

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Dominion Energy Kewaunee, Inc.)

Docket No. EG06-____-____

**NOTICE OF SELF-RECERTIFICATION OF
EXEMPT WHOLESALE GENERATOR STATUS
BY DOMINION ENERGY KEWAUNEE, INC.**

Pursuant to the Public Utility Holding Company Act of 2005 (“PUHCA 2005”),¹ and Section 366.7 of the Regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 366.7, Dominion Energy Kewaunee, Inc. (“DEK”) hereby submits this notice of self-recertification of its status as an exempt wholesale generator (“EWG”). The Commission has previously determined that DEK is an EWG based on its ownership and operation of the Kewaunee Nuclear Power Station and its appurtenant jurisdictional interconnection facilities (“KPS” or the “Facility”).² The purpose of this notice of self-recertification is to describe a new leasing arrangement that does not affect DEK's status as an EWG.

I. NAME AND ADDRESS OF THE APPLICANT

The address and principal place of business of DEK is 490 N. Hwy. 42, Kewaunee, Wisconsin 54216-9511.

¹ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 584, §§ 1261 *et. seq.* (2005).

² *Dominion Energy Kewaunee, Inc.*, 111 FERC ¶ 62,256 (2005).

II. COMMUNICATIONS

All communications regarding this Application should be addressed to:

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III. DESCRIPTION OF DEK

DEK, a Wisconsin corporation, is a wholly owned subsidiary of Dominion Nuclear Projects, Inc., a Virginia corporation, which in turn is a wholly owned subsidiary of Dominion Energy, Inc. (“DEI”). DEI is a wholly owned subsidiary of Dominion Resources, Inc. (“DRI”), a diversified utility holding company incorporated in the Commonwealth of Virginia with its principle offices located in Richmond, Virginia. DRI is a holding company under PUHCA 2005, with three principal subsidiaries: Virginia Electric and Power Company (“Dominion Virginia Power”), Consolidated Natural Gas Company, and DEI.³

³ DRI’s other subsidiaries include Dominion Exploration and Production, Inc., an oil and natural gas exploration and production unit; and Dominion Retail, Inc., a retail marketing arm providing energy services in deregulated markets.

IV. DESCRIPTION OF THE ELIGIBLE FACILITIES

The eligible facility that is the subject of this self-recertification, KPS, is located in the Town of Carlton in Kewaunee County, Wisconsin. KPS consists of a Westinghouse pressurized water single reactor nuclear power plant, along with appurtenant interconnection facilities, necessary to interconnect the Facility to the transmission grid.⁴ The Facility has a net generating capacity of approximately 568 MW.

DEK purchased KPS from Wisconsin Public Service Corporation (“WPSC”) and Wisconsin Power and Light Company (“WPL”) on July 5, 2005, pursuant to Commission authorization under Section 203 of the Federal Power Act.⁵

V. EXCLUSIVITY AND WHOLESALE SALES

DEK will be engaged directly, or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (the “1935 Act”),⁶ and exclusively in the business of owning, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. DEK potentially may make wholesale sales to its power marketer affiliates, which may resell electric energy obtained from DEK to retail customers.⁷ All sales by DEK, however, will be at wholesale. DEK may also engage in exempt wholesale generator development activities and such other activities incidental to the business of owning and operating the

⁴ Those jurisdictional interconnection facilities, which interconnect the Facility to American Transmission Company, LLC’s transmission system, consist of step-up transformers, generator leads, and interconnection line (approximately 200 yards in length) and associated breakers and other equipment.

⁵ *Dominion Energy Kewaunee, Inc., et al.*, 106 FERC ¶ 62,191 (March 11, 2004) and 107 FERC ¶62,046 (April 16, 2004).

⁶ 15 U.S.C. § 79b(a)(11)(B).

