

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

January 12, 2005

In Reply Refer To:  
Metcalf Energy Center, LLC  
Docket No. ER05-67-000

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

Dear Mr. Vasile:

1. On October 25, 2004, Metcalf Energy Center, LLC (Metcalf), filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates, the reassignment of transmission capacity, and the resale of firm transmission rights.<sup>1</sup> It also includes the Commission's market behavior rules.<sup>2</sup> Metcalf's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective on February 1, 2005, as requested.<sup>3</sup>

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<sup>1</sup> Metcalf's rate schedule provides for the sale of 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, Inc. (CAISO). Metcalf's rate schedule also allows for 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) (*Avista*).

<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> FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-5.

2. Metcalf is a Delaware limited liability company whose principal purpose is constructing, owning, and operating a 600-MW, natural gas-fired, combined-cycle generating facility located in San Jose, Santa Clara County, California. The newly-constructed facility is expected to commence the sale of test power in February 2005. The output of the facility will be sold to Calpine Energy Services, L.P., under a long-term contract. The facility will be interconnected to the transmission system of Pacific Gas and Electric Company and is located within the CAISO market.

3. Metcalf is an indirect, wholly-owned subsidiary of Calpine Corporation, a company engaged in the development, ownership, and operation of independent power production facilities. Metcalf is affiliated with several generating facilities located in the CAISO market, and is not affiliated with any entity that owns or controls transmission assets other than those used to interconnect to transmission systems.

## **I. Procedural Matters**

4. Notice of Metcalf's filing was published in the *Federal Register*, 69 Fed. Reg. 64,746 (2004), with comments, protests, and interventions due on or before November 15, 2004. None was filed.

## **II. Discussion**

### **A. Market-Based Rate Authorization**

5. 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 Metcalf satisfies the standards for market-based rate authority.

6. 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. Metcalf has prepared both the

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<sup>4</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996), Letter Order Approving Settlement, 79 FERC ¶ 61,149 (1997); *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).

pivotal supplier and the wholesale market share screen analyses for the CAISO market.<sup>5</sup> The Commission has reviewed Metcalf's generation market power screen analyses for the CAISO market and has determined that Metcalf passes the screens in that market. Accordingly, the Commission finds that Metcalf satisfies the Commission's generation market power standard for the grant of market-based rate authority.

7. Metcalf states that neither it nor any of its affiliates owns or operates any transmission facilities other than interconnection facilities. Based on Metcalf's representation, the Commission finds that Metcalf satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. Metcalf states that neither it nor any of its affiliates controls any interstate fuel transportation systems or equipment suppliers, nor do they have control over generation sites or other inputs in generation. Metcalf further states that while it is affiliated with an intrastate natural gas pipeline in California, neither Metcalf nor its affiliates can erect barriers to entry given the abundance of competing pipelines in California. Based on Metcalf's representations, the Commission is satisfied that neither Metcalf nor any of its affiliates can erect barriers to entry. However, should Metcalf 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, that electric competitor may file a complaint with the Commission that could result in the suspension of Metcalf's authority to sell power at market-based rates.<sup>6</sup>

9. Metcalf states that neither it nor any of its affiliates has a franchised electric service territory and therefore cannot engage in affiliate abuse or reciprocal dealing. Based on Metcalf's representation, the Commission finds that Metcalf satisfies the Commission's concerns with regard to affiliate abuse.

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<sup>5</sup> Applicants located in markets administered by an independent system operator (ISO) or a regional transmission organization (RTO) with sufficient market structure, such as PJM, ISO-NE, NYISO and CAISO may consider the geographic region under the control of the ISO/RTO as the default relevant geographic market for purposes of completing their screen analyses. *See* April 14 Order, 107 FERC ¶ 61,018 at P 187.

<sup>6</sup> *See, e.g., Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

10. Metcalf's request for approval to reassign transmission capacity is consistent with the Commission's requirements.<sup>7</sup> Metcalf's request for approval to buy and sell firm transmission rights is also consistent with the Commission's requirements.<sup>8</sup> The Commission grants Metcalf's requests.

11. Metcalf 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 ISO-NE, PJM, NYISO, and the CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant Metcalf's request.<sup>9</sup> Metcalf also requests authority for the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista*, 87 FERC ¶ 61,223. The Commission grants Metcalf's request. In addition, Metcalf proposes to sell any other 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. The Commission will grant Metcalf's request in this regard; however, our grant does not relieve Metcalf of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).<sup>10</sup>

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

12. Metcalf requests the following waivers and authorizations: (1) waiver of Parts 41, 101 and 141 of the Commission's accounting and periodic reporting requirements; (2) 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; (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.

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<sup>7</sup> See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997).

<sup>8</sup> See *California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

<sup>9</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>10</sup> *Calhoun Power Company*, 96 FERC ¶ 61,056 (2001).

13. 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 Metcalf to keep its accounting records in accordance with generally accepted accounting principles.

14. 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 Metcalf 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 (2004).

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

16. 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 Metcalf. Any such person instead shall file a sworn application providing the following information:

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

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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 and P 24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

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

18. 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, Metcalf must file its first Electric Quarterly Report no later than 30 days after the first quarter Metcalf's rate schedule is in effect.<sup>14</sup>

19. Metcalf 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 filing 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>

20. Metcalf 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.

Magalie R. Salas,  
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 reporting requirements outlined herein are subject to the outcome of the rulemaking.