

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

May 5, 2006

In Reply Refer To:  
Pedricktown Cogeneration Company, LP  
Docket No. ER06-703-000

Van Ness Feldman, P.C.  
Attn: Margaret A. Moore, Esq.  
Attorney for Pedricktown Cogeneration Company, LP  
1050 Thomas Jefferson Street, N.W.  
Washington, D.C. 20007

Dear Ms. Moore:

1. On March 6, 2006, Pedricktown Cogeneration Company, LP (Pedricktown) filed an application for market-based rate authority, with an accompanying market-based rate tariff. The proposed market-based rate tariff provides for the sale of energy and capacity and ancillary services at market-based rates.<sup>1</sup> The proposed market-based rate tariff also provides for the reassignment of transmission capacity and the resale of firm transmission rights or their equivalents (FTRs). Pedricktown's market-based rate tariff includes the Commission's change in status reporting requirement.<sup>2</sup> Pedricktown requests waivers commonly given to similar market-based rate applicants. Pedricktown's submittal, as

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<sup>1</sup> Pedricktown plans to sell certain ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), and ISO New England Inc. (ISO-NE).

<sup>2</sup> *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).

discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing,<sup>3</sup> effective March 17, 2006, as requested.<sup>4</sup>

2. Pedricktown states that it owns and operates a 134.5 MW cogeneration facility located in Pedricktown, New Jersey. Pedricktown states that it is owned by Pedricktown Management Company, L.L.C. (PMC) and Pedricktown Investment Company, L.L.C. (PIC). Pedricktown states that PMC and PIC are wholly-owned subsidiaries of Pedricktown Plant Holdings L.L.C. which is a wholly-owned subsidiary of Morris Energy Group L.L.C. (Morris Energy). Pedricktown states that Morris Energy is engaged in the acquisition, ownership, and operation of qualifying facilities (QFs) and exempt wholesale generators (EWGs) under section 32 of the Public Utility Holding Company Act of 1935.<sup>5</sup> Pedricktown further states that Morris Energy currently owns a 27.5 percent interest in Newmarket Power Company, LLC, which owns and operates three EWGs located in New Jersey totaling 505 MW. Pedricktown represents that neither it nor any of its affiliates own or control any transmission facilities other than the interconnection equipment necessary to interconnect its generating facilities to the transmission grid. Pedricktown states that neither it nor its affiliates can erect any barriers to entry and that neither Pedricktown nor its affiliates have a franchised electric service territory.

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<sup>3</sup> Pedricktown Cogeneration Company, LP, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-3.

<sup>4</sup> We will grant Pedricktown's request for waiver of the prior notice requirement to allow the market-based rate tariff to become effective on March 17, 2006, the effective date of Order No. 671. *See Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 71 Fed. Reg. 7852 (Feb. 15, 2006), FERC Stats. & Regs. ¶ 31,203 (2006); *order on clarification*, 114 FERC ¶ 61,128 (2006) (clarifying that the Commission will waive the 60-day prior notice requirement of section 205 of the Federal Power Act (FPA) for electric energy sales that, pursuant to Order No. 671's elimination of certain regulatory exemptions, will now be subject to section 205 filings, provided that such section 205 filings are made prior to Order No. 671's effective date of March 17, 2006).

<sup>5</sup> 15 U.S.C. § 79z-5a (2000). *But see* Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, 70 Fed. Reg. 75,592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g*, Order No. 667-A, 71 Fed. Reg. ----(----, 2006), FERC Stats. & Regs. ¶ ----(2006) (adopting 18 C.F.R. §§ 366.1, 366.7).

## **Procedural Matters**

3. Notice of Pedricktown's filing was published in the *Federal Register*, 71 Fed. Reg. 13,832 (2006), with motions to intervene and protests due on or before March 27, 2006. 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.<sup>6</sup> As discussed below, the Commission concludes that Pedricktown satisfies the Commission's standards for market-based rate authority.

