

128 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Entegra Power Services, LLC

Docket No. ER09-838-000

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION

(Issued July 10, 2009)

1. In this order, the Commission grants market-based rate authorization to Entegra Power Services, LLC (Entegra), effective May 12, 2009.¹ We also find that Entegra meets the criteria for a Category 2 seller in the Southeast and Southwest, and a Category 1 seller in all other regions and is so designated.

Background

2. On March 13, 2009, Entegra filed an initial application for market-based rate authority with an accompanying rate schedule (March 13 filing). The proposed market-based rate tariff provides for the sale of energy, capacity, and ancillary services at market-based rates. Entegra requests waivers commonly granted to similar market-based rate applicants.

3. Entegra is a wholly-owned subsidiary of Entegra Power Group, LLC (Entegra Power Group), a special purpose vehicle through which a group of owners holds indirect interests in Entegra and two electric generating companies, Union Power Partners, LP (Union Power) and Gila River Power, LP (Gila River). Entegra does not own any electric generation or transmission assets. Following the Commission's approval of the tariff, Entegra will purchase energy, capacity, and ancillary services from its affiliates, Union Power and Gila River, and from other sources, and resell such energy, capacity, and ancillary services pursuant to the terms of the proposed tariff.

4. Entegra states that it is affiliated with Union Power and Gila River through Entegra Power Group. Union Power owns and operates a natural gas-fired combined-

¹ FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-2.

cycle generating facility with an installed capacity of approximately 2,200 megawatt (MW), located in Union County, Arkansas, which is within the Entergy balancing authority area. Entegra states that Gila River owns and operates a natural gas-fired, combined-cycle generating facility with an install capacity of approximately 2,200 MW, located in Gila Bend, Arizona, which is within the combined Arizona Public Service Company/Salt River Project (APS/SRP) balancing authority area. Entegra also states in the March 13 filing that it is affiliated with Liberty Electric Power, LLC (Liberty Electric), the owner of a 521 MW (summer capacity) generating facility located in the PJM Interconnection, L.L.C. Liberty Electric is an indirect subsidiary of Strategic Value Partners, LLC (Strategic Value), which together with its affiliates has a greater than 10 percent voting interest in Entegra Power Group.

5. On April 22, 2009, the Director, Division of Tariffs and Market Development West, acting under delegated authority, requested additional information concerning Entegra's category status in the Northeast region and that Entegra submit an analysis of the balancing authority area where the Gila River plant is physically located, as required by Commission regulations.

6. On May 13, 2009, Entegra submitted a response to the data request supplementing its initial application with a market power analysis for the default geographic market for Gila River, and with additional information concerning its relationship with Liberty Electric.

Notice of Filing and Responsive Pleadings

7. Notice of Entegra's March 13, 2009, filing was published in the *Federal Register*, 74 Fed. Reg. 12,348 (2009), with interventions or protests due on or before April 3, 2009. Liberty Electric filed a timely motion to intervene and comments.

8. Notice of Entegra's May 13, 2009, response was published in the *Federal Register*, 74 Fed. Reg. 25,527 (2009), with interventions or protests due on or before June 3, 2009. None was filed.

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), Liberty Electric's timely, unopposed motion to intervene serves to make it a party to this proceeding.

Discussion

A. 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, horizontal and vertical market

power.² As discussed below, we find that Entegra satisfies the Commission's standards for market-based rate authority.

1. Horizontal Market Power

11. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.³

12. Entegra submitted the pivotal supplier and wholesale market share screens for the Entergy balancing authority area prepared by Union Power.⁴ The Commission has reviewed Entegra's pivotal supplier screen and wholesale market share screen and has determined that Entegra passes the pivotal supplier screen and the wholesale market share screen in the Entergy balancing authority area.

13. Entegra also submitted the pivotal supplier and wholesale market share screens for the combined APS/SRP balancing authority areas. Entegra states that its market share in the APS/SRP balancing authority areas ranges from 12.3 to 18.7 percent in all seasons. The Commission has reviewed Entegra's pivotal supplier screen and wholesale market share screen and has determined that Entegra passes the pivotal supplier screen and the wholesale market share screen in the combined APS/SRP balancing authority areas.⁵

² *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 62, 399, 408, 440, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *order on reh'g and clarification*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, 73 Fed. Reg. 79,610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, 74 Fed. Reg. 30,924 (June 29, 2009), FERC Stats. & Regs. ¶ 31,291 (2009)

³ *Id.* P 45, 62; Order Clarifying Final Rule, 121 FERC ¶ 61,260.

