

140 FERC ¶ 62,085  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Dominion Energy Salem Harbor, LLC  
Footprint Power Acquisitions LLC  
Footprint Power Salem Harbor Operations LLC  
Footprint Power Salem Harbor Real Estate LP

Docket No. EC12-114-000

ORDER AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued July 27, 2012)

On June 29, 2012, Dominion Energy Salem Harbor, LLC (Dominion Salem Harbor), Footprint Power Acquisitions LLC (Footprint Acquisitions), Footprint Power Salem Harbor Operations LLC (Footprint Salem Harbor), and Footprint Power Salem Harbor Real Estate LP (Footprint Real Estate ) (collectively, Applicants) filed an application pursuant to section 203 (a)(1) of the Federal Power Act (FPA)<sup>1</sup> requesting authorization by the Commission for the disposition of jurisdictional facilities resulting from a transaction in which Dominion Salem Harbor will be acquired by Footprint Acquisitions and merged into Footprint Salem Harbor. Footprint Salem Harbor will then enter into a sale and leaseback of the Salem Harbor Power Station with Footprint Real Estate (Transaction). The jurisdictional facilities affected by the Transaction are Dominion Salem Harbor's market-based rate tariff, related contracts, books and records, and the Salem Harbor Power Station's interconnection facilities.

Dominion Salem Harbor is an indirect wholly-owned subsidiary of Dominion Resources, Inc. (Dominion). Dominion Salem Harbor owns the Salem Harbor Power Station, which is an approximately 748 megawatt (MW) fossil fueled electric generating station in Salem, Massachusetts that has been in operation since the early 1950s. The Salem Harbor Power Station is comprised of the following four Units: (a) Unit 1- an 80 MW coal fired unit; (b) Unit 2- an 82 MW coal fired unit; (c) Unit 3 - a 150 MW coal fired unit; and (d) Unit 4 - a 438 MW oil fired unit. Units 1 and 2 were removed from service in December 2011. Units 3 and 4 are committed to the ISO New England, Inc. (ISO-NE) capacity market through May 31, 2014, and will be permanently shut down thereafter in June 2014.

---

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

Dominion Salem Harbor is a wholly-owned subsidiary of Dominion Energy New England, Inc. (Dominion New England), which is a wholly-owned subsidiary of Dominion Energy, Inc. (DEI), which is a wholly-owned subsidiary of Dominion. Dominion is a utility holding company whose various subsidiaries are engaged in competitive wholesale electric generation, retail sale of electricity through traditional franchised utilities in Virginia and North Carolina, interstate natural gas transmission, and natural gas local distribution in West Virginia and Ohio.

Footprint Salem Harbor is a New Jersey limited liability company and a direct wholly-owned subsidiary of Footprint Acquisitions. Footprint Salem Harbor currently has no assets and was created to serve as a consolidation vehicle for the Transaction.

Footprint Acquisitions is a New Jersey limited liability company and a wholly-owned subsidiary of Footprint Power LLC (Footprint Power). Footprint Acquisitions has no assets and was created to enter into the Transaction to acquire Dominion Salem Harbor.

Footprint Power is a New Jersey limited liability company that was created to acquire aging coal and oil fired power plants that have reached or are approaching the end of their useful lives while structuring environmentally responsible solutions to the challenges posed by the historical uses of such sites. All of the membership interest in Footprint Power are owned by two individuals, Peter G. Furniss and Scott G. Silverstein.

Footprint Real Estate is a Delaware limited partnership owned directly by Footprint Power Salem Harbor Holdings LP (Footprint Holdings), which is a Delaware limited partnership. Footprint Power owns 76.625 percent of the limited partnership interests in Footprint Holdings and controls Footprint Holdings through the ownership of Footprint Holdings' general partner. The remaining limited partnership interests in Footprint Holdings are owned by two individuals who are members of Footprint Power's management team (the Minority Partners).

Applicants state that neither Footprint Power, its subsidiaries or affiliates, Messrs. Furniss and Silverstein, nor the Minority Partners currently own or control, directly or indirectly, any electric generation facilities or vertical inputs to electric generation.

The proposed Transaction involves the following three steps: First, pursuant to the Membership Interest Sale Agreement (MISA), Footprint Acquisitions will purchase all of the membership interests in Dominion Salem Harbor from DEI. Applicants note that all of the outstanding membership interests in Dominion Salem Harbor are currently held by Dominion New England. Prior to the transactions contemplated by this transaction, DEI will dissolve Dominion New England and will then directly hold all of the outstanding membership interests in Dominion Salem Harbor. Second, Footprint Acquisitions will merge Dominion Salem Harbor into Footprint Salem Harbor.

