

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

September 26, 2005

TransAlta Energy Marketing (U.S.) Inc.	In Reply Refer To: Docket Nos. ER05-1014-000 ER05-1014-001 ER05-1014-002 ER98-3184-000 ER98-3184-008 ER98-3184-009 ER98-3184-010 ER01-3148-000
TransAlta Centralia Generation LLC	Docket Nos. ER00-494-000 ER00-494-001 ER00-494-002 ER00-494-003
Merchant Energy Group of Americas, Inc.	Docket No. ER98-1055-000
TransAlta Energy Marketing (U.S.) Inc., and TransAlta Centralia Generation LLC	Docket No. EL05-111-000

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Dear Mr. Angle:

1. On May 24, 2005, as amended on June 24 and August 3, 2005, TransAlta Energy Marketing (U.S.) Inc. (TEMUS) and TransAlta Centralia Generation LLC (TCG) (collectively, TransAlta Companies or Applicants) filed an updated market power analysis, pursuant to the Commission's order granting Applicants authority to sell electric

energy and capacity at market-based rates.<sup>1</sup> Applicants also submitted revised tariff sheets to comply with the Commission's market behavior rules<sup>2</sup> and change in status reporting requirement.<sup>3</sup> In this order, the Commission accepts the revised tariff sheets incorporating the market behavior rules and change in status reporting requirement filed by the TransAlta Companies.<sup>4</sup> The Commission also accepts the updated market power analysis filed by the TransAlta Companies. As discussed below, we conclude that the TransAlta Companies satisfy the Commission's standards for market-based rate authority.

2. On May 24, 2005, TEMUS submitted revised tariff sheets providing for the sale of certain ancillary services at market-based rates. The Commission accepts these tariff revisions for filing.

3. This order also terminates the proceeding instituted under section 206 of the Federal Power Act (FPA)<sup>5</sup> in Docket No. EL05-111-000 with regard to TEMUS and TCG.<sup>6</sup> TransAlta Companies submitted an updated market power analysis before the order instituting the section 206 proceeding was issued, and thus were inadvertently included among the companies ordered to submit updated market power analyses in the Commission's May 31 Order in Docket No. EL05-111-000.

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<sup>1</sup> The Commission granted TEMUS market-based rate authority in *TransAlta Energy Marketing (U.S.) Inc.*, Docket No. ER98-3184-000 (June 25, 1998) (unpublished letter order). The Commission granted TCG market-based rate authority in *Allegheny Energy Unit 1 and Unit 2, L.L.C.*, 89 FERC ¶ 61,272 (1999).

<sup>2</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>3</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, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

<sup>4</sup> TEMUS, Rate Schedule FERC No. 1, First Revised Sheet Nos. 1-5, effective July 24, 2005; TCG, Rate Schedule FERC No. 1, First Revised Sheet Nos. 1-3, effective July 24, 2005.

<sup>5</sup> 16 U.S.C. § 824e (2004).

<sup>6</sup> *See 3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (instituting a section 206 proceeding for the listed entities that had failed to comply with the requirement to submit an updated or revised market power analysis) (May 31 Order).

4. The Commission in the May 31 Order also listed TransAlta Energy Marketing Corp. (U.S.). Applicants inform us that no entity referred to as TransAlta Energy Marketing Corp. (U.S.) exists in the TransAlta corporate family. Additionally, the Commission on August 29, 2002 in Docket No. ER01-3148-002 accepted for filing by TEMUS a re-designation of rate schedules previously issued by Merchant Energy Group of Americas, Inc. in Docket No. ER98-1055-000. In light of this information the investigations with respect to these dockets under Docket No. EL05-111-000 are also terminated.

5. TEMUS is a Delaware corporation with its principal place of business in Oregon. TEMUS is a direct subsidiary of TransAlta Energy, Inc. and an indirect subsidiary of TransAlta Energy Corporation. TEMUS is a power marketer.

6. TCG is a Washington limited liability company, with offices in Centralia, Washington and Calgary, Alberta. TCG is a wholly-owned subsidiary of TECWA Power, Inc. TECWA Power Inc. is a direct wholly-owned subsidiary of TransAlta Energy Corporation. TCG is an exempt wholesale generator.

### **Procedural Matters**

7. Notice of Applicants' May 24, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 37384 (2005), with interventions or protests due on or before June 14, 2005. None was filed.

8. Notice of Applicants' June 24, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 39264 (2005), with interventions or protests due on or before July 15, 2005. None was filed.

9. Notice of Applicants' August 3, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 48,387 (2005), with interventions or protests due on or before August 24, 2005. None was filed.

