

109 FERC ¶ 61,274
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

December 17, 2004

In Reply Refer To:
Pastoria Energy Center, LLC
Docket No. ER05-68-000

Davis Wright Tremaine LLP
Attn: James B. Vasile, Esq.
1500 K Street, N.W., Suite 450
Washington, D.C. 20005-1262

Dear Mr. Vasile:

1. On October 25, 2004, Pastoria filed an application for market-based rate authority with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity, energy, replacement reserves,¹ and ancillary services at market-based rates,² the reassignment of transmission capacity, and the resale of firm transmission rights (FTR). It also includes the Commission's market behavior rules.³ Pastoria's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective November 1, 2004, as requested.⁴

¹ Pastoria notes in its application that the Commission has determined that the granting of market-based rate authority for sales of energy and capacity includes the grant of market-based rate authority for the sale of replacement reserves.

² Pastoria plans to sell certain ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM); New York Independent System Operator, Inc. (NYISO); ISO New England, Inc. (ISO-NE); and California Independent System Operator Corporation (CAISO). Pastoria also intends to engage in the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista Corporation*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999) (*Avista*).

³ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

⁴ FERC Electric Tariff No. 1, Original Sheet Nos. 1-5. Waiver of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2004), is granted to allow for the effective date noted above.

2. Pastoria is a limited liability company formed for the purposes of constructing, owning and operating a 750 megawatt natural gas-fired, combined-cycle electric generating facility in Kern County, California. Pastoria is a subsidiary of Calpine Corporation. Pastoria states that the facility's output will be sold to Calpine Energy Services, L.P.

Notice and Responsive Pleadings

3. Notice of Pastoria's filing was published in the *Federal Register*, 69 Fed. Reg. 64,746 (2004), with protests and interventions due on or before November 15, 2004. Metropolitan Water District of Southern California filed an intervention on November 15, 2004, raising no substantive issues.

Discussion

Procedural Matters

4. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), Metropolitan Water District of Southern California's timely, unopposed motion to intervene serves to make it a party to this proceeding.

Market-Based Rate Authorization

5. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁵ As discussed below, we conclude that Pastoria satisfies the Commission's standards for market-based rate authority.

6. In its order issued in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted new indicative screens for assessing generation market power. The Commission has reviewed Pastoria's generation market power screens for the CAISO market, which indicate that Pastoria passes both the pivotal supplier and wholesale market share screens in that market. Accordingly, we find that Pastoria satisfies the Commission's generation market power standard for the grant of market-based rate authority.

⁵ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); 79 FERC ¶ 61,149 (1997); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc., et al.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

7. Pastoria states that neither it nor any of its affiliates owns or controls any transmission facilities other than generation interconnection facilities. Based on this representation, we find that Pastoria satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. Pastoria states that neither it nor its affiliates control any interstate fuel transportation systems that could be used to impede downstream generators from gaining access to lower-cost gas supplies. Pastoria states that its affiliates own interests in natural gas reserves and natural gas gathering facilities in California used to deliver Pastoria's affiliates' gas to their generating facilities. Pastoria states that it does not have dominant control over equipment supplies such as gas turbines. Based on Pastoria's representations, we find that Pastoria cannot erect barriers to entry. However, should Pastoria or any of its affiliates deny, delay, or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of Pastoria's authority to sell power at market-based rates.⁶

9. Pastoria states that neither it nor its affiliates has a franchised service territory for the sale of electricity to captive customers. Further, Pastoria's market-based rate tariff prohibits sales to any affiliate of Pastoria with a franchised service territory without first receiving Commission approval under a separate filing pursuant to section 205 of the Federal Power Act.⁷ Based on these representations, we find that Pastoria satisfies the Commission's concerns with regard to affiliate abuse.

10. Pastoria requests authority to engage in the sale of certain ancillary services (listed in the proposed tariff) at market-based rates into the markets administered by the ISO-NE, PJM, NYISO, and CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant Pastoria's request.⁸ Pastoria also intends to engage in the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista*. We will grant this request.

⁶ *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

⁷ 16 U.S.C. § 824d (2000).

⁸ See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *Atlantic City Electric Co., et al.*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (1999); *Central Hudson Gas & Electric Corp., et al.*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 (1999); *AES Redondo Beach, L.L.C., et al.*, 85 FERC ¶ 61,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g and clarification*, 90 FERC ¶ 61,036 (2000).

11. Pastoria proposes to sell additional ancillary services in other geographic markets as the Commission may specify and authorize from time-to-time in orders that extend such authority to all sellers previously authorized to sell energy and/or capacity at market-based rates. We will grant Pastoria's request in this regard; however, our grant does not relieve Pastoria of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).⁹

12. Pastoria also requests authority to reassign transmission capacity, and resell FTRs or their equivalent. We find these provisions consistent with the Commission's requirements.¹⁰ Accordingly, we grant this request.

Other Waivers, Authorizations, and Reporting Requirements

13. Pastoria requests the following waivers and authorizations: (1) waiver of subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except as to sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting requirements; (3) abbreviated filings with respect to interlocking directorates under Part 45 of the Commission's regulations; and (4) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

14. We will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹¹ Notwithstanding the waiver of the accounting and reporting requirements here, we expect Pastoria to keep its accounting records in accordance with generally accepted accounting principles.

⁹ *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

¹⁰ See *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997), and *California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

¹¹ It should be noted that the Commission is examining the issue of continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141) as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of obligations and liabilities (18 C.F.R. Part 34). See *Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities*, Order No. 627, at P 23 and P 24, 67 Fed. Reg. 67,691 (Oct. 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

15. Within 30 days of the date of the issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Pastoria should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.211 and 385.214.

16. Absent a request to be heard within the period set forth above, Pastoria is hereby authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Pastoria, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

17. Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving Pastoria. Any such person instead shall file a sworn application providing the following information:

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

18. The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Pastoria's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

19. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.¹² Electric

¹² *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹³ Accordingly, Pastoria must file its first Electric Quarterly Report no later than 30 days after the first quarter Pastoria's rate schedule is in effect.¹⁴

20. Pastoria is directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These characteristics include, but are not limited to: (1) ownership of generating or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.¹⁵

21. Pastoria is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹³ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b.

¹⁴ Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in a report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹⁵ The Commission issued a Notice of Proposed Rulemaking in Docket No. RM04-14-000 in which the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates. *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004). The change of status requirements outlined herein are subject to the outcome of the rulemaking.