

113 FERC ¶ 61,156
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

November 17, 2005

In Reply Refer To:
Noble Thumb Windpark I LLC
Docket No. ER05-1511-000

Latham & Watkins LLP
Attn: Stephanie S. Lim, Esq.
Counsel for Noble Thumb Windpark I LLC
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004

Dear Ms. Lim:

1. On September 28, 2005, Noble Thumb Windpark I LLC (Noble Thumb) 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, and ancillary services at market-based rates and for the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs).¹ Noble Thumb's submittal includes the Commission's market behavior rules² and the change in status reporting requirement adopted by the Commission in Order No. 652.³ Noble Thumb's submittal satisfies the Commission's

¹ Noble Thumb plans to sell certain ancillary services in the markets administered by PJM Interconnection, LLC (PJM), the New York Independent System Operator (NYISO), ISO New England (ISO-NE), and the California Independent System Operator Corporation (CAISO).

² *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).

³ *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) (Order No. 652).

standards for market-based rate authority and is accepted for filing, effective as of the date of this order.

2. Noble Thumb states that it will own and operate an approximately 48 MW wind-powered generation facility located in Bingham Township near the Village of Ubyly, Huron County, Michigan (the Project), which is within the Midwest Independent Transmission System Operator (Midwest ISO) market. Construction of the Project began in June 2005, and the first phase of the Project is expected to commence commercial operations on December 31, 2005, with the second phase expected to commence commercial operations on April 1, 2006. Noble Thumb states that most of the energy from the Project is committed under a 10-year power purchase agreement (PPA) with Consumers Energy Company.⁴

3. Noble Thumb states that it is a Delaware limited liability company, with its principal place of business located in Essex, Connecticut. Noble Thumb states that it is a wholly-owned, direct subsidiary of Noble Thumb Windpark, LLC, a wholly-owned direct subsidiary of Noble Environmental Power, LLC (Noble Environmental). Noble Environmental is owned by eight JP Morgan Entities,⁵ and Noble Power, LLC (Noble Power). Noble Thumb states that the JP Morgan Entities collectively hold an 83.5 percent ownership interest and 75 percent of the voting rights and Noble Power holds a 16.5 percent ownership interest and 25 percent of the voting rights in Noble Environmental.

4. Noble Environmental, through its subsidiaries, is in the process of developing a number of wind-powered generation facilities in the United States. Noble Thumb states that the only facility being developed by Noble Environmental in the Midwest ISO market is the Project. Noble Thumb states that Noble Power is engaged in the development of wind-powered generation facilities in the United States, although none of the facilities being developed by Noble Power is currently operational. Noble Power states that it is owned by eight individuals who do not hold any interests in generation or transmission facilities other than the generation facilities being developed by Noble Environmental and its subsidiaries.

⁴ Noble Thumb states that under certain circumstances contemplated by the PPA, Noble Thumb may make sales of energy to third parties.

⁵ The JP Morgan Entities are (1) J.P. Morgan Partners (BHCA), L.P., (2) J.P. Morgan Partners Global Investors, L.P., (3) J.P. Morgan Partners Global Investors (Cayman), L.P., (4) J.P. Morgan Partners Global Investors (Cayman) II, L.P., (5) JPMP Global Fund/Noble, L.P., (6) JPMP Global Fund/Noble A, L.P., (7) J.P. Morgan Partners Global Investors (Selldown), L.P., (8) JPMP Global Fund/Noble/Selldown, L.P.

5. Noble Thumb states that each of the JP Morgan Entities is an indirect subsidiary of JP Morgan Chase & Co. (JPMorgan). JPMorgan is a financial holding company incorporated in Delaware with its principal place of business in New York, New York. JPMorgan's principal bank subsidiaries are JP Morgan Chase Bank, N.A. (JPMCB), and Chase Manhattan Bank USA, National Association (Chase USA).

6. Noble Thumb states that JPMorgan and its affiliates will conduct transactions subject to regulation under the Federal Power Act (FPA) through JPMCB and J.P. Morgan Ventures Energy Corporation (JPMVEC).⁶

Procedural Matters

7. Notice of Noble Thumb's September 28, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 59,065 (2005), with interventions and protests due on or before October 19, 2005. None was filed.

Discussion

Market-Based Rate Authorization

8. 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.⁷ As discussed below, the Commission concludes that Noble Thumb satisfies the Commission's standards for market-based rate authority.

9. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. However, we note that, under section 35.27 of the Commission's regulations, applicants need not demonstrate any lack of market power in

⁶ See *JPMorgan Chase Bank; NA.*, 110 FERC ¶ 61,292 (2005), and *J.P. Morgan Ventures Energy Corp.*, 112 FERC ¶ 61,322 (2005).

