

Virginia Electric and Power Company, Amended and Restated Market-Based Sales Tariff  
Filing Category: Compliance Filing Date: 11/30/2015  
FERC Docket: ER16-00431-000 FERC Action: Accept  
FERC Order: Delegated Letter Order Order Date:  
03/24/2016  
Effective Date: 01/29/2016 Status: Effective  
Tariff, Amended and Restated Market-Based Sales Tariff, 5.0.0

**Amended and Restated**  
**Market-Based Sales Tariff**  
**of**  
**Virginia Electric and Power Company**

**1.0 Availability**

- 1 This Amended and Restated Market-Based Sales Tariff ("Tariff") provides for sales of capacity and/or energy at market-based rates on a short-term or long-term basis by Virginia Electric and Power Company ("Virginia Power").
- 2 Service under this Tariff is available to any electric utility, power marketer, rural electric cooperative, municipality, power authority or agency, or its designated representative ("Customer").
- 3 **[Reserved]**
- 4 This Tariff does not provide for transmission or ancillary services which are provided on an unbundled basis under PJM Interconnection LLC's Open Access Tariff ("Transmission Tariff") as on file with the FERC. The Customer shall request any necessary transmission services under the Transmission Tariff for any capacity and/or energy transactions under this Tariff. Unless otherwise agreed to in writing by the Parties, the Customer shall be responsible for making any necessary arrangements for transmission service.

**2.0 Character of Service**

- 2.1 Virginia Power may provide capacity and/or energy under this Tariff in varying amounts, at varying levels of firmness or priorities of service, for varying periods of time, and in accordance with varying delivery schedules as agreed to between the Customer and Virginia Power (individually a "Party" and collectively the "Parties").

### **3.0 Rates**

- 1** The rates for sales under the Tariff shall be as negotiated by the Parties. For any transaction exceeding one (1) calendar day, the Parties shall execute a separate written document ("Confirmation Letter") specifying the terms and conditions for such transaction, including but not limited to the terms and conditions relating to the quantity, delivery point(s), price, time period, and level of firmness or priority of service.
- 2** The terms and conditions for a transaction lasting one (1) calendar day or less shall be established by recorded telephone conversation between the Parties.

### **4.0 Terms and Conditions of Service**

- 4.1** Within thirty (30) days of commencement of service, Virginia Power and the Customer shall execute an agreement to engage in transaction under this Tariff ("Service Agreement"). Service Agreements under Virginia Power's predecessor power sales tariffs, including FERC Electric Tariff, First Revised Volume No. 4, shall be considered Service Agreements under this Tariff.
  - 1** For transactions of more than one year in duration or for a lesser period if designated by the parties, Virginia Power will file a specific Service Agreement that will set forth the rates and any additional terms and conditions of service for each transaction.
  - 2** For all other transactions, the Service Agreement shall provide for the Parties to engage in multiple transactions with the rates and any additional terms and conditions established at the time the transactions are arranged.
- 2** Virginia Power is under no obligation to provide service hereunder unless the Parties mutually agree to the rates, and terms and conditions of the transaction.
- 3** Acceptance of service by a Customer under this Tariff commits the Customer to the provisions of this Tariff, to the terms and conditions of the Service Agreement and to the terms and conditions stated in the Confirmation Letter or recorded in the telephone conversation between the Parties.
- 4** Within thirty (30) days after the end of a quarter, Virginia Power will file a transaction summary of all short-term (one year or less) energy or capacity sales made in the prior quarter. The quarterly reports will specify unbundled prices for wholesale generation, transmission and ancillary services for the transaction identified.

### **5.0 Sales of Electric Capacity, Energy and/or Ancillary Services**

- 1 Electric Capacity and Energy: Virginia Power may sell electric capacity and/or energy to Customer under this Tariff from time to time at rates, terms and conditions established by the agreement of the Parties. All such Transactions shall be voluntary.
  
- 2 Seller Category: Virginia Electric and Power Company is a Category 2 Seller in the Northeast region and is a Category 1 Seller in the: Northwest, Central, Southwest, Southwest Power Pool, and Southeast regions, as defined in 18 C.F.R. § 35.36(a).
  
- 3 Ancillary Services: Virginia Power may sell the following ancillary services to Customer under this Tariff from time to time at rates, terms and conditions established by the agreement of the Parties. All such Transactions shall be voluntary.