Dominion Salem Harbor will cease to exist and Footprint Salem Harbor will be the surviving entity. Third, pursuant to the MISA and the Quitclaim Deed, the Lease and the Demolition Remediation Costs Agreement (collectively, Sale Leaseback Agreements), Footprint Salem Harbor will sell the Salem Harbor Power Station including all real estate appurtenant thereto to Footprint Real Estate, which will immediately lease back the Salem Harbor Power Station to Footprint Salem Harbor for a term lasting until the permanent shutdown of the facility. As part of the arrangement, Footprint Salem Harbor will pay for the remediation and demolition of the Salem Harbor Power Station up to the level of net revenue earned by the Salem Harbor Power Station during its remaining life.

Applicants explain that the sale and leaseback of the Salem Harbor Power Station is being accomplished in order to ensure that Footprint Real Estate, the entity that will undertake the remediation of any environmental contamination discovered on the Salem Harbor Power Station site, will own the site that it is responsible for remediating. Under the Sale Leaseback Agreements, Footprint Real Estate will not have any operational control over the Salem Harbor Power Station until the Salem Harbor Power Station becomes non-jurisdictional as the result of its permanent shutdown. Applicants note that Footprint Real Estate is in a business (i.e., real estate holdings) other than that of a public utility and is not otherwise in the business of producing or selling electric power. Therefore, Applicants state that under Commission precedent, Footprint Real Estate will qualify as a passive owner that is not deemed to be a jurisdictional public utility under the FPA and Footprint Salem Harbor as the lessee and operator of the Salem Harbor Power Station will be a public utility subject to the Commission's jurisdiction.

Applicants state that following the leaseback of the Salem Harbor Power Station, Footprint Salem Harbor as the successor to Dominion Salem Harbor, will file a notice of succession with the Commission and succeed to Dominion Salem Harbor's market-based rate tariff. Footprint Salem Harbor will also enter into an asset management agreement with Footprint Power Management, Inc. for the management of the Salem Harbor Power Station as Footprint Salem Harbor's agent and subject to its direction.

Applicants state that the Transaction is consistent with the public interest and will not adversely affect competition, rates or regulations. With respect to competition, Applicants state that the Transaction does not raise any horizontal market power concerns because Footprint Salem Harbor and its affiliates currently do not own or control any electric generation within the ISO-NE balancing authority area or any other market. Therefore, Applicants claim that the Transaction will have a deconcentrating effect on the generation market.

In addition, Applicants state that the Transaction does not involve the combination of control over generation with control over transmission or other vertical inputs to generation. Applicant note that Footprint Salem Harbor and its affiliates do not own or control within the ISO-NE balancing authority area or any other market: (i) any

electric transmission facilities; (ii) any intrastate natural gas, coal, or oil transportation, storage or distribution facilities; or (iii) any other upstream inputs to electricity products such as sites for generation capacity development, physical coal supply sources or access to transportation of coal supplies. Therefore, Applicants state that the Transaction does not raise any vertical market power concerns.

With respect to rates, Applicants state that the Transaction will not have an adverse effect on rates charged to wholesale sales or transmission service customers. Applicants state that following the Transaction, all of the sales of electric energy from the Salem Harbor Station will continue to be made at market-based rates. Applicants note that neither Footprint Salem Harbor nor any of its affiliates provides any unbundled transmission service.

With respect to regulation, Applicants state that until the Salem Harbor Power Station is permanently shut down, the Commission will continue to have the same jurisdiction over wholesale sales of electric energy from the Salem Harbor Power Station after the Transaction is consummated as it had before.

Applicants state that the Transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional facilities for the benefit of an associate company. Applicant asserts that the Transaction falls within one of the “safe harbors” adopted by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Applicants more specifically state that the Transaction does not involve a franchised public utility with captive customers. Additionally, Applicants state that, based on the facts and circumstances known to them 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 Federal Power Act.

This filing was noticed on June 29, 2012, with comments, protests or

interventions due on or before July 20, 2012. None were filed. 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 provision of Rule 214.

Information and/or systems connected to the bulk power system involved in this Transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, NERC or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

Order No. 652 requires that sellers with market-based rate authority 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>2</sup> The foregoing authorization may result in a change in status. Accordingly, Applicants are advised that it must comply with the requirements of Order No.652. In addition, Applicants shall make appropriate filings under section 205 of the FPA, to implement the Transaction.

After consideration, it is concluded that the proposed 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 determination 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

---

<sup>2</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, order on reh'g, 111 FERC ¶ 61,413 (2005).

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) If the Transaction results in changes in the status or the upstream ownership of Applicants' affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;
- (6) Applicants shall make appropriate filings under section 205 of the FPA, as necessary, to implement the proposed Transaction; and
- (7) Applicants must inform the Commission of any changes in circumstances that would reflect a departure from the facts the Commission relied upon in authorizing the transaction.
- (8) Applicants shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation – 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 Electric  
Power Regulation – West

Document Content(s)

EC12-114-000.DOC.....1-6