⁷ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

generation with respect to sales from capacity constructed after July 9, 1996.⁸ Further, if an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.⁹ The Commission clarified that in circumstances where construction on all of an applicant's generation commenced after July 9, 1996, no generation market power analysis need be performed.¹⁰

10. Noble Thumb states that the only generation owned or controlled by Noble Thumb is the Project, construction of which commenced in June 2005. Noble Thumb further states that the only other generating facility in the Midwest ISO market in which any Noble Thumb affiliate has an interest is the 1,176 MW facility (Covert Facility) owned by Covert Generating Company, LLC, in which JPMCB holds an indirect, passive 11.6 percent ownership interest. Noble Thumb states that construction of the Covert Facility also commenced after July 9, 1996. Based on these representations, the Commission finds that Noble Thumb satisfies the Commission's generation market power standard for market-based rate authority.

11. Noble Thumb states that neither it nor any of its affiliates owns or controls any transmission facilities in the United States. Based on this representation, the Commission finds that Noble Thumb satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

12. Noble Thumb states that it does not have the ability to erect barriers to entry because neither it nor its affiliates owns or controls any sites for the construction of new generation capacity, construction or engineering firms, or natural gas pipelines. Based on this representation, the Commission is satisfied that Noble Thumb cannot erect barriers to entry.

13. Noble Thumb states that neither Noble Thumb nor any of its affiliates has a franchise or service territory for the transmission, distribution or sale of electric power in the United States. Additionally, the proposed tariff prohibits transactions with any public utilities with franchised service territories that are controlled by, under common control with, or control Noble Thumb, without first receiving Commission approval under a separate filing under section 205 of the FPA. Based on this representation, the

⁸ 18 C.F.R. § 35.27(a) (2005). We note that the Commission intends to address as part of the generic rulemaking proceeding in Docket No. RM04-7-000 whether to retain or modify section 35.27(a) of our regulations.

⁹ See *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 69 (2004).

¹⁰ See *AEP Power Marketing, Inc.*, 108 FERC ¶ 61,026 at P 110 (2004).

Commission finds that Noble Thumb satisfies the Commission's concerns with regard to affiliate abuse.

14. Noble Thumb 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 PJM, NYISO, ISO-NE, and the CAISO. Consistent with Commission precedent granting market-based rate authority to sellers to engage in such transactions in those markets, the Commission will grant Noble Thumb's request.¹¹

15. Noble Thumb also requests authority to sell additional ancillary services 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 capacity at market-based rates. The Commission will grant Noble Thumb's request; however, this grant does not relieve Noble Thumb of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2005).¹²

16. Noble Thumb also requests authority to reassign transmission capacity and to resell FTRs or their equivalent. The Commission finds Noble Thumb's proposed provisions consistent with the Commission's requirements.¹³ Accordingly, the Commission will grant this request.

Other Waivers, Authorizations and Reporting Requirements

17. Noble Thumb 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; and (3) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

¹¹ See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 ¶ 61,074 (2001); *PJM Interconnection, LLC*, 86 FERC ¶ 61,247 (1999), *California Independent System Operator*, 100 FERC ¶ 61,060 (2002), *order on reh'g*, 101 FERC ¶ 61,061 (2002); and *New York Independent System Operator, Inc.*, 89 FERC ¶ 61,196 (1999), *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,317 (2000).

¹² See *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

¹³ See *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997); *Calif. Indep. Sys. Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

18. The Commission will grant the waivers and authorizations requested by Noble Thumb consistent with those granted other entities with market-based rate authorizations.¹⁴ Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Noble Thumb to keep its accounting records in accordance with generally accepted accounting principles.

19. 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 Noble Thumb should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 (2005).

20. Absent a request to be heard within the period set forth above, Noble Thumb is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, 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 Noble Thumb, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

21. 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 Noble Thumb's issuances of securities or assumptions of liabilities.

22. 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

¹⁴ 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, 67 Fed. Reg. 67,691 (Oct. 10, 2002), FERC Stats. & Regs. ¶ 32,558, at P 23-24 (2002).

(one year or greater) market-based power sales during the most recent calendar quarter.¹⁵ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁶ Accordingly, Noble Thumb must file its first Electric Quarterly Report no later than 30 days after the first quarter Noble Thumb's rate schedule is in effect.

23. Noble Thumb must 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.¹⁷

24. Noble Thumb's next updated market power analysis is due within three years of the date of this order. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Magalie R. Salas,
Secretary.

¹⁵ *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/docs-filing/eqr.asp>.

¹⁶ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly 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.

¹⁷ *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) (Order No. 652).