**5.3.1 RTO/ISO specific:**

- i. **PJM**: Virginia Power offers regulation and frequency response service, energy imbalance service, and operating reserve service (which includes spinning, 10-minute, and 30-minute reserves) for sale into the market administered by PJM Interconnection, L.L.C. ("PJM") and, where the PJM Open Access Transmission Tariff permits, the self-supply of these services to purchasers for a bilateral sale that is used to satisfy the ancillary services requirements of the PJM Office of Interconnection.
  
- ii. **New York**: Virginia Power offers regulation and frequency response service, and operating reserve service (which include 10-minute non-synchronous, 30-minute operating reserves, 10-minute spinning reserves, and 10-minute non-spinning reserves) for sale to purchasers in the market administered by the New York Independent System Operator, Inc.
  
- iii. **New England**: Virginia Power offers regulation and frequency response service (automatic generator control), operating reserve service (which includes 10-minute spinning reserve, 10-minute non-spinning reserve, and 30-minute operating reserve service) to purchasers within the markets administered by the ISO New England, Inc.
  
- iv. **California**: Virginia Power offers regulation service, spinning reserve service, and non-spinning reserve service to the California Independent System Operator Corporation

("CAISO") and to others that are self-supplying ancillary services to the CAISO.

- v. **MISO**: Seller offers regulation service and operating reserve service (which includes 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Midcontinent Independent System Operator, Inc. (MISO) and to others that are self-supplying ancillary services to MISO.
- vi. **Southwest Power Pool**: Seller offers regulation service and operating reserve service (which include 10-minute spinning reserve and 10-minute supplemental reserve) for sale to the Southwest Power Pool, Inc. (SPP) and to others that are self-supplying ancillary services to SPP.

**5.4 Third-party ancillary services**: Seller offers Regulation and Frequency Response Service, Reactive Supply and Voltage Control Service, Energy and Generator Imbalance Service, Operating Reserve-Spinning, and Operating Reserve-Supplemental. Sales will not include the following: (1) sales to an RTO or an ISO, *i.e.*, where that entity has no ability to self-supply ancillary services but instead depends on third parties; and (2) sales to a traditional, franchised public utility affiliated with the third-party supplier, or sales where the underlying transmission service is on the system of the public utility affiliated with the third-party supplier. Sales of Operating Reserve-Spinning and Operating Reserve-Supplemental will not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except where the Commission has granted authorization. Sales of Regulation and Frequency Response Service and Reactive Supply and Voltage Control Service will not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except at rates not to exceed the buying public utility transmission provider's OATT rate for the same service or where the Commission has granted authorization.

## **6.0 Billing**

- 1 Virginia Power will submit to the Customer, as promptly as practicable after the first of each month, an invoice for transactions and the amounts due under the terms of this Tariff and the Service Agreements for the preceding calendar month ("Delivery Month"). Bills for each Delivery Month shall be due and payable on the first business day common to the Parties hereto on or following the seventh (7th) day after the day on which the bill was received, unless otherwise agreed. Payment shall be made, on or before the due date, to Virginia Power in accordance with the invoice in immediately available funds through

wire transfer, mail or other mutually agreeable method. Bills not paid when due shall accrue interest computed in accordance with 18 C.F.R. § 35.19a, as that provision may be amended from time to time, and as computed from the date payment was due to the date of the payment.

- 2 If the Parties agree to offset payments owed by Customer to Virginia Power or Virginia Power to Customer may be offset so that only the net amount shall be paid by the Party having the greater payment obligation in a Delivery Month. The Parties shall continue to issue invoices to each other in accordance with this Tariff and any Service Agreement hereunder. Each month at least ten (10) business days prior to the date when payment is due, the Parties shall confer by reasonable means (telephone, facsimile, or EDT) and compare/confirm invoice amounts of account balances owed by and/or to each other. The net differences or the net settlement of account balances resulting after offsetting the total amount each Party owes to the other Party shall be paid by the Party owing money to the Party receiving money through wire transfer, mail or other mutually agreeable method.
- 3 The net payment provisions provided for herein shall only apply to the financial obligations of the Customer arising under this Tariff and any Service Agreement hereunder and any financial obligations of Virginia Power arising under the Customer's tariff and/or agreement for sale of capacity and/or energy that has been accepted for filing by FERC. These provisions shall not apply to the financial obligations of any persons or corporations affiliated with the Parties who are not a Party to the Tariff and/or any Service Agreement. Guarantees, letters of credit, escrow accounts, and other security arrangements in effect between the Parties at the time of a net payment agreement shall not affect the calculation of any unpaid amounts.
- 4 In the event any portion of any invoice submitted hereunder is in bona fide dispute for reasons relating to the computation of the invoice, the undisputed amount shall be payable when due; and the remainder, with interest computed in accordance with 18 C.F.R. § 35.19a, as that provision may be amended from time to time, and as computed from the date payment was due to the date of the payment shall be paid upon the determination of the correct amount.

