

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

February 18, 2005

In Reply Refer To:
Northeast Energy Associates, LP
Docket Nos. ER05-236-000
ER05-236-001
ER05-236-002
ER05-236-003

FPL Energy, LLC
Attn: Joel D. Newton, Esq.
801 Pennsylvania Ave., N.W.
Suite 220
Washington, DC 20004

Dear Mr. Newton:

1. On November 18, 2004, as amended, Northeast Energy Associates, a Limited Partnership (Northeast Energy), 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 certain ancillary services¹ at market-based rates and the reassignment of transmission rights. It also includes the Commission's market behavior rules.² Northeast Energy's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective the closing date of the restructured power purchase agreements (PPAs), as requested.³

¹ Northeast Energy plans to sell certain ancillary services in the markets administered by PJM Interconnection, LLC (PJM), New York Independent System Operator, Inc. (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).

³ FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1- 6.

2. Northeast Energy is a Massachusetts limited partnership that owns a 300 MW natural gas-fired electric generating plant near Bellingham, Massachusetts (Bellingham plant),⁴ which has been certified as a qualifying facility (QF)⁵ under the Public Utility Regulatory Policies Act of 1978 (PURPA).⁶ Northeast Energy states that power from the Bellingham plant will be sold at market-based rates pursuant to long-term PPAs to Boston Edison Company (Boston Edison) and Commonwealth Electric Company (Commonwealth Electric). Northeast Energy is an indirectly owned subsidiary of FPL Group, Inc. (FPG), an exempt public utility holding company under section 3(a)(1) of Public Utility Holding Company Act of 1935, as amended by the Energy Policy Act of 1992⁷ and an indirectly owned subsidiary of Tractebel Inc. (“Tractebel”).

3. Northeast Energy is affiliated with Florida Power & Light Company (FPL), a franchised utility that is a directly-owned subsidiary of FPG with a service territory in peninsular Florida. Northeast Energy is also affiliated with Florida Power & Light Company – New England Division (FPL–NED), which owns generating and transmission facilities operating in ISO-NE. Affiliates of Tractebel own Distrigas, LLC (Distrigas) and Distrigas of Massachusetts (DOMAC), which import and sell liquefied natural gas (LNG) in the U.S.

4. Northeast Energy has entered into an agreement to restructure its existing PPAs with Boston Edison and Commonwealth Electric. The restructured PPAs provide, among other things, that Northeast Energy will obtain market-based rate authority and permit Northeast Energy to make purchases from the market in order to satisfy its obligations to Boston Edison and Commonwealth Electric. All existing PPAs will be terminated as of the closing date associated with the restructured PPAs, with the restructured PPAs being the only long-term power contracts in effect at that time.

⁴ Northeast Energy stated in its original application that affiliates own an additional 2,670 MW of capacity in ISO-NE giving the corporate family a total of 2,970 MW of capacity in that market.

⁵ Northeast Energy states that it will relinquish its QF status upon the closing date of the restructured PPAs.

⁶ See *Northeast Energy Associates*, 37 FERC ¶ 62,202 (1986); 16 U.S.C. §§ 791a-825r, 2601-2645 (2000); see also 18 C.F.R. Part 292 (2004).

⁷ 15 U.S.C. §79z-5a (2000).

5. On January 14, 2005, Northeast Energy filed a supplement to its application for market-based rate authority to clarify that it will relinquish its QF status upon the closing date of the restructured PPAs. On January 24, 2005, in Docket No. QF86-1081-005, Northeast Energy filed a Notice of Change of Status and Motion to Withdraw Qualifying Status to move to withdraw its QF status concurrent with the closing date of the restructured agreements.

Procedural Matters

6. Notice of Northeast Energy's November 18, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 70,140 (2004), with protests and interventions due on or before December 2, 2004. None was filed. Notice of Northeast Energy's November 30, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 71,808 (2004), with protests and interventions due on or before December 10, 2004. None was filed. Notice of Northeast Energy's January 14, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 4,116 (2005), with protests, and interventions due on or before January 28, 2005. None was filed.

Discussion

Market-Based Rate Authorization

7. 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.⁸ As discussed below, we conclude that Northeast Energy's submittal satisfies the Commission's standards for market-based rate authority and is accepted for filing, to become effective as requested, on the closing date of the restructured PPAs.⁹

8. 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) (July 8 Order), the Commission adopted two indicative screens for assessing generation market power. Northeast Energy has provided a generation market power analysis pursuant to the

⁸ 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).