5. In its 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. Pedricktown has prepared the pivotal supplier and wholesale market share screens for the PJM market. The Commission has reviewed Pedricktown's generation market power screens for the PJM market and has determined that Pedricktown passes both the pivotal supplier and wholesale market share screens in the PJM market. Accordingly, the Commission finds that Pedricktown satisfies the Commission's generation market power standard for the grant of market-based rate authority.

6. Pedricktown states that neither it nor any of its affiliates owns or controls any transmission facilities in PJM, other than the interconnection equipment necessary to interconnect their generating facilities to the transmission grid. Based on this representation, the Commission finds that Pedricktown satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

7. Pedricktown states that neither Pedricktown 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 market. Pedricktown also states that neither it nor its affiliates owns or controls fuel supplies. Based on these representations, the Commission is satisfied that Pedricktown cannot erect barriers to entry.

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<sup>6</sup> 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. Pedricktown states that neither it nor any of its affiliates has a franchised service territory for the sale of electricity. Additionally, the proposed tariff prohibits transactions with any affiliated public utilities with a franchised service territory without first receiving Commission approval under section 205 of the FPA. Based on this representation, the Commission finds that Pedricktown satisfies the Commission's concerns with regard to affiliate abuse.

9. Pedricktown 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, and ISO-NE. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant Pedricktown's request.<sup>7</sup>

10. Pedricktown 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 Pedricktown's request; however, this grant does not relieve Pedricktown of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2005).<sup>8</sup>

11. Pedricktown 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.<sup>9</sup> Accordingly, the Commission will grant this request.

### **Other Waivers, Authorizations and Reporting Requirements**

12. Pedricktown requests the following waivers and authorizations: (1) waiver of the accounting and reporting requirements contained in Parts 41, 101, and 141 of the Commission's regulations; (2) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15, and 35.16; (3) any waiver of section 35.3(a) that may be necessary to permit the filing to take effect on the requested effective date; and

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<sup>7</sup> See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *PJM Interconnection, L.L.C.*, 86 FERC ¶ 61,247 (1999); *New York Independent System Operator, Inc.*, 89 FERC ¶ 61,196 (1999), *order on reh'g*, 90 FERC ¶ 61,317 (2000).

<sup>8</sup> See *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

<sup>9</sup> See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997); *California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

(4) blanket authorization under Part 34 of the Commission's regulations for the issuance of securities and the assumption of liabilities that have been granted to other applicants requesting market-based rate authority.

13. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>10</sup> Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Pedricktown to keep its accounting records in accordance with generally accepted accounting principles.

14. Within 30 days of the date of 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 Pedricktown 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, Pedricktown 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 Pedricktown, 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 Pedricktown's issuances of 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

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<sup>10</sup> 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., Regulations and Preambles 2001-2005 ¶ 31,134 (2002).

greater) market-based power sales during the most recent calendar quarter.<sup>11</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>12</sup> Accordingly, Pedricktown must file its first Electric Quarterly Report no later than 30 days after the first quarter Pedricktown's rate schedule is in effect.

18. Pedricktown also seeks Commission assurance that Pedricktown will continue to be exempt from section 203 of the FPA under the provisions of section 292.601 of the Commission's regulations, as amended by Order No. 671. In addition Pedricktown states that unless the Commission advises otherwise, Pedricktown will continue to be exempt from the other sections of the FPA as previously provided to QFs.

19. Pedricktown's request that the Commission offer assurance that Pedricktown, as a QF, continues to be exempt from section 203 and other sections of the FPA as previously provided to QFs is beyond the scope of this proceeding. This proceeding involves a request for market-based rate authority and for certain waivers and authorizations typically granted to market-based rate sellers. The exemptions accorded to a QF from section 203 or other sections of the FPA by virtue of being a QF is a different and separate issue, and is beyond the scope of this proceeding.<sup>13</sup>

20. Pedricktown 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.<sup>14</sup>

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<sup>11</sup> *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>.

<sup>12</sup> 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.

<sup>13</sup> We note that Order No. 671, referred to by Pedricktown, did not change the exemption accorded to a QF from the filing requirements of section 203 of the FPA.

<sup>14</sup> See Order No. 652, FERC Stats. & Regs. ¶ 31,175.

21. Pedricktown 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.