⁷ FERC has granted EWG status to entities engaged in such wholesale sale arrangements. *See, e.g., Brooklyn Navy Yard Cogeneration Partners, LP*, 107 FERC ¶ 62,298 (2004); *Dearborn Industrial Generation, LLC*, 91 FERC ¶ 62,211 (2000); *Energy Alternatives, Inc.*, 89 FERC ¶ 61,146 (1999).

Facility that the Commission has determined are permissible for exempt wholesale generators.⁸ DEK has been granted market-based rate authority by the Commission.⁹

The Facility constitutes an “eligible facility” as defined in Section 32(a)(2)¹⁰ of 1935 Act because it will be used for the generation of electric energy exclusively for sale at wholesale, and the state commission determinations required under Section 32(c)¹¹ of the 1935 Act have been obtained. (See Section VII, below). The Facility includes no transmission or distribution facilities other than those interconnecting transmission facilities necessary to permit the Facility to engage in sales at wholesale.

VI. LEASE ARRANGEMENTS

Except as discussed in this Section VI, there are no lease arrangements involving the Facility, including leases to any public utility company or any affiliate or associate company of any public utility company.

⁸ DEK may provide ancillary services and interconnected operations services at wholesale, such as operating reserves (spinning and supplemental reserves), reactive supply and voltage control, regulation and frequency response, energy imbalance, real power loss service, back-up supply service, and restoration service, consistent with Commission precedent construing the exclusivity requirements of Section 32 of PUHCA. See *Phelps Dodge Energy Services, LLC*, 88 FERC 61,052 (1999); *Sithe Framingham, LLC*, 83 FERC 61,106 (1998); *Duke Energy Oakland, LLC*, 83 FERC 61,304 (1998). In addition, DEK may engage in additional activities that the Commission has previously determined to be “incidental” to an EWG’s primary business of owning and operating eligible facilities and selling electric energy at wholesale. These activities include: (a) wholesale marketing and brokering of electric energy that DEK has not generated. See *Entergy Power Marketing Corp.*, 73 FERC 61,063 (1995); *CNG Power Services Corp.*, 71 FERC 61,378 (1995); *LG&E Power Marketing, Inc.*, 67 FERC 61,083 (1994); (b) delivering fuel to third parties to generate electric power to be delivered by that third party to DEK for sale at wholesale. See *CNG Power Services Corp.*, 71 FERC 61,378; *Southern Energy Marketing, Inc.*, 71 FERC 61,376 (1995); (c) entering into contracts for transmission capacity solely to the extent necessary to effect sales at wholesale of electricity generated by DEK or others. See *CNG Power Services Corp.*, 71 FERC 61,378; (d) selling by-products of electric generation. See *Erie Boulevard Hydropower, L.P.*, 87 FERC 61,378 (1999); *Elm Energy & Recycling (UK) Limited*, 63 FERC 61,201 (1993); *Richmond Power Enterprise, L.P.*, 62 FERC 61,157 (1993); and (e) developing or purchasing additional eligible facilities or qualifying facilities. See *China Power Partners, L.P.*, 70 FERC 61,256 (1995); *Southern Electric Wholesale Generators, Inc.*, 66 FERC 61,264 (1994); *Entergy Power Development Corp.*, 67 FERC 61,344 (1994); *Wartsila Diesel Dominicana, S.A.*, 69 FERC 61,191 (1994).

⁹ *Dominion Energy Kewaunee, Inc.*, Docket No. ER04-318-000, Letter Orders dated February 17, 2004 and February 18, 2004.

¹⁰ 15 U.S.C. § 79z-5a(a)(2).

¹¹ 15 U.S.C. § 79z-5a(c).

A. Agricultural Leases.

The site of the Facility consists of approximately 690.65 acres of property (the “Facility Site”). Approximately 407 acres, or 58.9%, of the Facility Site is leased to three lessees under four leases and used by them for agricultural purposes. The annual rental fees under these leases total approximately \$14,235 per annum.

