. 888); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market

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<sup>44</sup> *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 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 Electric Quarterly Reports 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>.

<sup>45</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2008). 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.

<sup>46</sup> *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 (2008).

<sup>47</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

power issues.<sup>48</sup> Sellers that do not fall into Category 1 are designated as Category 2 and are required to file regularly scheduled updated market power analysis.<sup>49</sup>

44. Based on Dominion Services' representations, we find that Dominion Companies meet the criteria for a Category 2 seller in the Northeast region and are so designated, based on their ownership of generation totaling greater than 500 MW of capacity in the Northeast region and because they own transmission in the PJM market. Thus, Dominion Companies must file an updated market power analysis in compliance with the regional reporting schedule adopted in Order No. 697.<sup>50</sup> The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Dominion Companies' updated market power analysis is hereby accepted for filing.

(B) Dominion Companies are hereby directed, within 30 days of the date of this order, to submit a compliance filing to comply with the requirements of Order Nos. 697 and 697-A, as discussed in the body of this order.

(C) Dominion Companies' revisions to their market-based rate tariffs are hereby conditionally accepted for filing, subject to Commission acceptance of compliance filing Ordering Paragraph (B), as discussed in the body of this order.

(D) Dominion Companies' change in status filing is hereby accepted, as discussed in the body of the order.

(E) Dominion Companies are hereby directed to file an updated market analysis according to the regional reporting schedule adopted in Order No. 697.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>48</sup> 18 C.F.R. § 35.36(a)(2) (2008).

<sup>49</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

<sup>50</sup> *Id.* P 882.