

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

January 19, 2006

In Reply Refer To:
Deutsche Bank AG
Docket No. ER06-234-000

Sullivan & Cromwell LLP
Attn: Kenneth M. Raisler, Esq.
Attorney for Deutsche Bank AG
125 Broad Street
New York, NY 10004

Dear Mr. Raisler:

1. On November 22, 2005, Deutsche Bank AG (Deutsche Bank) 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, and ancillary services at market-based rates and for the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs).¹ Deutsche Bank's submittal includes the Commission's market behavior rules² and the change in status reporting requirement adopted by the

¹ Deutsche Bank plans to sell certain ancillary services in the markets administered by PJM Interconnection, LLC (PJM), the New York Independent System Operator (NYISO), ISO New England, Inc. (ISO-NE), and the California Independent System Operator Corporation (CAISO).

² *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).

Commission in Order No. 652.³ Deutsche Bank's submittal satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective January 2, 2006, as requested.⁴

2. Deutsche Bank states that it is a New York Stock Exchange traded company organized under the laws of the Federal Republic of Germany. Deutsche Bank states that it is a banking and financial institution that has equity interest in several generation plants as a result of its lending business, however, Deutsche Bank does not maintain day-to-day control of the generation facilities. Deutsche Bank states that it plans to engage in the marketing and trading of electric energy and capacity at wholesale in various United States markets.

Procedural Matters

3. Notice of Deutsche Bank's November 22, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 44,350 (2005), with interventions and protests due on or before December 13, 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.⁵ As discussed below, the Commission concludes that Deutsche Bank satisfies the Commission's standards for market-based rate authority.

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) (Order No. 652).

⁴ FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1 through 4. Waiver of section 35.3 of the Commission's regulations is granted to allow for the effective date noted above. *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁵ *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 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. Deutsche Bank states that it does not own or control any generation or uncommitted capacity. Deutsche Bank states that its affiliates own approximately 830 MW of generation in the ISO-NE market and it has prepared the indicative screens for that market. The Commission's review of the generation market power screens indicates that Deutsche Bank passes the pivotal supplier and wholesale market share screens in the ISO-NE market.

6. In addition, Deutsche Bank states that certain of its affiliates own or control generation outside of ISO-New England that was constructed after July 9, 1996, approximately 36 MW in PJM.⁶ With regard to this generation, Deutsche Bank cites section 35.27(a) of the Commission's regulations, which provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.⁷

7. Accordingly, the Commission finds that Deutsche Bank satisfies the Commission's generation market power standard for the grant of market-based rate authority

8. Deutsche Bank also states that neither it nor any of its affiliates owns or controls any transmission facilities in the United States. Based on these representations, the Commission finds that Deutsche Bank satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

9. Deutsche Bank states that it does not have the ability to erect barriers to entry because neither it nor its affiliates owns or controls key inputs into the domestic power supply industry, such as intrastate natural gas transportation or distribution facilities, fuel supplies, or generation plant sites. Based on this representation, the Commission is satisfied that Deutsche Bank cannot erect barriers to entry.

10. Deutsche Bank states that neither Deutsche Bank nor any of its affiliates has a franchise or service territory for the transmission, distribution or sale of electric power in the United States. Additionally, the proposed tariff prohibits transactions with any public utilities with franchised service territories that are controlled by, under common control with, or control Deutsche Bank, without first receiving Commission approval under a

⁶ This generation is located in the PJM market.

⁷ 18 C.F.R. § 35.27(a) (2005). We note that the Commission intends to address as part of the generic rulemaking proceeding in Docket No. RM04-7-000 whether to retain or modify section 35.27(a) of its regulations.

separate filing under section 205 of the Federal Power Act (FPA). Based on this representation, the Commission finds that Deutsche Bank satisfies the Commission's concerns with regard to affiliate abuse.

11. Deutsche Bank 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, NYISO, ISO-NE, and the CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant Deutsche Bank's request.⁸

12. Deutsche Bank also requests authority to sell additional ancillary services as the Commission may specify and authorize from time to time in orders that extend such authority to all sellers previously authorized to sell energy and capacity at market-based rates. The Commission will grant Deutsche Bank's request; however, this grant does not relieve Deutsche Bank of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2005).⁹

13. Deutsche Bank also requests authority to reassign transmission capacity and to resell FTRs or their equivalent. The Commission finds Deutsche Bank's proposed provisions consistent with the Commission's requirements.¹⁰ Accordingly, the Commission will grant this request.