These leases are similar to the agricultural leases addressed in *Keystone Power LLC*, 96 FERC ¶61,216 (2001) in which the Commission found that such leasing activities were permissible EWG activities where the EWG donated or transferred the payments received under such leases to an unaffiliated third party. Although DEK believes the rental payments received under these leases to be nominal, DEK donates the payments it receives under them to an unaffiliated third party. Accordingly, DEK’s continuation of these leases will be a permissible EWG activity. *See also Hardee Power Partners, Ltd.*, 104 FERC ¶61,327, at ¶12, 13 (2003).

B. Emergency Operation Facility Lease.

As the owner of a nuclear facility, DEK is required by Nuclear Regulatory Commission (“NRC”) regulations to provide and maintain emergency equipment and facilities necessary to respond to radiological emergencies at the Facility. Among the facilities that DEK is required to provide and maintain is an off-site emergency operations facility (“EOF”). The basic requirements for an off-site EOF are contained in a series of NRC regulations and issuances.¹² Pursuant to these NRC regulations and directives, an off-site EOF must be at least ten miles away from its associated nuclear

¹² *See*, 10 C.F.R. §§ 50.47(a)(1), 50.47(b)(8); NUREG-0654/FEMA-REP-1 Rev. 1, *Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants*; Section H.2 (1980); NUREG-0696, Revision 1, *Functional Criteria for Emergency*

plant, and must include working spaces for NRC officials during an emergency. In addition to an off-site EOF, a nuclear licensee must also maintain a joint information center (“JIC”) for the coordination of licensee, NRC, state, and local media communications to the press and the public concerning an emergency involving a nuclear facility.¹³

When DEK acquired the Facility from WPSC and WPL, the EOF and JIC for KPS were located at WPSC's office complex in Green Bay, Wisconsin (the “Original EOF-JIC”). The Original EOF-JIC was shared with Nuclear Management Company, LLC (“NMC”), the operator of the Point Beach Nuclear Plant owned by WE Energies, as the back-up EOF-JIC for the Point Beach nuclear facility (“Point Beach”) located in Two Rivers, Wisconsin.¹⁴

In June 2004, DEK located and purchased an approximately 10,200 square foot building in Green Bay, Wisconsin that, with modifications to be made after the purchase of KPS, could serve as the new EOF-JIC for KPS (the “New EOF-JIC Building”). When the closing of the purchase of KPS was unexpectedly delayed, DEK and WPSC entered into an Emergency Operation Facility, Equipment and Support Services Agreement, dated July 5, 2005 that allowed DEK to continue using the Original EOF on an interim basis until DEK arranged for a new EOF for the KPS.

Subsequent to DEK's purchase of the New EOF-JIC Building, NMC found that it also needed a new back-up EOF and JIC for the Point Beach facility.¹⁵ NMC contacted

Response Facilities (1981); NUREG-0737, Supplement No. 1, *Clarification of TMI Action Plan Requirements, Requirements for Emergency Response Capability* (1983).

¹³ See NUREG-0654/FEMA-REP-1 Rev.1, Section G 3.

¹⁴ Prior to the sale of KPS to DEK, NMC had also operated KPS under an Operating Services Agreement with WPS.

¹⁵ WPSC had informed NMC that it had other needs for office space devoted to the Original EOF.

DEK to see if DEK's newly acquired building had space sufficient to serve as both the KPS EOF-JIC and the back-up Point Beach EOF-JIC, as had been the case with the Original EOF-JIC. Although DEK purchased the New EOF-JIC Building for its exclusive use, DEK determined that the building was large enough to accommodate both the KPS EOF and the back-up Point Beach EOF, if DEK and NMC shared use of common areas required for third party (i.e., NRC, state and local government) use including the JIC (collectively "Joint Use Areas"). In addition, DEK determined that joint use of the New EOF-JIC Building would avoid wasteful duplication of facilities by DEK and NMC, and could facilitate DEK and NMC rendering assistance to the other in the event of an emergency at either plant. Further, because KPS and Point Beach are located in the same region, and would interface with the same federal, state and local officials in the event of an emergency, DEK, and NMC, believed that it would be beneficial for NRC, state and local officials if both the KPS EOF, the back-up Point Beach EOF and the JIC for both facilities were located in the same building. In light of the above considerations, DEK and NMC agreed to enter into a lease agreement for joint use of the New EOF-JIC Building.