### **Discussion**

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

10. 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>7</sup> As discussed below, the Commission concludes that TransAlta Companies satisfy the Commission's standards for market-based rate authority.<sup>8</sup>

11. 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. The Applicants have prepared both the pivotal supplier and the wholesale market share screens for the Bonneville Power Administration (BPA) and the New York Independent System Operator, Inc. (NYISO) markets. The Commission has reviewed the Applicants' generation market power analysis for the BPA and NYISO markets and has determined that the Applicants pass the screens in those markets. Accordingly, the Commission finds that the Applicants satisfy the Commission's generation market power standard for the grant of market-based rate authority.

12. TransAlta Companies state that neither they nor their affiliates own or control transmission facilities other than generation interconnection facilities. Based on Applicants' representation, the Commission finds that TransAlta Companies satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

13. TransAlta Companies state that neither they nor any of their affiliates have control over scarce sites for capacity development or control any fuel transportation systems in the relevant markets that could be used to impede downstream generators from gaining access to gas supplies. Based on the Applicants' representations, the Commission is satisfied that the TransAlta Companies cannot erect barriers to entry.

14. TransAlta Companies state that neither they nor any of their affiliates have a franchised service territory for the sale of electricity to captive customers, and accordingly there are no issues with regard to affiliate abuse. TransAlta Companies therefore request waiver of the Commission's code of conduct requirement. In addition, TEMUS' tariff prohibits sales to affiliates with franchised service territories and TCG's

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<sup>7</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).

<sup>8</sup> TransAlta Companies should have filed updated market power analyses by 2002, three years from the date the Commission acted on their previous filings. TransAlta Companies, however, did not file again until May 24, 2005, approximately three years out of time. Both TEMUS's and TCG'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.

market-based rate tariff restricts sales of electricity to any affiliates with franchised service territories without first receiving Commission approval of the transaction under section 205 of the FPA.<sup>9</sup> Based on these representations, TransAlta Companies satisfy the Commission's concerns with regard to affiliate abuse.

15. Because TransAlta Companies have no affiliates with a franchised service territory, Applicants are not required to file a code of conduct.<sup>10</sup> However, should TransAlta Companies become affiliated with an entity with a franchised service territory or obtain captive customers in the future, TransAlta Companies are directed to notify the Commission and we reserve the right to impose the code of conduct requirement.

### **Ancillary Services**

16. TEMUS 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 the California Independent System Operator, Inc. (CAISO), ISO New England (ISO-NE), PJM Interconnection, L.L.C. (PJM), and NYISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant TEMUS's request.<sup>11</sup> TEMUS also requests authority to engage in the sale of certain ancillary services to third party suppliers in other markets subject to certain restrictions.<sup>12</sup> The Commission grants this request.

17. TEMUS proposes to offer additional ancillary services in other geographic markets, as the Commission may specify and authorize from time to time in orders that extend such authority to all sellers authorized to sell energy and capacity at market-based

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<sup>9</sup> 16 U.S.C. § 824d (2004).

<sup>10</sup> See *Gleason Power I, L.L.C.*, 90 FERC ¶ 61,252 at n. 3 (2000) and *Calpine Fox, LLC*, 109 FERC ¶ 61,058 (2004).

<sup>11</sup> See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *Atlantic City Electric Co.*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (1999); *Central Hudson Gas & Electric Corp.*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 (1999); *AES Redondo Beach, L.L.C.*, 85 FERC ¶ 61,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g and clarification*, 90 FERC ¶ 61,036 (2000).

<sup>12</sup> *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999).

rates. TEMUS' request in this regard is granted; however, the grant does not relieve TEMUS of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2005).<sup>13</sup>

### **Waivers, Authorizations and Reporting Requirements**

18. TEMUS requests that the Commission waive the prior notice requirement and permit the proposed changes to its tariff to be effective on May 24, 2005. TEMUS submits that good cause exists for waiver because this filing has no rate impact and would allow TEMUS to begin supplying ancillary services into the Commission approved markets. TEMUS has not demonstrated good cause to justify waiver of the prior notice requirement for an effective date of May 24, 2005. Therefore, consistent with section 205 of the Federal Power Act and 18 C.F.R. § 35.3, the revised tariff will be effective July 24, 2005, following 60-day notice from the date of filing.

19. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of part 45 in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of part 45.<sup>14</sup> With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).<sup>15</sup> Thus, consistent with Order No. 664, TransAlta Companies will be required henceforth to comply with the full requirements of part 45.

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

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<sup>13</sup> See *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

<sup>14</sup> *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 112 FERC ¶ 61,298 at P 34 (2005).

<sup>15</sup> *Id.* at P 36.

greater) market-based power sales during the most recent calendar quarter.<sup>16</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>17</sup>

21. TransAlta Companies 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>18</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, TransAlta Companies have revised their tariffs to include the change in status reporting requirement.

22. TransAlta Companies 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.

Magalie R. Salas,  
Secretary.

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<sup>16</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>17</sup> 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.

<sup>18</sup> *See supra* note 3.