⁴ *Union Power Partners, LP*, Docket No. ER05-1191-014 (March 25, 2009) (unpublished letter order) (accepting Union Power's up-dated market power analysis).

⁵ The Commission accepted Entegra's identification of the combined APS/SRP balancing authority area as the relevant geographic market for purposes of market power analyses for the Gila River facility in an application filed under section 203 of the Federal Power Act. *Entegra Power Group*, 117 FERC ¶ 61,187, at P 6 and n. 9 (2006).

14. Accordingly, the Commission finds that Entegra satisfies the Commission's requirements for market-based rates regarding horizontal market power.⁶

2. Vertical Market Power

15. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff on file before granting a seller market-based rate authorization.⁷

16. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.⁸ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and sources of coal supplies and equipment for the transportation of coal supplies, such as barges and rail cars. The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.⁹

17. Entegra states that neither it nor its affiliates own or control any transmission facilities other than interconnection facilities for its affiliates' plants to interconnect to the grid.

18. With regard to other barriers to entry, Entegra states that neither it nor any of its affiliates own or control intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; own or control any unique sites for new generation capacity development; own or control any physical coal supply sources; or have ownership or control over who may access transportation of coal supplies.

⁶ Entegra also submitted the pivotal supplier and wholesale market share screens for the PJM-East submarket within the PJM balancing authority area to account for Liberty Electric's generation.

⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

⁸ *Id.* P 440.

⁹ *Id.* P 447.

19. Consistent with Order No. 697, Entegra affirmatively states that it has not erected any barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.

20. Based on Entegra's representations, we find that it satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Affiliate Restrictions

21. Entegra states that neither it nor any of its affiliates have a franchised service area for the sale of electricity. Additionally, Entegra states that it will abide by the Commission's restrictions on transactions between a market-based rate seller and its affiliates that are franchised public utilities, to the extent that they apply to Entegra.

22. Under the "Compliance with Commission Regulations" provision in its tariff, Entegra is thus required to comply with the affiliate restrictions in section 35.39 of the Commission's regulations.

C. Waiver Requests

23. Entegra 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 Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

24. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁰ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Entegra to keep its accounting records in accordance with generally accepted accounting principles.

¹⁰ It should be noted that the Commission has recently examined and approved the continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141), as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities (18 C.F.R. Part 34). *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 984-85 (regarding waiver of Parts 41, 101, and 141), and P 999-1000 (regarding blanket approval under Part 34).

D. Reporting Requirements

25. 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 longer) market-based power sales during the most recent calendar quarter.¹¹ Public utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.¹²

26. Additionally, Entegra 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.

E. Request for Category Seller Designation

27. In Order No. 697, the Commission created two categories of sellers.¹³ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted

¹¹ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs 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>.

¹² The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2008). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, 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.

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.¹⁴ Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analysis.¹⁵

28. In its March 13 filing, Entegra states that it is affiliated with Liberty Electric.¹⁶ Entegra explains that Liberty Electric is an indirect subsidiary of Strategic Value, which together with its affiliates, has a greater than 10 percent interest in Entegra Power Group. Entegra also states that it included Liberty Electric as an affiliate for purposes of its application, but states that it has no ability to control Liberty Electric, and Strategic Value and its affiliates have no ability to control Entegra Power Group or Entegra.¹⁷

29. In its motion to intervene, Liberty Electric opposes Entegra's characterization of Liberty Electric as an affiliate of Entegra. In particular, Liberty Electric objects to any characterization, whether intended or not, of Liberty Electric as being under common control with Entegra Group. Furthermore, Liberty Electric states that on December 9, 2008, in Docket No. ER01-2398-016, Liberty Electric filed an updated market-power analysis, including an Appendix B, which depicted only the filing entity, Liberty Electric, and no affiliated generation assets or public utility affiliates. Liberty Electric requests that the Commission direct Entegra to delete the PJM balancing authority area analysis from its market-based rate application. In the alternative, Liberty Electric requests that the Commission acknowledge in its order on Entegra's market-based rate application that Entegra's analysis of market power is applicable only to the Entegra's companies, and does not impose conditions or obligations upon Liberty Electric.