While the parties negotiated the lease agreement, DEK agreed to oversee and fund (subject to partial reimbursement as discussed below), the capital costs of improvements to the New EOF-JIC Building (the "Building Improvements") necessary for it to serve as the KPS EOF, the back-up Point Beach EOF and the JIC for both facilities. The Building Improvements included refurbishment of approximately 2200 square feet to serve as the KPS EOF, and 2200 square feet to serve as the back-up Point Beach EOF. In addition,

approximately 5800 square feet of the New EOF-JIC Building was refurbished to serve as the Joint Use Areas.

On February 20, 2006, NMC and DEK executed the Lease Agreement (the "Lease"). Under the Lease, DEK leases NMC the 2200 square feet of New EOF Building dedicated to the back-up Point Beach EOF and joint use of the Joint Use Areas for a term of twenty-eight years. NMC's rent under the Lease is a nominal \$1.00. In addition, NMC reimburses DEK for one-half of the actual operating and maintenance costs (*e.g.*, heating, lighting, HVAC and routine maintenance) attributable to the Point Beach EOF and the Joint Use Areas.

The Lease also requires NMC to reimburse DEK for the actual capital costs of the Building Improvements incurred by DEK that are attributable to the back-up Point Beach EOF and for one-half of the capital costs incurred by DEK for the Building Improvements attributable to the Joint Use Areas (collectively the "Capital Reimbursement"). The total Capital Reimbursement payable by NMC under the Lease is \$1,344,020, and does not include mark-up of any kind. NMC paid DEK \$750,000 of the Capital Reimbursement upon execution of the Lease, with the remainder due in ten annual installments of \$59,402.

DEK's ownership and operation of the New EOF-JIC Building does not violate the requirement set forth in Section 32(a)(1) of the 1935 Act that an EWG be "exclusively" engaged in the business of owning and/or operating eligible facilities and selling electric energy at wholesale. Because KPS is a nuclear facility, ownership and operation of an off-site EOF and a JIC is required by NRC regulations, and therefore an

integral part of the business of owning and operating a nuclear generating facility and selling electricity from the facility at wholesale.

The lease of a portion of the New EOF-JIC Building to NMC, and the recovery by DEK of the costs attributable to the Point Beach EOF Building Improvements and the Joint Use Areas, also does not violate the exclusivity requirement. The Commission has previously found that an EWG may lease its facilities to third parties, or provide a third party services from its facilities, if the facilities or services involved are otherwise necessary for the EWG's operations, and the purpose of the lease or the provision of the service is to avoid economic waste.¹⁶ Here, DEK purchased the New EOF-JIC Building to satisfy NRC requirements, not for leasing purposes. Only when DEK was approached by NMC did DEK consider leasing a portion of the New EOF-JIC Building. As discussed above, it entered into the Lease because it would avoid economic waste through duplication of facilities, enable DEK and NMC to provide assistance to each other in the event of an emergency at either plant, and provide a centrally located EOF and JIC at which federal, state and local could respond to emergencies at the KPS and Point Beach facilities.