⁹ Northeast Energy is directed to notify the Commission of the closing date of the restructured PPAs within 10 days of that date.

requirements of the Commission's April 14 Order for the Bellingham plant using ISO-NE as the relevant geographic market. Northeast Energy states that it passes both indicative screens in ISO-NE.¹⁰

9. Northeast Energy submits historical evidence of actual transmission imports in ISO-NE.¹¹ Based on data submitted in an amended filing, Northeast Energy passes the indicative screens using actual imports for the time periods the studies are performed into ISO-NE. Accordingly, the Commission finds that Northeast Energy satisfies the Commission's generation market power standard for the grant of market-based rate authority.

10. Northeast Energy states that it does not own or control any transmission facilities other than the interconnection facilities necessary to connect the Bellingham plant to the transmission grid. Northeast Energy states that its public utility affiliate, FPL, owns transmission facilities in Florida which are administered under the FPL OATT.¹² In addition, Northeast Energy states, the only transmission asset owned by FPL-NED is the Seabrook Substation, which is controlled by ISO-NE and operates pursuant to the New England Power Pool OATT on file with the Commission.¹³ Northeast Energy states that no other affiliate owns transmission facilities other than interconnection facilities necessary to connect their generating facilities to the grid. Based on Northeast Energy's representations, the Commission finds that Northeast Energy satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

11. Northeast Energy states neither it nor its affiliates can erect barriers to entry. Northeast Energy states that while it and its affiliates control a limited number of unused generation sites, that number is insufficient to allow it or its affiliates to erect barriers to entry. In addition, Northeast Energy states that its affiliate Distrigas imports LNG and sells the LNG to DOMAC, which in turn sells natural gas at market-based rates pursuant to a tariff on file with the Commission. Northeast Energy states that neither it nor its affiliates purchases natural gas from Distrigas or DOMAC or owns natural gas pipeline or distribution facilities. Based on Northeast Energy's representations, the Commission is satisfied that neither Northeast Energy nor its affiliates can erect barriers to entry. However, should Northeast Energy, DOMAC or other Northeast Energy affiliates deny,

¹⁰ Northeast Energy also states that its affiliates own generation in neighboring NYISO (NYISO Generation) and PJM (PJM Generation).

¹¹ ISO-NE, Monthly Market Report, March 2002-February 2003.

¹² *Florida Power & Light Company*, 92 FERC ¶ 61,241 (2000).

¹³ *See New England Power Pool*, 83 FERC ¶ 61,045 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001).

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 Northeast Energy's authority to sell power at market-based rates.¹⁴

12. Northeast Energy states that its proposed market-based rate tariff includes a provision that Northeast Energy will not sell wholesale energy and capacity in peninsular Florida. Northeast Energy also states that it will not sell energy, capacity, and certain ancillary services to any of its affiliates without first receiving authorization under section 205 of the Federal Power Act.¹⁵ The proposed market-based rate tariff also contains a code of conduct that would govern Northeast Energy's relationship with a power marketing affiliate and is consistent with the Commission's requirements. Based on Northeast Energy's representations, the Commission finds that Northeast Energy satisfies the Commission's concerns with regard to affiliate abuse.

13. Northeast Energy requests authority to engage in the sale of certain ancillary services (listed in the proposed rate schedule) at market-based rates into the markets administered by PJM, NYISO, ISO-NE, and CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant Northeast Energy's request.

14. In addition, Northeast Energy 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 Northeast Energy's request in this regard; however, our grant does not relieve Northeast Energy of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).¹⁶

15. Northeast Energy also requests authority to reassign transmission capacity. The Commission finds this provision consistent with the Commission's requirements.¹⁷ Accordingly, we grant this request.

¹⁴ See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

¹⁵ 16 U.S.C. § 824d (2000).

¹⁶ *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

¹⁷ See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997).

Waivers, Authorizations and Reporting Requirements

16. Northeast Energy 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 except Sections 141.14 and 141.15;¹⁸ (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.

17. We will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁹ Notwithstanding the waiver of the accounting and reporting requirements here, we expect Northeast Energy to keep its accounting records in accordance with generally accepted accounting principles.

18. 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 Northeast Energy 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.

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

¹⁸ *Citizens Energy Corp.*, 35 FERC ¶ 61,198 (1986); *Citizens Power and Light Corp.*, 48 FERC ¶ 61,210 (1989) (*Citizens Power*); *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994) (*Enron*).

¹⁹ 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).

20. 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 Northeast Energy. 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.

21. 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 Northeast Energy's issuances and securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

22. 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.²⁰ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.²¹ Accordingly, Northeast Energy must file its first Electronic Quarterly Report no later than 30 days after the first quarter Northeast Energy's rate schedule is in effect.²²

²⁰ *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>.

²¹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b.

²² Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in a 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.

23. Northeast Energy 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. A change in status includes, but is not limited to each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.²³ Any change in status must be filed no later than 30 days after the change in status occurs.

24. 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. Accordingly, Northeast Energy is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the change in status reporting requirement adopted in Order No. 652.

25. In addition, Northeast Energy 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

²³ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Order No. 652).