

UNITED STATES OF AMERICA 120 FERC ¶ 62,132
FEDERAL ENERGY REGULATORY COMMISSION

Virginia Electric and Power Company

Docket No. EC07-118-000

ORDER AUTHORIZING ACQUISITION
OF AN EXISTING GENERATING FACILITY
AND JURISDICTIONAL FACILITIES

(Issued August 20, 2007)

On July 26, 2007, Virginia Electric and Power Company (Dominion Virginia Power, or Applicant) filed an application, pursuant to section 203 of the Federal Power Act¹, for authorization for the acquisition of an existing generating facility (the Facility) that it currently leases, and related jurisdictional facilities. The jurisdictional facilities affected by the transaction are the interconnection facilities related to the Facility.

Dominion Virginia Power, a Virginia public service company, is a regulated, vertically-integrated public utility engaged in the generation, distribution, and sale of electric energy, including both retail and wholesale electric energy sales. Dominion Virginia Power has a total aggregate generating capacity of 15,552 megawatts (MWs) from various fossil fuel, nuclear and hydroelectric generating facilities it owns or operates in Virginia, North Carolina and West Virginia, and also owns and/or operates approximately 65,000 miles of electric distribution lines. Additionally, Dominion Virginia Power owns, but does not control transmission facilities; as operational control of these facilities has been transferred to PJM Interconnection, LLC (PJM). Dominion Virginia Power is a wholly-owned subsidiary of Dominion Resources, Inc. (DRI), a publicly owned holding company. In addition to Dominion Virginia Power, DRI also owns or holds interest in several local gas distribution companies, interstate gas pipeline companies and a retail marketing entity with market-based rate authority that sells energy services, natural gas and electric power at retail. DRI also owns Dominion Energy, Inc. (DEI), which in turn owns various subsidiaries that own and operate generating facilities and several power marketers, including one that manages approximately 900 MWs of generation in the relevant PJM market, independent of Dominion Virginia Power's assets. DEI is also involved in the gas and oil industries, owning natural gas reserves in the Appalachian area and gas processing facilities in the Midwest, as well as subsidiaries that engage in gas and oil exploration.

Dominion Virginia Power, which has market-based rate authority, leases the Facility, which is the Possum Point Generating Unit 6 located on Dominion Virginia

¹ 16 U.S.C. § 824b (2000), amended by Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, (2005).

Power's Possum Point Power Station in Dumfries, Virginia. The Facility consists of two combustion turbine units and one steam turbine with a combined approximate generating capacity of 540 MWs. The legal title to the Facility is owned by DDR Trust No. 2000-A (the Trust), acting through Wells Fargo Bank Association, National Association as the Certificate Trustee (Certificate Trustee), and is leased pursuant to a Master Lease and Site Lease (Master Lease) to Dominion Equipment II, Inc. (DE II), a indirect, wholly-owned subsidiary of DRI. DE II then subleased the Facility to Dominion Virginia Power. The Facility has been operated and controlled by Dominion Virginia Power as a part of its integrated utility system since the Facility's entry into commercial operations.

In the transaction, Dominion Virginia Power will acquire the Facility in exchange for a payment equal to the balance due under the Master Lease and accrued and unpaid rent. Dominion Virginia Power will terminate its sublease with DE II, and has instructed DE II to notify the Certificate Trustee that it will exercise its right to purchase the Facility and to convey the title to the Facility to Dominion Virginia Power.

Applicant states that the transaction is consistent with the public interest and will not adversely affect competition, rates, or regulation. Applicant states that the transaction will not adversely affect competition, because the change from the Applicant's leasehold to ownership interest in the Facility will not change Applicant's control over the Facility. Applicant notes that because the Facility has been exclusively operated and controlled by Dominion Virginia Power since its entry into commercial operation, the Facility's generating capacity has always been included as Dominion Virginia Power owned capacity in market power studies, including two studies previously filed with the Commission. Thus, the acquisition of the Facility by Applicant will not change Applicant's market share or generation market concentration. Furthermore, Applicant states that no vertical market power concerns are raised by the transaction, because neither DRI, Dominion Virginia Power, nor their affiliates has control over sites or other scarce inputs to generating. Applicant states that there is no incentive for Dominion Virginia Power and its affiliates to exert vertical market power in natural gas markets or through electric or natural gas transmission, as the transaction will not change Dominion Virginia Power's downstream generation market share or market concentration. Applicant further notes that Dominion Virginia Power's transmission facilities are under the control of PJM, while the interstate gas transmission companies affiliated with Dominion Virginia Power are subject to Standards of Conduct applicable to interstate pipelines.

