

UNITED STATES OF AMERICA 110 FERC ¶62,077
FEDERAL ENERGY REGULATORY COMMISSION

Virginia Electric and Power Company

Docket No. EC05-24-000

ORDER AUTHORIZING DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued January 28, 2005)

On December 3, 2004, Virginia Electric and Power Company (Virginia Power or Applicant) filed an application pursuant to section 203 of the Federal Power Act (FPA)¹ requesting authorization for a disposition of jurisdictional facilities associated with a proposed sale of all of the assets of Panda-Rosemary, L.P. (Panda-Rosemary) to Virginia Power. The jurisdictional facilities involved with the proposed transaction include transmission facilities associated with a generating facility owned by Panda-Rosemary.

Virginia Power is a public utility and a wholly-owned subsidiary of Dominion Resources, Inc. (Dominion), a registered public utility holding company under the Public Utility Holding Company Act of 1935. Virginia Power, which owns generation and transmission facilities, provides retail electric service in Virginia and North Carolina and sells wholesale power both at cost-based rates and market-based rates. Several other Dominion subsidiaries also are authorized to sell wholesale power at market-based rates. In addition, through Dominion, Virginia Power is affiliated with gas distribution local distribution companies and interstate natural gas pipeline companies that serve in Virginia, Maryland and other states.

Panda-Rosemary is a wholly-owned subsidiary of Panda Energy Corporation, which is, in turn, a majority-owned indirect subsidiary of Panda Energy International, Inc. (Panda). Several direct or indirect subsidiaries of Panda own or operate qualifying facilities and exempt wholesale generators. Panda-Rosemary owns a 181 megawatt qualifying facility (Facility) located in North Carolina and associated transmission facilities that interconnect the generating facility with the transmission grid owned by Virginia Power. A power purchase agreement between Virginia Power and Panda-Rosemary gives Virginia Power rights and control of the Facility's output through 2015. Other than the Facility, Panda or its direct or indirect subsidiaries own no other facilities in the franchise area served by Virginia Power.

Under the Asset Purchase Agreement dated as of November 9, 2004, between

¹ 16 U.S.C. § 824b (2000).

Panda-Rosemary and Virginia Power, Panda-Rosemary will sell all of its assets, including jurisdictional facilities, to Virginia Power. Virginia Power will also assume the taxable bonds associated with the Facility. The power purchase agreement between Panda-Rosemary and Virginia Power will be terminated prior to closing of the proposed transaction.

Applicant states that the proposed transaction will not adversely affect competition, rates or regulation. With respect to competition, Applicant notes that the power purchase agreement currently provides Virginia Power exclusive rights to the purchase and dispatch of the output of the Facility. As a result, Applicant states, the proposed transaction will not change market concentration and thus does not pose a horizontal competitive concern. Applicant also states that Virginia Power has an open access transmission tariff and will become a member of the PJM Interconnection, L.L.C. regional transmission organization. Applicant asserts that the proposed transaction will not provide Virginia Power ability or incentive to exercise vertical market power in either transmission or natural gas transportation and thus raises no vertical market power concerns.

Applicant further states that the proposed transaction will not adversely affect the rates of its wholesale customers and contends that fuel cost savings will result for wholesale customers subject to fuel adjustment clauses. It also states that it is not proposing to change the fixed cost charges applicable to wholesale customers to reflect the proposed transaction. Applicant asserts that the proposed transaction will have no effect on transmission rates under its open access transmission tariff.

Finally, Applicant asserts that the proposed transaction will not adversely affect the Commission's regulation or state regulation. It notes that in connection with the prior merger that formed Dominion, Virginia Power and other public utility subsidiaries of Dominion committed to follow the Commission's policies regarding the treatment of inter-affiliate transactions in ratemaking. Applicant states that Virginia Power is seeking certain regulatory authorizations from the state commissions in Virginia and North Carolina in connection with the proposed transaction. Applicant asserts that the proposed transaction will not diminish state regulatory authority in either state.

This filing was noticed on December 8, 2004, with comments, protests or interventions due on or before December 27, 2004. On December 23, 2004, Virginia Municipal Electric Association No.1 (Virginia Municipals) filed a timely motion to intervene. The Virginia Municipals' motion to intervene states that the proposed transaction would affect the fuel adjustment charges to Virginia Municipals, but does not protest the filing. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

After consideration, it is concluded that the proposed transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may become before the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (5) Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the transaction;
- (6) Applicant shall account for the proposed transaction in accordance with the instruction to Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts and file its proposed journal entries within six months of the date that the disposition of jurisdictional facilities has occurred; and
- (7) Applicant shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has occurred.

This action is taken pursuant to the authority delegated to the Director, Division of Tariffs and Market Development – West, pursuant to 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Jamie L. Simler
Director
Division of Tariffs and Market Development - West