

110 FERC ¶ 61,112
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

February 10, 2005

In Reply Refer To:
Amerada Hess Corporation and
Hess Energy, Inc.
Docket Nos. ER00-2181-002 and
ER97-2153-014

John & Hengerer
Attn: Kevin M. Sweeney, Esq.
1200 17th Street, N.W.
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Washington D.C. 20036

Dear Mr. Sweeney:

1. On November 1, 2004, Amerada Hess Corporation (AHC) and Hess Energy, Inc. (HEI), jointly filed an updated market power analysis pursuant to the requirements of the Commission's orders granting AHC and HEI authority to sell capacity and energy at market-based rates.¹ AHC and HEI already have on file the Commission's market behavior rules.² As discussed below, the Commission concludes that AHC and HEI satisfy the Commission's standards for market-based rate authority.
2. AHC and HEI are affiliated power marketers that do not own or operate electric generation or transmission facilities. AHC and HEI are not affiliated with any entity

¹ *Amerada Hess Corporation*, Docket No. ER97-2153-000 (May 1, 1997) (unpublished letter order) and *Hess Energy, Inc.*, Docket No. ER00-2181-000 (May 10, 2000) (unpublished letter order). Hess Energy, Inc. is the successor in interest to the market-based rate authority granted to *Eastern Energy Marketing, Inc.*, Docket No. ER97-4381-000 (December 4, 1997) (unpublished letter order).

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). AHC and HEI's market behavior rules were previously accepted by the Commission. *Acadia Power Partners, LLC*, Docket No. ER03-1372-000, et al. (March 29, 2004) (unpublished letter order).

which owns generation or transmission facilities or other inputs to electric power production, and they are not affiliated with any entity that has a franchised service area. AHC and HEI state that there were no material changes to report regarding the characteristics relied upon by the Commission when it granted them market-based rate authority.

Procedural Matters

3. Notice of AHC and HEI's filing was published in the *Federal Register*, 69 Fed. Reg. 67,566 (2004), with motions to intervene and protests due on or before November 22, 2004. 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 barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.³ As discussed below, the Commission concludes that AHC and HEI satisfy the Commission's standards for market-based rate authority.

5. AHC and HEI state that neither they nor any of their affiliates own or control any generation assets. Based on this representation, the Commission finds that AHC and HEI satisfy the Commission's generation market power standard for the grant of market-based rate authority.

6. AHC and HEI state that neither they nor any of their affiliates own transmission assets. Based on this representation, the Commission finds that AHC and HEI satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

7. AHC and HEI state that they cannot erect barriers to entry that would prevent other entities from entering the market. AHC and HEI state that neither they nor any of their affiliates own transmission facilities, or other inputs to electric power production other than the fuel supplies. Consequently, neither AHC nor HEI are able to restrict

³ 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., et al.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

others from gaining access to such facilities and/or inputs. Based on these representations, the Commission is satisfied that AHC and HEI cannot erect barriers to entry.

8. AHC and HEI state that neither is affiliated with any entity that has a franchised service territory or that provides service to captive customers. Additionally, AHC and HEI state that they remain subject to the requirements imposed by the Commission orders granting them market-based rate authority, as well as the market behavior rules. The Commission finds that AHC and HEI satisfy the Commission's concerns with regard to affiliate abuse.

Other Waivers, Authorizations and Reporting Requirements

9. 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.⁴ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁵

10. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, the Commission instituted a rulemaking proceeding in Docket No. RM04-11-000.⁶ The Commission proposed to amend its regulations and to modify the market-based rate

⁴ *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>.

⁵ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10(b). 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.

⁶ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Change in Status Final Rule).

authority of current market-based rate sellers to establish a reporting obligation for changes in status. Accordingly, the change in status reporting obligation for AHC and HEI is subject to the provisions of the Change in Status Final Rule.

11. AHC and HEI are 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.

Magalie R. Salas,
Secretary.