

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 26, 2005

In Reply Refer To:  
Logan Generating Company, L.P.  
Madison Windpower, LLC  
Plains End, LLC  
Docket Nos. ER95-1007-014  
ER95-1007-018,  
ER00-1742-001,  
ER00-1742-002,  
ER01-2741-002, and  
ER01-2741-003

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Dear Ms. Moore:

1. On December 14, 2001, Logan Generating Company, L.P. (Logan), Madison Windpower, LLC (Madison), and Plains End, LLC (Plains End) (collectively, Applicants) filed an updated market power analysis pursuant to the requirements of the Commission's order granting Applicants authority to sell electric energy and capacity at market-based rates.<sup>1</sup>

2. On March 31, 2005, Applicants submitted for filing a revised updated market power analysis, pursuant to the Commission's order issued on May 13, 2004.<sup>2</sup> The

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<sup>1</sup> The Commission granted Logan market-based rate authority in *Logan Generating Company, L.P.*, 71 FERC ¶ 61,403 (1995); the Commission granted Madison market-based rate authority in *Reliant Energy, Inc.*, 91 FERC ¶ 61,073 (2000); the Commission granted Plains End market-based rate authority in *Plains End, LLC*, Docket No. ER01-2741-000 (September 24, 2001) (unpublished letter order).

May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.<sup>3</sup> Madison and Plains also submitted for filing a revised tariff incorporating the Commission's market behavior rules.<sup>4</sup> Applicants also submitted for filing a revised tariff incorporating the Commission's change in status reporting requirement pursuant to Order No. 652.<sup>5</sup> We accept Applicants' revisions relating to the market behavior rules and the change in status reporting requirement. As discussed below, we conclude that Applicants satisfy the Commission's standards for market-based rate authority.

3. Logan states that it leases and operates a 242 MW nameplate generating facility located in Logan Township, New Jersey (Logan Facility) and sells approximately 200 MW of that output to Atlantic City Electric Company (Atlantic City) pursuant to a long-term power purchase agreement that expires in 2024 and the remaining output at wholesale into the market operated by PJM Interconnection, L.L.C. (PJM). Logan states that it is an exempt wholesale generator (EWG) under section 32 of the Public Utility Holding Company Act of 1935 (PUHCA).<sup>6</sup>

4. Madison states that it owns and operates an 11.5 MW nameplate wind powered generating facility located in Madison County, New York (Madison Facility). Madison states that it sells all of the electrical output from its facility into the market operated by New York Independent System Operator, Inc. (NYISO). Madison states that it is an EWG under section 32 of PUHCA.<sup>7</sup>

5. Plains End states that it owns and operates a 142 MW nameplate generating facility located in Golden, Colorado (Plains End Facility). Plains End states that it is

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<sup>2</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

<sup>3</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>4</sup> *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).

<sup>5</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 (2005).

<sup>6</sup> *Keystone Energy Services Company*, 66 FERC ¶ 61,191 (1994).

<sup>7</sup> *Madison Windpower, LLC*, 91 FERC ¶ 62,026 (2000).

an EWG under section 32 of PUHCA.<sup>8</sup> Plains End further states that it sells all of the electric output from its facility to Public Service Company of Colorado (PSCo) pursuant to a long-term contract that expires in 2012.

6. Applicants state that prior to January 31, 2005, Logan was owned by Cogentrix/Logan, Inc. (Cogentrix/Logan), a wholly-owned indirect subsidiary of Cogentrix Energy, Inc. (Cogentrix), and Eagle Power Corporation (Eagle Power Corp.), a wholly-owned direct subsidiary of National Energy Power Company, LLC (NEP Company), which, in turn, was a wholly-owned indirect subsidiary of National Energy & Gas Transmission, Inc. (NEGT). Applicants state that Madison and Plains End were wholly-owned indirect subsidiaries of NEGТ as well.

