

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

January 31, 2006

In Reply Refer To:
SR Energy, LLC
Docket No. ER06-284-000

Latham & Watkins LLP
Attn: Mr. Jared W. Johnson, Esq.
Attorney for SR Energy, LLC
555 Eleventh Street, N.W.
Washington, D.C. 20004

Dear Mr. Johnson:

1. On December 2, 2005 SR Energy, LLC (SR Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates, the reassignment of transmission capacity, and the resale of firm transmission rights or their equivalents (FTRs).¹ SR Energy's submittal includes the Commission's market behavior rules,² and also the change in status reporting requirement adopted by the Commission in Order No. 652.³ As discussed below, SR Energy's submittal satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective January 1, 2006, as requested.⁴

¹ SR Energy states that it 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, Inc. (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).

⁴ Rate Schedule FERC No. 1, Original Sheet Nos. 1-4. Waiver of section 35.3 of (continued...)

2. SR Energy states that it is a limited liability company, with its place of business located in St. Francis, Wisconsin. SR Energy also states that it is a direct, wholly-owned subsidiary of Stark Investments Limited Partnership (Stark Investments), which is an investment fund owned by private investors. SR Energy explains that Stark Trading and Shepherd Investments International Ltd. (Shepherd), affiliates of SR Energy, have recently acquired a 7.13 percent minority, non-controlling interest in MACH Gen, LLC (MACH Gen). MACH Gen owns 100 percent of four generation facilities located in various parts of the United States.

Procedural Matters

3. Notice of the December 2, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 74,800 (2005), with interventions or protests due on or before December 23, 2005. None was filed.

Discussion

Market-Based Rate Authorization

4. 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, the Commission concludes that SR Energy satisfies the Commission's standards for market-based rate authority.

5. In the Commission's order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. SR Energy states that it does not own or control any generation. However, since approval of the MACH Gen transaction, affiliates of SR Energy have a 7.13 percent minority, non-controlling interest in the four MACH Gen facilities.⁶ In addition, an affiliate of SR Energy is expected to

the Commission's regulations is granted to allow for the effective date noted above. *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 671 FERC ¶ 61,089 (1992).

⁵ 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).

⁶ SR Energy states that neither Stark Trading, nor Shepherd, nor any of their
(continued...)

close on the purchase of a 100 percent indirect interest in Wolf Hollow. SR Energy states that the MACH Gen and Wolf Hollow facilities were constructed after July 9, 1996.⁷ SR Energy cites section 35.27(a) of the Commission's regulations, which provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.⁸ Based on SR Energy's representations, the Commission finds that SR Energy satisfies the Commission's generation market power standard for the grant of market-based rate authority.

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

7. SR Energy states that neither it nor any of its affiliates owns or controls essential inputs to power production other than a 9.99 percent interest in International Coal. SR Energy further states that neither it nor any of its affiliates owns or controls any sites for the construction of new generation capacity that could restrict the entry by suppliers, nor any interests in construction or engineering firms, or natural gas pipelines. No intervenors have raised any issue with regard to other barriers to entry. Based on SR Energy's representations, the Commission is satisfied that SR Energy cannot erect barriers to entry.

8. SR Energy states that neither it nor any of its affiliates holds 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 SR Energy, without first receiving Commission approval under a separate filing

affiliates has the ability to direct day-to-day operations, including sales and dispatch decisions of any of the MACH Gen facilities.

⁷ SR Energy also states that affiliates hold interests in three development projects in North America that are in the construction phase, but not yet operational.

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

pursuant to section 205 of the Federal Power Act (FPA).⁹ Based on SR Energy's representations, the Commission finds that SR Energy satisfies the Commission's concerns with regard to affiliate abuse.

9. SR Energy 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 SR Energy's request.¹⁰

10. SR Energy 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 SR Energy's request; however, this grant does not relieve SR Energy of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2005).¹¹

11. SR Energy also requests authority to reassign transmission capacity and to resell FTRs or their equivalent. The Commission finds these provisions consistent with the Commission's requirements.¹² Accordingly, the Commission will grant this request.

Other Waivers, Authorizations and Reporting Requirements

12. SR Energy request 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.

⁹ 16 U.S.C. § 824e (2000).

¹⁰ See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 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).

¹¹ See *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

¹² See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997); *California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

13. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹³

Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects SR Energy to keep its accounting records in accordance with generally accepted accounting principles.

14. 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 SR Energy 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 (2005).

15. Absent a request to be heard within the period set forth above, SR Energy 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 SR Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

16. 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 SR Energy's issuances and securities or assumptions of liabilities.

17. 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.¹⁴ Electric

¹³ 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 at P 23-24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

¹⁴ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. (continued...)

Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁵ Accordingly, SR Energy must file its first Electric Quarterly Report no later than 30 days after the first quarter SR Energy's rate schedule is in effect.

18. SR Energy 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.¹⁶

19. SR Energy 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.

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>.

¹⁵ The exact filing 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.

¹⁶ *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).