

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

June 24, 2005

In Reply Refer To:  
Lake Road Generating Company, L.P.  
Docket Nos. ER99-1714-002  
ER99-1714-004

Dewey Ballantine LLP  
Attn: Earle O'Donnell, Esq.  
Attorney for Lake Road Generating Company, L.P.  
1775 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-4605

Dear Mr. O'Donnell:

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

2. On May 13, 2005, Lake Road Generating Company, L.P. (Lake Road) filed a market power analysis pursuant to the Commission's order issued on May 13, 2004.<sup>2</sup> The 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> In addition, Lake Road filed a revised market-based rate tariff containing the Commission's market behavior rules and change in status requirement. Lake Road's updated market power analysis and revised market-based rate tariff are accepted for filing.<sup>4</sup>

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<sup>1</sup> The Commission granted Lake Road market-based rate authority in *Rockingham Power, L.L.C.*, 86 FERC ¶ 61,337 (1999).

<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> First Revised FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1 – 5. Lake Road's market behavior rules are effective December 17, 2003 and the change in status requirement is effective March 21, 2005.

3. Lake Road states that it owns and operates an 840 MW combined-cycle, natural gas-fired generating facility located in Killingly, Connecticut. Due to the bankruptcy of its prior owner, National Energy & Gas Transmission, Inc., the ownership interest in Lake Road is currently held by a group of 19 creditors of Lake Road.<sup>5</sup> Lake Road states that these creditors, including banks, institutional investors, financial institutions, investment companies and related entities, are not primarily engaged in energy-related business activities.

### **Procedural Matters**

4. Notice of Lake Road's filing in Docket No. ER99-1714-004 was published in the *Federal Register*, 70 Fed. Reg. 29,731 (2005), with interventions or protests due on or before June 3, 2005. None was filed. Lake Road's filing in Docket No. ER99-1714-002 was noticed on December 20, 2001.

### **Discussion**

#### **Market-Based Rate Authorization**

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>6</sup> As discussed below, the Commission concludes that Lake Road satisfies the Commission's standards for market-based rate authority.

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<sup>5</sup> Lake Road's owners include: The Bank of Nova Scotia (4.8283 percent), Barclays Bank plc (4.8283 percent), BNP Paribas (BNP) (7.6670 percent), Calyon New York Branch (Calyon) through its wholly-owned subsidiary formed solely to hold its interest in Lake Road, LaRoa, LLC (8.7973 percent), Cargill Financial Services International, Inc. (4.8283 percent), Citibank, N.A. (12.4782 percent), CoBank, ACB (3.0187 percent), Commerzbank AG, Grand Cayman Branch (3.6860 percent), Danske Bank A/S (3.6860 percent), Deutsche Bank AG (Deutsche Bank) (8.4524 percent), Fortis Capital Corp. (4.8283 percent), ING Capital LLC (3.0187 percent), Nordea Bank Finland plc (3.5665 percent), Société Générale (10.9940 percent), Toronto Dominion (Texas) Inc. (3.6860 percent), Union Bank of California, N.A. (3.9690 percent), and Bear Stearns Investment Products, Inc. (Bear Sterns) (7.6670 percent). *See* application at 6 n. 18.

<sup>6</sup> *See, e.g., Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., LLC*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

6. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.<sup>7</sup> Lake Road has prepared both the pivotal supplier and the wholesale market share screens for the ISO New England, Inc. (ISO-NE) market where it is located. For the purposes of the generation market power analysis, Lake Road has considered each lender holding a 5 percent or greater voting interest in Lake Road (either directly or indirectly through an affiliate or subsidiary with the same corporate parent) as an affiliate. Lake Road has therefore included the generation assets of BNP, Calyon, Citibank, Deutsche Bank, and Société Générale in its analysis of the ISO-NE market.<sup>8</sup> The Commission has reviewed Lake Road's generation market power analysis and has determined that Lake Road passes the generation market power screens in the ISO-NE market. Accordingly, the Commission finds that Lake Road satisfies the Commission's generation market power standard for the grant of market-based rate authority.

7. Lake Road states that neither it nor its affiliates possess any transmission facilities other than interconnection transmission facilities needed to effect sales from their respective generation facilities. No intervenor has raised transmission market power concerns. Based on Lake Road's representations, we find that Lake Road satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. Lake Road states that both it and its affiliates lack the ability to hinder or bar entry into the power generation marketplace. Lake Road states that neither it nor its affiliates are franchised utilities; they do not have the ability to unilaterally site new generation plants or to block other entities from siting new plants; and they do not own or control any natural gas pipelines or local natural gas distribution companies serving the relevant market area or any suppliers of electrical equipment. Finally, Lake Road states that neither it nor its affiliates own any sites that would be suitable for building generation facilities, nor do they own construction or engineering companies operating in the relevant geographic area. No intervenor has raised concerns regarding barriers to entry. Based on Lake Road's representations, the Commission is satisfied that Lake Road cannot erect barriers to entry.

9. Lake Road states that it is not affiliated with an electric utility that has a franchised service territory. Lake Road's tariff, however, contains a provision prohibiting sales to Pacific Gas and Electric Company (PG&E), a utility with a franchised service territory, and a code of conduct governing the relationship between PG&E and Lake Road. As a result of the transfer of the ownership interest in Lake Road to the group of creditors, Lake Road is no longer affiliated with PG&E. Lake Road states that it

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<sup>7</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004).

<sup>8</sup> Lake Road notes that, although Bear Stearns owns a 7.6670 percent interest in Lake Road, its voting interests are limited to 2.8508 percent.

plans to separately file a revision to its tariff to remove the code of conduct that was previously required due to Lake Road's former affiliation with PG&E and make conforming changes. No intervenor has raised affiliate abuse concerns. Based on these representations, we find that Lake Road 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>9</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>10</sup>

11. Lake Road 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>11</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.<sup>12</sup> As noted above, Lake Road has revised its tariff to include the change in status reporting requirement.

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<sup>9</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>10</sup> The exact filing 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>11</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) (Order No. 652), *order on reh'g*, 111 FERC ¶ 61,413 (2005).

<sup>12</sup> *Id.*

12. Lake Road 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.

( S E A L )

Magalie R. Salas,  
Secretary.