

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

December 30, 2004

In Reply Refer To:  
Mankato Energy Center, LLC  
Docket No. ER04-1221-000

Davis Wright Tremaine LLP  
Attn: James B. Vasile, Esq.  
Attorney for Mankato Energy Center, LLC  
1500 K Street, NW, Suite 450  
Washington, DC 20005

Dear Mr. Vasile:

1. On September 14, 2004, Mankato Energy Center, LLC (Mankato) 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,<sup>1</sup> the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs). It also includes the Commission's market behavior rules.<sup>2</sup> Mankato's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective February 1, 2006, as requested.<sup>3</sup>

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<sup>1</sup> Mankato plans to sell certain ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), ISO New England, Inc. (ISO-NE), and California Independent System Operator Corporation (CAISO). Mankato also intends to engage in the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (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> Mankato Energy Center, LLC, FERC Electric Tariff, Volume No. 1, Original Sheets Nos. 1-5. Waiver of section 35.3 of the Commission's regulations is granted to allow for the effective date noted above.

2. Mankato is a Delaware limited liability company, and an indirect, wholly-owned subsidiary of Calpine Corporation. Mankato will be engaged in the development, construction, ownership and operation of a 730 MW generating facility in Mankato, Blue Earth County, Minnesota. Mankato states that the facility will interconnect with the Northern States Power Company (NSP) transmission system at the Wilmarth substation. Mankato will sell up to 290 MW of baseload capacity and 85 MW of peaking capacity to NSP under a power purchase agreement with a term of 20 years. Construction on the facility was expected to commence in October 2004. Mankato states that it does not have other generation or affiliated generation in the NSP control area, and that it is not affiliated with NSP.

### **I. Procedural Matters**

3. Notice of Mankato's filing was published in the *Federal Register*, 69 Fed. Reg. 59,913 (2004), with comments, protests, and interventions due on or before October 5, 2004. None was filed.

### **II. Discussion**

#### **A. 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.<sup>4</sup> As discussed below, the Commission concludes that Mankato satisfies the Commission's standards for market-based rate authority.

5. Mankato 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.<sup>5</sup>

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<sup>4</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>5</sup> 18 C.F.R. § 35.27(a) (2004). 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.

If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.<sup>6</sup>

6. Mankato commenced construction of the facility after July 9, 1996, and it does not have other generation or affiliated generation in the area. Accordingly, the Commission finds that Mankato satisfies the Commission's generation market power standard for the grant of market-based rate authority.

7. Mankato states that neither it nor any of its affiliates owns or controls any transmission facilities other than generation interconnection facilities. The Commission finds that Mankato satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. Mankato states that neither it nor any of its affiliates is able to erect barriers to entry because neither it nor its affiliates control any interstate fuel transportation systems that could be used to impede downstream generators from gaining access to low-cost gas supplies in the relevant market. Mankato states that to the extent it and its affiliates have contracts for firm, interstate and intrastate gas transportation to serve some of their generating plants, the amounts of transportation capacity they control is small relative to capacity on the relevant pipelines. Based on Mankato's representations, the Commission is satisfied that neither Mankato nor its affiliates can erect barriers to entry. However, should Mankato or any of its affiliates deny, delay or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of Mankato's authority to sell power at market-based rates.<sup>7</sup>

9. Mankato states that neither it nor any of its affiliates has a franchised service area for the sale of electricity. Based on this representation, we find that Mankato satisfies the Commission's concerns with regard to affiliate abuse.

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<sup>6</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

<sup>7</sup> *See, e.g., Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

10. Mankato 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 ISO-NE, PJM, NYISO, and CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant Mankato's request.<sup>8</sup> Mankato also intends to engage in the sale of certain ancillary services to third-party suppliers in other markets consistent with *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC 61,136 (1999). The Commission will grant this request.

11. In addition, Mankato proposes to sell additional ancillary services in additional geographic markets 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/or capacity at market-based rates. We will grant Mankato's request in this regard; however, our grant does not relieve Mankato of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).<sup>9</sup>

12. Mankato also requests authority to reassign transmission capacity, and resell FTRs. The Commission finds these provisions consistent with the Commission's requirements.<sup>10</sup> Accordingly, we grant this request.

#### **B. Other Waivers, Authorizations and Reporting Requirements**

13. Mankato requests the following waivers and authorization: (1) waiver of Subparts B and C Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for 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

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<sup>8</sup> See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *Atlantic City Electric Company*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (1999); *Central Hudson Gas & Electric Corporation*, 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>9</sup> *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

<sup>10</sup> See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997) and *California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

Part 45 of the Commission's regulations; (4) blanket authorization under section 204 of the FPA and Part 34 of the Commission's regulation for all futures issuances of securities and assumptions of liability.

14. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>11</sup> Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Mankato to keep its accounting records in accordance with generally accepted accounting principles.

15. 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 Mankato should file a motion to intervene or protest with 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. §§ 383.211 and 385.214 (2004).

16. Absent a request to be heard within the period set forth above, Mankato is hereby authorized to issue securities and assume obligations or liabilities as guarantor, endorser, 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 Mankato, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

17. 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 the applicant. Any such person shall instead file a sworn application providing the following information:

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<sup>11</sup> 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 at P 23-24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

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

18. 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 Mankato's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

19. 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>12</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>13</sup> Accordingly, Mankato must file its first Electric Quarterly Report no later than 30 days after the first quarter Mankato's rate schedule is in effect.<sup>14</sup>

20. Mankato is directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These characteristics include, but are not limited to: (1) ownership of generating or transmission facilities or inputs to electric power

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<sup>12</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/Electric/eqr/eqr.htm>.

<sup>13</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

<sup>14</sup> 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.

production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.<sup>15</sup>

21. Mankato is directed to file an updated market 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.

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<sup>15</sup> The Commission issued a Notice of Proposed Rulemaking in Docket No. RM04-14-000 in which the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates. *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004). The change of status requirements outlined herein are subject to the outcome of the rulemaking.