

114 FERC ¶ 61,032
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 19, 2006

In Reply Refer To:
Waterside Power, L.L.C.
Docket No. ER02-1884-002

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Dear Mr. Franco:

1. On June 13, 2005, Waterside Power, L.L.C. (Waterside) filed an updated market power analysis and revisions to its market-based rate tariff.¹ As discussed below, in this order, we conclude that Waterside satisfies the Commission's standards for market-based rate authority and will accept the proposed tariff revisions. Waterside's next updated market power analysis is due within three years from the date of this order.
2. Waterside is a limited liability company that owns and operates a 69.6 MW gas turbine electric generator located in Stamford, Connecticut. The facility is interconnected to the transmission system of Connecticut Light and Power Company (CL&P) which is part of the transmission grid operated by ISO New England, Inc. (ISO-NE). Waterside states that it provides all of its energy and capacity to ISO-NE as load response pursuant to an ISO-NE Demand Response Program.
3. Waterside states that it is owned indirectly by Power Development, L.L.C. (PDC) and by an investment fund managed by Energy Investors Funds Group, LLC (EIF). PDC is a privately-owned company that owns a 10 percent interest in Berkshire Power Company, LLC (Berkshire), which owns and operates a 272 MW natural gas fired generating facility. PDC also owns a five percent interest in Milford Power Company,

¹ FERC Electric Tariff, Original Vol. No. 1, First Revised Sheet No. 2 (Supersedes Original Sheet No. 2).

LLC, which owns and operates a 540 MW natural gas fired combined-cycle generating plant located in Milford, Connecticut. Waterside states that EIF is a private equity fund manager dedicated exclusively to the independent power and electric utility industry.

Notice of Filings and Responsive Pleadings

4. Notice of the June 13, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 36,931 (2005), with interventions or protests due on or before July 5, 2005. None was filed.

Discussion

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.² As discussed below, the Commission concludes that Waterside satisfies the Commission's standards for market-based rate authority.

6. In the Commission's order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), we adopted two indicative screens for assessing generation market power. Waterside has prepared both the pivotal supplier and the wholesale market share screen analyses for the ISO-NE market. The Commission has reviewed Waterside's generation market power analyses for the ISO-NE market and has determined that Waterside passes both screens in the ISO-NE market. Based on Waterside's representation, the Commission finds that Waterside satisfies the Commission's generation market power standard for the grant of market-based rate authority.

7. Waterside states that neither it nor any of its affiliates owns any transmission facilities other than those needed to interconnect generating facilities to the grid. Based on Waterside's representation, the Commission finds that Waterside satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

² 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).

8. Waterside states that neither it nor any of its affiliates has dominant control over sites or other scarce inputs to generation that could be used to prevent competitors from entering the ISO-NE wholesale electric market. Based on Waterside's representations, the Commission is satisfied that Waterside cannot erect barriers to entry.

9. Waterside states that it is not affiliated with any utility that has a franchised service territory. Furthermore, Waterside's tariff prohibits sales of electric energy and capacity to a franchised electric utility affiliate. Based on Waterside's representations, the Commission finds that Waterside satisfies the Commission's concerns with regard to affiliate abuse.

10. 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.³ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁴

11. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of Part 45 in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of Part 45.⁵ With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking

³ *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>.

⁴ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). 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.

⁵ *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 55,717 (September 23, 2005), FERC Stats. & Regs. ¶ 31,194 (2005).

positions (unless and until that individual assumes different or additional interlocking positions).⁶ Thus, consistent with Order No. 664, Waterside will be required henceforth to comply with the full requirements of Part 45.

12. Waterside 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.⁷ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. We will accept Waterside's tariff revisions which include the change in status reporting requirement.

13. Waterside's current tariff includes the Commission's market behavior rules. However, the language does not comply with the market behavior rules as established by the Commission.⁸ Specifically, section 2(b) of Waterside's market behavior rules should state, "(...or scheduling non-firm service for products sold as firm)..." Accordingly, Waterside is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to include such language, consistent with the Commission's market behavior rules.

14. Waterside is directed to file an updated market power analysis 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.

⁶ *Id.* at P 36.

⁷ *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 (2005), *order on reh'g*, 111 FERC ¶ 61,413 (2005).

⁸ *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 at P 73 (2004).