**7.0 [Reserved]**

**8.0 Financial Assurances**

- 1 Should Virginia Power deem the creditworthiness of the Customer or the Customer's ability to fulfill its obligation hereunder to be unsatisfactory at any time during the term of the Tariff, Virginia Power may request certain commercially reasonable actions by the Customer

to assure the Customer's performance. In such circumstance, Virginia Power may demand financial assurances, including, but not limited to requiring the Customer's obligation to perform be secured by collateral and the Customer grant Virginia Power a first priority continuing security interest in, lien on, and right of set-off against, certain collateral, and the proceeds there from, (the "Collateral") of the Customer in an amount and form satisfactory to Virginia Power; or procure from a third party ("the Guarantor") a guaranty of the Customer's performance of its obligations under the Tariff and any Service Agreement. Such guaranty shall be in such commercially reasonable amount as Virginia Power may designate and shall substantially conform to the form of guaranty as Virginia Power designates.

- 2 Upon taking the actions requested by Virginia Power pursuant to this Section 8.0, the Customer shall warrant to Virginia Power that the Customer has the capacity and authority to take such action. The failure of Virginia Power to demand such assurances from the Customer shall not operate as a waiver of Virginia Power's right to demand such assurances.

## **9.0 Default**

- 9.1 The occurrence of any of the following events constitutes an "Event of Default" under this Tariff:

- 1 The failure of the Customer to make, when due, any payment under this Tariff or under any Service Agreement, if such failure is not cured within three (3) business days following the Customer's receipt of a written notice by Virginia Power of the Customer's failure to make the required Payments; provided however, if Customer, in good faith, disputes the amount of any such billing or part thereof and pays such amounts as it concedes to be correct, no Event of Default shall exist.
- 2 A downward adjustment of the credit rating of the Customer or the Guarantor by Moody's Investor Services, Inc. or Standard & Poors' Rating Group (or successors thereto) that, as determined by Virginia Power in its reasonable discretion, materially impairs the Customer's or Guarantor's ability to meet its obligations under this Tariff or any Service Agreement. The Customer or the Guarantor shall have three business days following written notice by Virginia Power to provide adequate assurance of its ability to pay or perform its obligations;
- 3 The failure of the Customer to establish, maintain, extend, substitute, or increase Collateral when reasonably requested by

Virginia Power pursuant to Section 8.0 of this Tariff, if such failure is not cured within three (3) business days following Virginia Power's written request under Section 8.0;

- 4 The default of the Customer or the Guarantor on any other indebtedness of Customer or Guarantor, evidenced by agreement or instrument, the principal amount of which exceeds \$500,000.00, which default results in such other indebtedness becoming, or becoming capable at such time of being declared, due and payable prior to its stated maturity, whether or not such other indebtedness is in fact declared due and payable, if such default is not cured within three (3) business days following written notice by Virginia Power;
- 5 The failure of the Guarantor to perform any covenant set forth in any guarantee agreement provided pursuant to Section 8.0 hereof, the determination by Virginia Power that any representation or warranty made by the Guarantor in a guarantee agreement that was false or misleading in any material respect (when made or when deemed to be repeated), or the expiration or other termination of the Guarantor's agreement to guarantee the obligations of Customer hereunder, if such failure is not cured within three (3) business days following written notice by Virginia Power;
- 6 The Customer or the Guarantor, as applicable: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) defaults in the payment or performance of any obligation under this Tariff or any Service Agreement hereunder; (iii) files a petition for bankruptcy or otherwise commences, authorizes, or acquiesces in the commencement of such a proceeding against it; (iv) otherwise becomes bankrupt or insolvent; (v) becomes unable to pay its debts as they become due; or (vi) fails to give adequate security for or assurance of its ability to pay or perform its further obligations hereunder or under a guarantee agreement provided pursuant to Section 8.0 hereof within forty-eight (48) hours of a reasonable request by Virginia Power; or
- 7 The Customer fails to perform any covenant set forth in this Tariff or any Service Agreement or in transactions hereunder and such failure is not excused by Force Majeure, as that term is defined in this Tariff, if such failure to perform is not cured within three (3) days following written notice by Virginia Power.