30. In Entegra's response to Commission staff's data request, Entegra states that it included Liberty Electric as an affiliate out of an abundance of caution, but requests that the Commission not consider Liberty Electric to be affiliated with Entegra. Entegra states that Strategic Value does not have the ability to control Entegra Power Group or Entegra, and that Entegra Power Group does not have the ability to control Liberty Electric. In support, Entegra points to the proceeding in Docket No. EC09-54, where

¹⁴ 18 C.F.R. § 35.36(a) (2) (2008).

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

¹⁶ Entegra March 13, 2009 Filing at P 2-4.

¹⁷ *Id.* n.9.

Strategic Value agreed to implement Commission-approved commitments to further ensure that Strategic Value cannot exercise control over Entegra and Entegra Power Group.¹⁸

31. In Order No. 697, the Commission stated that it would consider on a case-by-case basis the category status of each seller with market-based rate authorization. The Commission explained that in its attempt to keep the Category 1 criteria as simple and straightforward as possible, it may have swept under Category 2 certain sellers whose particular circumstances make it unlikely that they could exercise market power. Therefore, the Commission stated that it would evaluate individual requests for exemption from Category 2 Seller status.¹⁹ Based on the conditions imposed on Strategic Value's dealings with Entegra in *MACH Gen, LLC*,²⁰ we will grant Entegra an exemption from Category 2 seller status in the Northeast region.²¹ We note that the issue of what constitutes control and affiliation for FPA section 203 and market-based rate purposes is the subject of a petition for guidance filed by Electric Power Supply Association in Docket No. PL09-3-000. Thus, pending the outcome of the petition for guidance and based on the conditions imposed on Strategic Value in *MACH Gen*, Entegra's analysis of market power is applicable only to the Entegra Companies and does not impose additional filing requirements on Liberty Electric.²²

32. Based on Entegra's representations, Entegra meets the criteria for a Category 2 seller in the Southeast and Southwest based on its affiliation with entities that own generation totaling greater than 500 MW of capacity and is so designated. Based on Entegra's representations, Entegra meets the criteria for a Category 1 seller in all other regions. Thus, Entegra must file an updated market power analysis, in all regions where

¹⁸ *MACH Gen, LLC*, Application, Docket No. EC09-54-000, at 14-16 (filed Feb. 4, 2009).

¹⁹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 868.

²⁰ *MACH Gen, LLC*, 127 FERC ¶ 61,127, at P 36 (2009) (*MACH Gen*) (finding that the conditions imposed on Strategic Value's dealings with Entegra would preclude Strategic Value's ability to control Entegra's generation assets, and therefore the transaction would not result in a consolidation of the generation assets of Entegra with those of *MACH Gen*).

²¹ *LS Power Dev., LLC*, 125 FERC ¶ 61,267, at P 26 (2008).

²² These findings are subject to the authorization granted in *MACH Gen*, and the conditions imposed therein, being in full force and effect.

it is designated a Category 2 seller, in compliance with the regional reporting schedule adopted in Order No. 697.²³ The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Entegra's market-based rate tariff is hereby accepted for filing, effective May 12, 2009, as discussed in the body of this order.

(B) Waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, with the exception of sections 35.12(a), 35.13(b), 35.15 and 35.16, is hereby granted.

(C) Waiver of Parts 41, 101, and 141 of the Commission's regulations is hereby granted.

(D) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is granted. Entegra 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 Entegra, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) 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 issuances of securities or assumptions of liabilities.

(F) Entegra is required to file Electric Quarterly Reports in compliance with Order No. 2001. If the effective date of Entegra's market-based rate tariff falls within a quarter of the year that has already expired, Entegra's Electric Quarterly Reports for the expired quarter are due within 30 days of the date of this order.

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882.

(G) Entegra is hereby directed to file an updated market analysis, in those regions it has been designated as a Category 2 seller, according to the regional reporting schedule adopted in Order No. 697

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.