

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

July 14, 2005

In Reply Refer To:
Prime Power Sales I, LLC
Docket Nos. ER05-982-000, and
ER05-982-001

Bracewell & Giuliani LLP
Attn: Jacqueline R. Java, Esq.
Counsel for Prime Power Sales I, LLC
2000 K Street, N.W.
Suite 500
Washington, D.C. 20006-1872

Dear Ms. Java:

1. On May 18, 2005, as amended on June 9, 2005, Prime Power Sales I, LLC (PPSI) filed an application for market-based rate authority with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity, energy,¹ and ancillary services at market-based rates within PJM Interconnection, LLC (PJM) and for the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs).² PPSI's submittal includes the Commission's market behavior rules³ and the change in status reporting requirement adopted by the Commission in Order No. 652.⁴ PPSI's submittal satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective July 18, 2005, as requested.

¹ Paragraph 1 of PPSI's tariff specifically limits PPSI's market-based rate transactions to the PJM market. Paragraph 1, Original Sheet No. 1, Prime Power Sales I, LLC, Original Rate Schedule FERC No. 1.

² PPSI plans to sell certain ancillary services in the markets administered by PJM.

³ *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).

⁴ *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) (Order No. 652).

2. PPSI states that it is a limited liability company with its principal place of business at Woodlands, Texas. PPSI states that its business activities will consist solely of the purchase and sale of wholesale energy and capacity and related products in PJM. PPSI states that it is a wholly-owned subsidiary of Prime Energy Limited Partnership (Prime). Prime also owns a 64 MW qualifying facility in New Jersey (Prime Facility), the entire output of which is committed under two long-term contracts to Jersey Central Power & Light Co. and Marcal Paper Mills, Inc.⁵ PPSI states that Prime is a limited partnership that is 50 percent owned by Elmwood Energy, LLC (Elmwood), which through subsidiaries has interests in two cogeneration facilities in California,⁶ and 50 percent owned by GS Prime Direct Holdings, LLC (GS Direct).

3. PPSI states that GS Direct is wholly owned by GS Prime Holdings, LLC (GS Holdings). GS Holdings is wholly owned by the Goldman Sachs Group, Inc. (GS Group). GS Group is a Delaware corporation. GS Group, together with its consolidated subsidiaries, is a global investment banking, securities, and investment management firm. GS Group currently indirectly holds for investment purposes less than 10 percent of the voting shares of several energy companies. PPSI states that the interests held by GS Group in such energy companies are transitory and may fluctuate as often as hourly or daily. PPSI states that these investments are held in the ordinary course of business, and neither GS Group nor any of its affiliates has control over any of these energy companies.

4. PPSI states 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). PPSI states that neither J. Aron nor PRF is currently party to any long-term power purchase agreements that assign operational control of generation capacity to J. Aron or PRF. CEPM currently is not engaged in any trading activity. PPSI states that neither J. Aron, PRF, nor CEPM own interests in any electric generation, transmission, or distribution facilities. PPSI states that through other various subsidiaries, GS Group holds indirect interests in electric generating facilities, all of which are qualifying facilities (QFs) pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA), or eligible facilities of exempt wholesale generators (EWGs) pursuant to the Public Utility Holding Company Act of 1935, as amended (PUHCA). PPSI states that other than in a capacity as a dealer and market-maker in securities, and with the exception of its interests in QFs and eligible facilities of EWGs, GS Group and its affiliates do not now beneficially own for

⁵ See page 2 of *Prime's* amended filing on June 9, 2005.

⁶ These are the 44 MW Ripon Cogeneration facility and the 42 MW San Gabriel Cogeneration facility which sell all output under long-term contracts to Pacific Gas and Electric Company and Southern California Edison Company, respectively.

proprietary investment purposes 10 percent or more of the voting securities of any company that owns electric generation or that holds an electric franchised territory. PPSI further states neither it nor its affiliates control transmission facilities other than those necessary to interconnect with transmission systems.

Procedural Matters

5. Notice of PPSI's May 18, 2005 filing in Docket No. ER05-982-000 was published in the *Federal Register*, 70 Fed. Reg. 30,939 (2005), with interventions and protests due on or before June 8, 2005. Notice of PPSI's June 9, 2005 supplemental filing in Docket No. ER05-982-001 was published in the *Federal Register*, 70 Fed. Reg. 35,663 (2005), with interventions and protests due on or before June 30, 2005. None was filed.

Discussion

Market-Based Rate Authorization

6. 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.⁷ As discussed below, the Commission concludes that PPSI satisfies the Commission's standards for market-based rate authority.