In addition, DEK will not receive any profit under the Lease. The rent under the Lease is a nominal \$1.00, and the Capital Reimbursement simply reimburses DEK, without mark-up, for DEK's capital outlays for the Building Improvements for the back-up Point Beach EOF and one-half of the Joint Use Areas. Similarly, NMC will reimburse

¹⁶ *E.g.*, *PPL Martins Creek, LLC*, 105 FERC 61,177 (2003) (holding that provision of water-related services to affiliate's adjacent generating facility does not violate the exclusivity requirement); *Blue Spruce Energy Center, LLC*, 105 FERC ¶ 61,059 (2003) (holding that sale of turbines purchased for project use that were later determined be surplus did not violate the exclusivity requirement because purpose of sale was to avoid economic waste); *C.f.*, *Killinghome Generation Limited*, 90 FERC ¶ 61,190(2000) (holding that intermittent lease of simulator operator training facilities to third parties did not violate the exclusivity requirement).

DEK for no more than the actual costs incurred by DEK for the operation and maintenance of the Point Beach EOF portion of the New EOF Building, and one-half of the capital costs of performing the improvements to the Joint Use Areas. Reimbursement for such costs is consistent with EWG status.¹⁷

VII. STATE DETERMINATIONS

Costs associated with the Facility rates or charges for, or in connection with, the construction of the Facility or for the electric energy produced by the Facility were in effect on October 24, 1992 in the states of Iowa, Minnesota, Illinois, Michigan and Wisconsin. The certifications required by under Section 32(c) of the Public Utility Holding Company Act of 1935 from the regulatory commissions of each of these states were provided to the Commission with DEK's April 22, 2005 application for EWG status in Docket No. EG05-61-000.

VIII. OWNERSHIP OR OPERATION BY AN AFFILIATED OR ASSOCIATED UTILITY COMPANY

No portion of the Facility is or will be owned or operated by an electric utility company that is an affiliate or associate company of DEK.

IX. ASSOCIATED ELECTRIC UTILITY COMPANIES

Dominion Virginia Power is an electric utility company that is an associate company, as defined in 18 C.F.R. § 366.1, of DEK. No other electric utility company is an associate company nor is any electric utility company an affiliate company, as defined in 18 C.F.R. § 366.1, of DEK.

¹⁷ *Id.*; see also, *Duke Energy Vermillion, LLC*; 106 FERC ¶ 61,153 (2004) (holding provision of administrative and technical services to co-owner for a fee does not violate the EWG exclusivity requirement.)

X. NOTICE OF APPLICATION

A copy of a notice of this application suitable for publication in the Federal Register is attached as Appendix A.

XI. SERVICE OF APPLICATION

In accordance with 18 C.F.R. §366.7(a), a copy of this notice of self-recertification has been served on the Public Service Commission of Wisconsin.

XII. CONCLUSION

Based on the foregoing facts and representations, DEK continues to satisfy the requirements for exempt wholesale generator status.

Respectfully submitted,

/s/Patrick T. Horne (e-filed)

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by mail upon
the Public Service Commission of Wisconsin

Dated at Richmond, Virginia this 8th day of May 2006.

/s/ Patrick T. Horne
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APPENDIX A

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

DOMINION ENERGY KEWAUNEE, INC.) DOCKET NO. EG06-____-000

NOTICE OF SELF-RECERTIFICATION
OF EXEMPT WHOLESALE GENERATOR STATUS
BY DOMINION ENERGY KEWAUNEE, INC.

(_____, 2006)

Take notice that on May 8, 2006 Dominion Energy Kewaunee, Inc., (“DEK”), filed with the Federal Energy Regulatory Commission (Commission) a notice of self-recertification of exempt wholesale generator (“EWG”) status pursuant to 18 C.F.R. § 366.7 of the Commission’s regulations, and under the Public Utility Holding Company Act of 2005.

DEK is a Wisconsin corporation that has previously been determined by the Commission to be an EWG based on its ownership and operation of the Kewaunee Nuclear Power Station, an approximately 568 MW nuclear power plant located in Town of Carlton in Kewaunee County, Wisconsin. DEK states that all of the electric energy produced by the facility is sold at wholesale. DEK is filing the notice of self-certification to describe a new leasing arrangement that DEK states does not affect DEK's status as an EWG.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online

service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Magalie R. Salas
Secretary

Submission Contents

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