

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

November 2, 2004

In Reply Refer To:  
Brascan Energy Marketing Inc.  
Docket No. ER02-2407-002

Patton Boggs LLP  
Attn: Jennifer Schwitzer, Esq.  
Counsel for Brascan Energy Marketing Inc.  
2550 M Street, NW  
Washington, DC 20037

Dear Ms. Schwitzer:

1. On August 27, 2004, Brascan Energy Marketing Inc. (Brascan)<sup>1</sup> filed an updated market power analysis pursuant to the Commission's order granting Brascan market-based rate authorization.<sup>2</sup> Brascan's submittal is accepted for filing. As discussed below, we conclude that Brascan satisfies the Commission's standards for market-based rate authority.

2. Brascan states that it is a wholly-owned subsidiary of Great Lakes Power Inc. (GLPI) under the laws of Ontario and is based in Gatineau, Québec, Canada. Brascan states that it does not own or operate any generation or transmission assets in Canada or in the United States. However, Brascan notes that its affiliates own generation in the New England Independent System Operator (ISO-NE) and the New York Independent System Operator (NYISO) control area markets, and own transmission facilities in Canada.

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<sup>1</sup>Formerly known as Maclaren Energy Inc.

<sup>2</sup> *Maclaren Energy Inc.*, Docket Nos. ER01-2104-000 & ER01-2104-001 (Aug. 27, 2001) (unpublished letter order).

3. Brascan's parent company, GLPI, recently announced its intent to acquire 776 MW of capacity in New York from Reliant Energy, Inc.<sup>3</sup> Brascan states that the acquired facilities are located in the State of New York. Brascan states that, in an abundance of caution, it has included this acquired generation in its generation market power screens.

4. Notice of Brascan's filing was published in the *Federal Register*, 69 Fed. Reg. 54,777 (2004), with comments, protests, and interventions due on or before September 17, 2004. None was filed.

5. 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>4</sup> As discussed below, we conclude that Brascan continues to satisfy the Commission's standards for market-based rate authority.

6. In its order issued in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. Brascan states that it does not own or control any generation. Regarding its affiliates, Brascan has prepared both the pivotal supplier and the wholesale market share screen analyses for the ISO-NE and NYISO control area markets.<sup>5</sup> The Commission has reviewed Brascan's generation market power screen analyses for the ISO-NE and NYISO control area markets and has determined that Brascan passes the screens in those markets. Accordingly, the Commission finds that Brascan satisfies the Commission's generation market power standard for the grant of market-based rate authority.

7. Brascan states that neither it nor any of its affiliates owns, operates, or controls any transmission facilities in the United States. Brascan notes that the transmission facilities owned by Brascan's affiliates are limited and discrete facilities located

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<sup>3</sup>GLPI's application is currently pending before the Commission in Docket No. EC04-120-000.

<sup>4</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); 79 FERC ¶ 61,149 (1997); *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).

<sup>5</sup> Applicants located in ISO/RTOs with sufficient market structure, such as PJM, ISO-NE and NYISO and CAISO may consider the geographic region under the control of the ISO/RTO as the default relevant geographic market for purposes of completing their screen analyses. See April 14 Order, 107 FERC ¶ 61,018 at P 187.

exclusively in Québec Canada. Brascan states that the transmission facilities are interconnected with the Ontario power grid and Hydro-Québec's transmission system. Brascan notes that in its initial request for market-based rate authority the Commission granted Brascan market-based rate authority.<sup>6</sup> Based on Brascan's representation, the Commission finds that Brascan satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. Brascan states that neither it nor any of its affiliates owns or controls any plant sites, gas pipeline or gas distribution facilities, engineering or construction firms, or other inputs that could impose barriers to entry by other power suppliers. Based on this representation, the Commission finds that neither Brascan nor any of its affiliates can erect barriers to entry.

9. Brascan states that it is not affiliated with an electric utility that has a franchised service territory. Based on this representation, we find that Brascan satisfies the Commission's concerns with regard to affiliate abuse.

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

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<sup>6</sup> The Commission found that Brascan satisfied the Commission's requirements for market-based rates. *Maclaren Energy Inc.*, Docket Nos. ER01-2104-000 & ER01-2104-001 (Aug. 27, 2001) (unpublished letter order). Brascan's tariff includes the terms and conditions under which it provides service.

<sup>7</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>8</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.

11. 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, in a Notice of Proposed Rulemaking in Docket No. RM04-14-000, the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates.<sup>9</sup> Accordingly, the change in status reporting obligation for Brascan is subject to the outcome of the rulemaking.

12. Brascan 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.

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<sup>9</sup> *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004).