

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

July 22, 2005

In Reply Refer To:
Infinite Energy, Inc.
Docket No. ER97-3923-002

John & Henegerer
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Dear Mr. John:

1. On April 7, 2005, Infinite Energy, Inc. (Infinite) filed an updated market power analysis pursuant to the Commission's order granting Infinite authority to sell electric energy and capacity at market-based rates (October 2, 1997 Order).¹ Infinite also filed tariff modifications incorporating the Commission's market behavior rules² and the change in status reporting requirement adopted in Order No. 652.³ Infinite further requested limited waiver of the requirement to file an updated market analysis within three years of the October 2, 1997 Order to the extent necessary to allow Infinite to file

¹ *Infinite Energy, Inc.*, Docket No. ER97-3923-000 (October 2, 1997) (unpublished letter order).

² *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) (Market Behavior Rules Order), *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).

its updated market analysis out of time.⁴ Infinite's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective May 1, 2005, as requested.⁵ The Commission also accepts Infinite's revised market-based rate tariff incorporating the Commission's market behavior rules and the change in status reporting requirement adopted in Order No. 652. Infinite's next updated market power analysis is due three years from the date of this order.

2. Infinite is a Florida corporation with its principal place of business in Gainesville, Florida. Infinite states that it is an independent power marketer. Infinite further states that neither it nor any of its affiliates have a franchised service territory, own or control transmission facilities, or own or control electric generation facilities.

Procedural Matters

3. Notice of Infinite's April 7, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 20890 (2005), with interventions and protests due on or before April 28, 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.⁶ As discussed below, the Commission concludes that Infinite satisfies the Commission's standards for market-based rate authority.

⁴ Infinite should have filed its updated market analysis by October 2, 2000, which is three years from the date the Commission granted it authority to sell electric energy and capacity at market-based rates. Infinite did not file that analysis until April 7, 2005. Infinite's next updated market power analysis is due within three years of the date of this order and we expect that filing to be made in a timely fashion.

⁵ Rate Schedule FERC No. 1, First Revised Sheet No. 1 (Supersedes Original Sheet No. 1) and Original Sheet No. 2-3. Waiver of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2005), is granted to allow for the effective date noted above.

⁶ 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).

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), we adopted two indicative screens for assessing generation market power. Infinite states that neither it nor any of its affiliates own or control any generation assets. Based on Infinite's representation, Infinite satisfies the Commission's generation market power standard for the grant of market-based rate authority.

6. Infinite states that neither Infinite nor any of its affiliates own or control transmission assets. Based on Infinite's representation, the Commission finds that Infinite satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

7. Infinite states that neither Infinite nor any of its affiliates own or otherwise control other inputs to electric power production other than fuel supplies. Infinite states that it is not able to restrict others from gaining access to such inputs. Based on Infinite's representation, the Commission is satisfied that Infinite cannot erect barriers to entry.

8. Infinite states that it is not affiliated with any entity that has a franchised service territory or that provides service to captive customers. Based on Infinite's representation, we find that Infinite satisfies the Commission's concerns with regard to affiliate abuse.

9. Infinite requests a limited waiver of the October 2, 1997 Order to the extent necessary to submit the instant market analysis out of time. Infinite acknowledges it should have filed its analysis by October 2, 2000, but states that its failure to submit the updated analysis in a timely manner was the result of a good faith misinterpretation of its filing responsibilities, which, when detected, was promptly corrected by the instant filing. Infinite further states that it has never engaged in power marketing activities and only recently began exploring the possibility of initiating such activities. Infinite states that good cause exists to permit it to file the instant market analysis out of time. The Commission will grant this request.

Reporting Requirements

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.⁷ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁸

11. Infinite 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.⁹ 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, Infinite has revised its tariff to include the change in status reporting requirement.

12. Infinite is 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.

⁷ *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>.

⁸ 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.

⁹ *Supra* note 3.