7. On January 31, 2005, Applicants state that GS Power Holdings II LLC (GSP II), a wholly-owned indirect subsidiary of The Goldman Sachs Group, Inc. (GS Group), acquired 100 percent of the ownership interests in NEP Company, and, therefore, acquired Logan, Madison, and Plains End from NEGТ.<sup>9</sup>

8. GS Group is a leading global investment banking, securities, and investment management firm. Applicants state that GS Group indirectly owns all of the interests in three power marketers, J. Aron & Company (J. Aron), Power Receivable Finance, LLC (PRF), and Cogentrix Energy Power Marketing, Inc. (CEPM). Applicants state that neither J. Aron nor PRF has any long-term power purchase contracts in any market that assign operational control of generation capacity to J. Aron or PRF. Applicants further state that CEPM currently is not engaged in any trading activity. In addition, Applicants state that GS Group holds indirect interests in electric generating facilities in the United States, all of which are either QFs under PURPA or eligible facilities of EWGs under section 32 of PUHCA.

### **Procedural Matters**

9. Notice of Applicants' December 14, 2001 filing was published in the *Federal Register*, 66 Fed. Reg. 67,242 (2001), with interventions or protests due on or before January 4, 2002. Massachusetts Municipal Wholesale Electric Company filed a timely motion to intervene and protest. Specifically, Massachusetts Municipal Wholesale Electric Company expressed concern that Applicants and the other affiliates (PG&E generation affiliates, at the time) in the December 14, 2001 updated

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<sup>8</sup> *Plains End, LLC*, 96 FERC ¶ 62,096 (2001).

<sup>9</sup> As stated above, Applicants were previously owned by NEGТ, an affiliate of Pacific Gas & Electric Company (PG&E), a traditional electric utility. Applicants' December 14, 2001 updated market power analysis was filed as a part of a group of entities owned by PG&E, with whom Applicants are no longer affiliated.

market power analysis had not performed the Supply Margin Assessment screen and provided only “minimal information” in its place. It argued that, as a result, there was no evidentiary basis for the Commission to consider the possible market power of certain PG&E generating facilities in New England. On January 17, 2002, Applicants (and the other then-affiliated applicants) filed an answer to Massachusetts Municipal Wholesale Electric Company’s protest.

10. Notice of Applicants’ March 31, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 19,750 (2005), with interventions or protests due on or before April 21, 2005. None was filed.

### **Discussion**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>10</sup> the timely, unopposed motion to intervene of Massachusetts Municipal Wholesale Electric Company serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>11</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Applicants’ (and the other then-affiliated applicants) answer and will, therefore, reject it.

12. With regard to the protest of Massachusetts Municipal Wholesale Electric Company, we note that the Commission replaced the Supply Margin Assessment screen, along with the ISO/RTO exemption, with two indicative screens for assessing generation market power in the April 14 Order. Massachusetts Municipal Wholesale Electric Company did not file a protest to Applicants’ March 31, 2005 revised market analysis. Additionally, we note that Applicants are no longer affiliated with PG&E. For these reasons, Massachusetts Municipal Wholesale Electric Company’s protest with Applicants’ December 14, 2001 filing has been adequately addressed.

13. 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>12</sup> As discussed

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<sup>10</sup> 18 C.F.R. § 385.214 (2004).

<sup>11</sup> 18 C.F.R. § 385.213(a)(2) (2004).

<sup>12</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).

below, the Commission concludes that Applicants satisfy the Commission's standards for market-based rate authority.

14. 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. Section 35.27(a) of the Commission's regulations 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.<sup>13</sup>

15. Applicants prepared both the pivotal supplier and the wholesale market share screen analyses for the fifteen relevant markets in which their affiliates own or control generation, including markets in which the affiliated generation consisted entirely of generating facilities constructed after July 9, 1996.<sup>14</sup> The Commission has reviewed Applicants' generation market power analyses for the fifteen relevant geographic markets, and determined that Applicants pass the screens in those markets.<sup>15</sup> Based on Applicants' representations, accordingly, the Commission finds that Applicants

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<sup>13</sup> 18 C.F.R. § 35.27(a) (2004). 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 its regulations.