- 8 If an Event of Default occurs at any time during the term of this Tariff, Virginia Power may, upon written notice to the Customer, and for so long as the Event of Default continues, designate a date on which all outstanding transactions shall terminate (the "Early Termination Date"); provided that Virginia Power must file a notice to terminate such transactions in accordance with the FERC's regulations. If an Early Termination Date has been designated, Virginia Power shall in good faith calculate the Contract Value Amount in accordance with Section 10.0 and shall notify Customer thereof. If Virginia Power's aggregate losses and costs exceed its aggregate gains, Customer shall, within five (5) business days of receipt of such notice, pay to Virginia Power an amount equal to the Contract Value Amount, plus any unpaid amount then owing to Virginia Power, which amount shall bear interest at the rate specified in Section 6.1 of this Tariff from the Early Termination Date, until paid.
- 9 In addition to any other rights or remedies provided under this Tariff, if the Customer fails to pay any amounts when due, Virginia Power shall, subject to the conditions set forth in Sections 9.1 and 9.2 above and the FERC's regulations, have the right to (i) suspend performance under any or all transactions until such amounts plus interest (at the rate specified in Section 6.1 of this Tariff) are paid and/or (ii) exercise any remedy available at law or in equity to enforce payment of such amounts plus interest (at the rate specified in Section 6.1 of this Tariff).

## **10.0 Early Termination**

- 10.1 If an Early Termination Date has been designated, Virginia Power shall have the right to liquidate any or all agreements, contracts, arrangements with the Customer (including any portion thereof not yet fully delivered or performed) then outstanding by:
  - 1 Closing out each agreement, contract, or arrangement being liquidated at its Market Value, as defined below, so that each such transaction is canceled and a settlement payment in an amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Contract shall be due to Virginia Power if such Market Value is less than the Contract Value, and
  - 2 Discounting each amount then due under Section 10.1.1 above, to present value in a commercially reasonable manner at the time of liquidations (to take account of the period between the date of liquidation and the date on which such amount would have been due otherwise pursuant to the relevant agreement, contract, or arrangement); and



**10.1.3** Setting off or aggregating, as appropriate, any or all such amounts (discounted as appropriate) and (at the election of Virginia Power) any or all other amounts owing between the parties, so that all such amounts are aggregated and/or netted to a single liquidated amount payable by the Customer to Virginia Power.

**2** For purposes of this Tariff, "Contract Value" means the amount of electric power remaining to be delivered under a contract multiplied by the price per unit, and "Market Value" means the amount of electric power remaining to be delivered under a contract multiplied by the market price per unit determined by the non-defaulting party in a commercially reasonable manner.

**3** If the Customer and Virginia Power mutually agree, amounts due hereunder may be settled by a net settlement pursuant to the following methodology:

**10.3.1** If the Customer has sold electric power to Virginia Power under any agreement during any given month, and if Virginia Power has sold electric power to the Customer hereunder or otherwise during the same month, the Party owing the greater amount for its purchases during such calendar month on any given due date (the "Debtor") shall apply the amount (the "Credit Balance") owed on or before the same date by the other Party (the "Creditor") toward payment of the amount owed by the Debtor to the Creditor for such calendar month. The remainder of the amount owed shall be paid pursuant to the terms of the agreement under which such unpaid amounts are payable.

## **11.0 Assignment**

**11.1** Either Party may assign rights and obligations under this Tariff and any transaction there under only with the written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that either Party may assign such rights and obligations to a wholly-owned subsidiary of such Party, to an affiliate under common ownership with such Party, or to an entity which acquires substantially all of the assets of such Party, without such consent. In the event of such assignment, any such assignee will be required to assume all of the obligations of the assignor under this Tariff and any transaction there under pursuant to a written agreement. In any event, the assigning Party shall remain secondarily liable for all obligations unless the non-assigning Party provides written consent that the assigning Party will not remain secondarily liable for all obligations.

## **12.0 Force Majeure**

**12.1** In case either Party to any Service Agreement hereunder should be delayed in or prevented from performing or carrying out any of the agreements, covenants, and obligations made by and imposed upon the parties by this Tariff or the Service Agreement by reason or through strike, stoppage in labor, failure of contractors or suppliers of materials, riot, fire, flood, storm, ice, invasion, civil war, commotion, insurrection, military or usurped power, order of any court or judge granted in any bona fide adverse legal proceedings or action, order of any civil or military authority either de facto or de jure, demands or priorities of governmental and administrative agencies or bodies, explosion, act of God or the public enemies, or any other cause reasonably beyond its control and not attributable to neglect, any and all of which events shall be considered to constitute Force Majeure: then, and in such case or cases, such Party shall not be liable to the other Party for or on account of any loss, damage, injury, or expense (including without limitation any special, incidental, indirect or consequential damages and cost of replacement power) resulting from or arising out of such delay or prevention; provided, however, that such Party shall use due and, in its judgment, practicable diligence to remove the cause or causes thereof; and provided further, that neither Party shall be required by the foregoing provisions to settle a strike or other labor dispute except when, according to its own best judgment, such a settlement seems advisable.