7. In its order issued in *AEP Power Marketing, Inc.*, 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, the pivotal supplier screen and the wholesale market share screen. PPSI states that PPSI does not own any generation assets. PPSI further states that its power marketer affiliates, J. Aron, PRF, CEPM, and five EWG affiliates of PPSI within the GS Group (GS Group affiliates) recently filed triennial market power analyses containing the applicable screens necessary to determine that the GS Group affiliates are not able to exercise generation market power anywhere in the United States. PPSI states that these analyses included consideration of assets or contracts owned by GS Group or its affiliates in PJM and surrounding markets. PPSI states that the Commission accepted these filings and found that the GS Group affiliates

⁷ 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).

satisfy the Commission's standards for market-based rate authority on April 14, 2005.⁸ PPSI states that neither GS Group nor any of its affiliates has acquired any additional assets or positions in PJM or surrounding markets since the GS Group's applications were completed. PPSI states further that its Prime affiliates do not own generation or other positions in PJM or surrounding markets other than the Prime Facility, which is fully committed to a third party under a long-term contract. Based on these representations, the Commission finds that PPSI satisfies the Commission's generation market power standard for market-based rate authority.

8. PPSI also states that neither PPSI nor its affiliates control transmission facilities in North America other than those facilities necessary to interconnect individual generation facilities owned or operated by a QF or EWG to the transmission grid. Based on these representations, the Commission finds that PPSI satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

9. PPSI states that neither PPSI nor its affiliates own or control resources that could be used to restrict the market entry of competing suppliers, marketers, or brokers, or hinder competitors' access to natural gas supplies. Based on this representation, the Commission is satisfied that PPSI cannot erect barriers to entry.

10. PPSI states that neither PPSI nor any of its affiliates has any franchised electric utility affiliates in the United States. The proposed tariff prohibits transactions with any public utilities with franchised service territories with which PPSI may become affiliated. Based on this representation, the Commission finds that PPSI satisfies the Commission's concerns with regard to affiliate abuse.

11. PPSI requests authority to engage in the sale of certain ancillary services (listed in the proposed tariff) at market-based rates into the markets administered by PJM. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant PPSI's request.⁹

12. PPSI also requests authority to sell additional ancillary services in PJM to the extent the Commission grants authority on a blanket basis to make sales of any such ancillary services to all persons then authorized to make sales of energy and capacity at market-base rates.¹⁰ The Commission will grant PPSI's request; however, this grant does

⁸ See *J. Aron & Co.*, 111 FERC ¶ 61,022 (2005).

⁹ *Atlantic City Electric Co.*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (1999).

¹⁰ Paragraph 8(b), Original Sheet No. 2, Prime Power Sales I, LLC, Original Rate Schedule FERC No. 1.

not relieve PPSI of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2005).¹¹

13. PPSI also requests authority to reassign transmission capacity and to resell FTRs or their equivalent. The Commission finds PPSI's proposed provisions consistent with the Commission's requirements.¹² Accordingly, the Commission will grant this request.

Other Waivers, Authorizations and Reporting Requirements

14. PPSI requests the following waivers and authorizations: (1) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except as to sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting requirements; (3) abbreviated filings with respect to interlocking directorates under Part 45 of the Commission's regulations; and (4) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

15. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹³ Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects PPSI to keep its accounting records in accordance with generally accepted accounting principles.

16. Within 30 days of the date of the issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by PPSI should file a motion to intervene or protest with

¹¹ See *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

¹² See *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997); *Calif. Indep. Sys. Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

¹³ It should be noted that the Commission is examining the issue of continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141), as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of obligations and liabilities (18 C.F.R. Part 34). See *Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities*, Order No. 627, 67 Fed. Reg. 67,691 (Oct. 10, 2002), FERC Stats. & Regs. ¶ 32,558, at P 23-24 (2002).

the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214 (2005).

17. Absent a request to be heard within the period set forth above, PPSI is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of PPSI, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

18. Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving PPSI. Any such person, instead, shall timely file a sworn application providing the following information¹⁴:

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

19. The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of PPSI's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

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

¹⁴ For current interlocks, applications should be filed within 30 days of the date of this order. We note that the Commission has issued a proposed rulemaking, *Commission Authorization to Hold Interlocking Directorates*, 110 FERC ¶ 61,343 (2005), which is considering modifications to 18 C.F.R. Part 45. The Commission is considering changing its requirements as to timing and also is examining the possibility of no longer granting a waiver of the full requirements of Part 45 in its orders granting market-based rate authority.

(one year or greater) market-based power sales during the most recent calendar quarter.¹⁵ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁶ Accordingly, PPSI must file its first Electric Quarterly Report no later than 30 days after the first quarter PPSI's rate schedule is in effect.

21. PPSI 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. 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, PPSI has included the change in status reporting requirement in its tariff.

22. Finally, PPSI 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.

Linda Mitry,
Deputy Secretary.

¹⁵ *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>.

¹⁶ 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.