Other Waivers, Authorizations and Reporting Requirements

14. Deutsche Bank 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; and (3) blanket authorization under section 204 of the FPA and Part 34 of the Commission's regulations for all future issuances of securities and

⁸ See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 ¶ 61,074 (2001); *PJM Interconnection, LLC*, 86 FERC ¶ 61,247 (1999); *Cal. Indep. Sys. Operator Corp.*, 100 FERC ¶ 61,060 (2002), *order on reh'g*, 101 FERC ¶ 61,061 (2002); *New York Indep. Sys. Operator, Inc.*, 89 FERC ¶ 61,196 (1999), *order on reh'g*, *New York Indep. Sys. Operator, Inc.*, 90 FERC ¶ 61,317 (2000).

⁹ See *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

¹⁰ See *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997); *Cal. Indep. Sys. Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

assumptions of liability. Deutsche Bank also requests that the Commission grant Deutsche Bank the same limited approvals under the acquisition of securities clause of section 203 of the FPA that the Commission granted to other bank power marketers.¹¹

15. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹² Notwithstanding the waiver of the accounting and reporting requirements here, we expect Deutsche Bank to keep its accounting records in accordance with generally accepted accounting principles.

16. We will grant Deutsche Bank's request that it be allowed to acquire securities of public utilities on a blanket basis, subject to: (1) a limitation (on holdings of voting equity securities held as principal) of five percent of each voting class of securities issued by the public utility; and (2) the condition that Deutsche Bank's holdings of public utility securities, regardless of form, confers upon it no right to control (positively or negatively through debt covenants or any other means) the management or operation of the public utility.

17. Excluded from the five percent limit are: (1) Deutsche Bank's acquisition of public utility securities in connection with its lending activities, *i.e.*, securities held as debt;¹³ (2) acquisition of public utility securities in connection with Deutsche Bank's fiduciary activities; (3) underwriting activities provided that the exemption for underwriting activities will end after 45 days unless Deutsche Bank has within that period filed an application for section 203 approval to retain the securities and has undertaken

¹¹ Deutsche Bank at 2 n.3 (citing *UBS AG*, 101 FERC ¶ 61,312 (2002), *reh'g granted in part and denied in part*, 103 FERC ¶ 61,284 (2003), *reh'g granted*, 105 FERC ¶ 61,078 (2003); *Barclays Bank PLC*, Docket No. ER04-734-000 (June 2, 2004) (unpublished letter order); *see also JP Morgan Chase Bank, N.A.*, 110 FERC ¶ 61,292 (2005)).

¹² 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 (Nov. 6, 2002), FERC Stats. & Regs. ¶ 31,134, at P 23 and P 24 (2002).

¹³ We note that Deutsche Bank could be placed in a position of assuming control over another public utility. In such situations, the Commission requires Deutsche Bank to obtain its approval under section 203 before acquiring control.

during the pendency of such application not to vote the securities; and (4) Deutsche Bank is permitted to exceed the five percent limitation with respect to securities held to hedge derivative transactions to the extent that such holdings are consistent with bank regulatory requirements subject to the condition that Deutsche Bank not vote in excess of five percent of the voting securities.

18. Deutsche Bank is required to file with the Commission quarterly reports, by public utility, showing: (1) its holdings of voting securities held as principal; and (2) its total holdings of voting equity acquired, within 45 days of the close of each quarter. The reports shall be subject to a *de minimis* threshold of one percent, and such reports will be made public.¹⁴

19. 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 Deutsche Bank should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, 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).

20. Absent a request to be heard within the period set forth above, Deutsche Bank 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 Deutsche Bank, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

21. 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.¹⁵

¹⁴ See *UBS AG*, 101 FERC ¶ 61,312 (2002), *reh'g granted in part and denied in part*, 103 FERC ¶ 61,284 (2003), *reh'g granted*, 105 FERC ¶ 61,078 (2003).

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>.

Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁶ Accordingly, Deutsche Bank must file its first Electric Quarterly Report no later than 30 days after the first quarter Deutsche Bank's rate schedule is in effect.

22. Deutsche Bank 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, Deutsche Bank has included the change in status reporting requirement in its tariff.

23. Finally, Deutsche Bank is directed to file an updated market power analysis within three years of the date of this order. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Magalie R. Salas,
Secretary.

¹⁶ The exact filing 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.