<sup>14</sup> The fifteen relevant markets include: PJM Interconnection, L.L.C., Bonneville Power Administration, California Independent System Operator Corporation, Carolina Power & Light (CPL), Central and South West Services, Inc. (CSWS), Entergy Corporation, ISO New England Inc., Northern States Power (NSP), New York Independent System Operator, Inc., Northwestern Energy Montana (NWMT), Dominion Virginia Power (VAP), Wisconsin Electric Corporation (WEC), Florida Power and Light Company, PacifiCorp East, Public Service Company of Colorado.

<sup>15</sup> In some instances, Applicants used simultaneous import capability data from filings currently pending before the Commission. However, Applicants pass the indicative screens without considering competing supplies imported into the CSWS, CPL, VAP, NSP, WEC, and NWMT control areas. The Commission accepts as an appropriate simplifying assumption no imports of competing supplies. The Commission clarifies that it relied on the Applicants' data from FERC Form 714 filings, EIA-860, and other public sources rather than on data which is pending before the Commission or that the Commission has found to be deficient. Similarly, in some instances, the Commission relied on conservative simplifying assumptions (i.e., exclusion of planned outages) to verify that Applicants pass both indicative screens.

satisfy the Commission's generation market power standard for the grant of market-based rate authority.

16. Applicants state that neither they nor any of their affiliates owns or controls any transmission facilities in the relevant geographic markets. Based on Applicants' representations, the Commission finds that Applicants satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

17. Applicants state that neither they nor any of their affiliates has dominant control over sites or other scarce inputs to generation that could be used to prevent competitors from entering the market. Applicants state that although GS Group, through its subsidiaries, holds for investment purposes up to 10 percent of the voting shares of companies that own or control fuel delivery systems, such voting securities are held for investment purposes only and do not confer control over any fuel supplies, unique land sites, or other inputs to electric power generation. Furthermore, with respect to the ownership and operation of natural gas assets, Applicants state that should they or any of their affiliates deny, delay, or require unreasonable terms, conditions, or rates for fuel procurement to a potential electric competitor, any electric competitor may file a complaint with the Commission that could result in the suspension of authority to sell power at market-based rates.<sup>16</sup> Based on these representations, the Commission is satisfied that Applicants cannot erect barriers to entry.

18. Applicants state that neither they nor any of their affiliates are a public utility with a franchised electric service territory. Based on these representations, Applicants satisfy the Commission's concerns with regard to affiliate abuse.

### **Market-Based Rate Tariff Revisions**

19. Applicants, in their March 31, 2005 filing, also revised their affiliate sales language and updated the issuing officer of their tariffs, Madison requested authority to resell firm transmission rights; and Madison and Plains End terminated their codes of conduct because they are no longer affiliated with PG&E or any other utility with a franchised service territory. Consistent with the Commission's precedent as identified in *FirstEnergy Operating Companies*, 111 FERC ¶ 61,032 (2005), the proposed tariff revisions to Applicants' tariffs have been rejected at the time of filing as outside the scope of that compliance filing without prejudice to Applicants making a separate filing pursuant to section 205 of the Federal Power Act. Accordingly, the Commission finds that Applicants' request in this regard has been addressed.

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<sup>16</sup> See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

### **Reporting Requirements**

20. 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.<sup>17</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>18</sup>

21. Applicants 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>19</sup> 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. As noted above, Applicants have revised their tariffs to include the change in status reporting requirement.

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<sup>17</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/Electric/eqr/eqr.htm>.

<sup>18</sup> The exact 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.

<sup>19</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 (2005).

22. Applicants 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.

Linda Mitry,  
Deputy Secretary.