Applicant states that the transaction will not adversely affect rates. In particular, Applicant affirms that Dominion Virginia Power is not proposing to adjust wholesale customers' rates due to the transaction. Additionally, Applicant states that the Virginia State Corporation Commission (VSCC) and North Carolina Utilities Commission (NCUC) will continue to regulate Dominion Virginia Power's relationship with retail customers in Virginia and North Carolina

Applicant states that the transaction will have no adverse effect on regulation, since the transaction will not adversely impact the Commission regulation of Dominion Virginia Power. Furthermore, Applicant states that the transaction will not diminish the authority of state regulatory entities, such as the VSCC and the NCUC.

Applicant states that the proposed transaction will not result in cross-subsidization or the pledge of encumbrance of utility assets for the benefit of an associate company. Applicants state that based on the facts and circumstances known to Applicants or that are reasonably foreseeable, the transaction will not result in, at the time of the transaction or in the future: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA. More specifically, Applicant states that the transaction is not a transfer of facilities between associated companies, because although Dominion Virginia Power subleases the Facility from DE II, an associate company, the actual owner of the Facility is not an associate company of Dominion Virginia Power. Applicant also states that there will be no compensation paid from Dominion Virginia Power to DE II, DRI or any other associate company of Dominion Virginia Power, nor will there be any new pledges or encumbrances of Dominion Virginia Power's assets for the benefit of DE II, DRI or any associate company. Finally, Applicant states that the transaction will not result in any new affiliate contract between Dominion Virginia Power or an associate company, and the sublease between Dominion Virginia Power and DE II, which is the only such contract, will be terminated as a result of the transaction.

Analysis of Proposed Accounting

Pursuant to Section 203 of the Federal Power Act (FPA), and Part 33 of the Federal Energy Regulatory Commission's regulations, Virginia Electric and Power Company (Dominion Virginia Power) requests that the Commission approve the proposed acquisition by Dominion Virginia Power of the approximately 540 MW Possum Point Generating Unit 6 and associated jurisdictional assets which the Company currently controls and operates under a lease that will expire on August 22, 2007.

Legal title to the Facility is currently held by a trust, the DRI Trust No. 2000-A (the Trust), acting through Wells Fargo Bank Northwest, National Association. The

Trust was formed for the sole purpose of constructing, owning and leasing the Facility under a synthetic lease financing arrangement. The trust, Dominion Equipment II, Inc., an indirect wholly owned subsidiary of DRI, and certain financial institutions (Financial Institutions) entered into a "Participation Agreement" to provide financing for the development of the Facility. Dominion Virginia Power was given the option to purchase the Facility at the end of the lease agreement. The purchase price was predetermined at the outset of the synthetic lease to be equal to the balance due on the underlying financing provided by the Financial Institutions plus any accrued and unpaid rent.

The purchase price that Dominion Virginia Power will pay to purchase the Facility is equal to the balance due under the lease, which will be \$370 million plus approximately \$2.7 million of accrued and unpaid rent as of August 22, 2007. Dominion Virginia Power's proposed journal entries record the Facility at full original cost, accumulated depreciation to date, and a plant acquisition adjustment for the difference between the purchase cost and net book value.² However, Dominion Virginia Power did not use Account 102, Electric Plant Purchased or Sold, to record the transaction as required by Electric Plant Instruction No. 5, *Electric Plant Purchased or Sold*.³

The filing was noticed on August 1, 2007, with comments, protests, or interventions due on or before August 16, 2007. None was received. 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 transaction is consistent with the public interest and is hereby authorized, subject to the following conditions:

- (1) The 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 come 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 further orders as appropriate;

² Application, Attachment 3, Proposed Accounting Entries.

³ 18 C.F.R. Part 101 (2007).

- (5) If the transaction results in changes in the status or the upstream ownership of Applicant's or its affiliates' qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;
- (6) Applicant shall make the appropriate filings under section 205 of the FPA, as necessary, to implement the transaction; and
- (7) Applicant shall notify the Commission within 10 days of the date that the acquisition of the generating facility and jurisdictional facilities has been consummated.
- (8) Applicant shall account for the transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Applicant must submit its final accounting within six months of the date that the acquisition is consummated, and the accounting submission shall provide all the accounting entries related to the transfer along with narrative explanations describing the basis for the accounting entries.

This action is taken pursuant to the authority delegated to the Director, Division of Tariffs and Market Development - West, under 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.

Steve P. Rodgers
Director
Division of Tariffs and Market Development – West