**13.0 Miscellaneous**

- 1** Nothing in this Tariff or any Service Agreement hereunder is intended to create or to imply the existence of any rights for or on behalf of any third parties.
- 2** Virginia Power shall have the right to revise, amend, cancel, or terminate this Tariff or Service Agreement executed hereunder by unilateral filing with the FERC pursuant to Section 205 of the Federal Power Act; provided that cancellation or termination shall not accuse the premature termination of any transaction already agreed to by Virginia Power. Nothing contained in this Tariff shall be construed as affecting in any way the ability of any Party receiving service hereunder to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated there under.
- 3** Each Party consents to the recording of its representative's telephone conversations without any further notice. Subject to the requirement of section 3.1 hereof, all recordings may be introduced to prove an oral agreement between the Parties.

- 4 Unless otherwise agreed to in writing by the Parties, Virginia Power and the Customer shall each defend, indemnify and save harmless the other and their respective servants, agents, employees and representatives from and against any and all claims, demands, costs or expense (including attorney's fees) for loss, damage or injury to any person, property or interest arising out of or in any way related to this Tariff to the extent such loss, damage or injury occurs on its own side of the delivery point or points hereunder, irrespective of negligence actual or claimed of the other. Execution of a Service Agreement under this Tariff shall in no way create a contractual relationship of one Party with the customers of the other Party; neither shall it create a duty thereto.

**14.0 Rates**

- 14.1 All sales shall be made at rates established by agreement between Virginia Power and Customer.

**15.0 Other Terms And Conditions**

- 15.1 All other terms and conditions shall be established by agreement between Virginia Power and Customer.

**16.0 Compliance With Commission Regulations**

- 16.1 Virginia Power shall comply with the provisions of 18 CFR Part 35, Subpart H, as applicable, and with any conditions the Commission imposes in its orders concerning Virginia Power's market-based rate authority, including orders in which the Commission authorizes Virginia Power to engage in affiliate sales under this tariff or otherwise restricts or limits Virginia Power's market-based rate authority. Failure to comply with the applicable provisions of 18 CFR Part 35, Subpart H, and with any orders of the Commission concerning Virginia Power's market-based rate authority, will constitute a violation of this tariff.

**17.0 Limitations And Exemptions Regarding Market-Based Rate Authority**

Virginia Electric and Power Company received market-based rate authority in Docket No. ER97-3561-000. *See Virginia Elec. and Power Co.*, Order Conditionally Accepting for Filing Tariff for Market-Based Power Sales and Reassignment of Transmission Capacity, and Establishing Hearing Procedures, 80 FERC ¶ 61,275, Docket No. ER97-3561-000 (Sept. 11, 1997).

In its September 29, 2011 Order Conditionally Granting Request for Waiver of Affiliate Restrictions, FERC granted Seller a limited waiver of the Affiliate

Restrictions in 18 C.F.R. § 35.39 to permit Seller to share fuel procurement employees between a franchised public utility and its market-regulated power sales affiliates. *Virginia Electric and Power Co.*, 136 FERC ¶61,215 (Sept 29, 2011).

On July 11, 2013, in its Order Conditionally Granting Request for Waiver of Affiliate Restrictions, FERC granted Seller a limited waiver of the Affiliate Restrictions in 18 C.F.R. § 35.39 to permit Seller to share nuclear generation outage planning employees between a franchised public utility and its market-regulated power sales affiliates. *Virginia Electric and Power Co.*, 144 FERC ¶61,021 (July 11, 2013).

**18.0 Effective Date**

**18.1** This Tariff is effective upon the date specified by the Commission.

**19.0 Filing And Reporting Requirements**

**19.1** Virginia Power will comply with the current Commission policies and regulations for the filing and/or reporting of service agreements and transactions pursuant to the Tariff.

**20.0 Revisions To The Tariff**

**20.1** Virginia Power may file revisions to this Tariff by notifying Customer in writing and by unilaterally making the appropriate filing with the Commission pursuant to the provisions of Section 205 of the Federal Power Act; provided, however, that such revision shall not affect the rates, terms and conditions of Transactions entered into prior to the date of such revision, unless otherwise agreed by the Parties.