

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

March 14, 2005

In Reply Refer To:
Hot Spring Power Company, LP
Docket Nos. ER05-570-000 and
ER05-570-001

Brunenkant & Cross, LLP
Attn: James W. Moeller, Esq.
Counsel for Hot Spring Power Company, LP
805 15th Street, N.W.
Suite 1101
Washington, D.C. 20005

Dear Mr. Moeller:

1. On February 11, 2005, as amended on February 23, 2005, Hot Spring Power Company, LP (Hot Spring) 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,¹ the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs) or their equivalent. It also includes the Commission's market behavior rules.² Hot Spring's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective March 15, 2005, as requested.³

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

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, Volume No. 1, Original Sheet Nos. 1-6. Waiver of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2004), is granted to allow for the effective date noted above.

2. Hot Spring is a Delaware limited liability partnership formed to own and operate an electric power plant located in Hot Springs, Arkansas. The electric power plant is a 720 MW gas-fired, combined-cycle plant near Malvern, Arkansas. Hot Spring states that it began construction on the plant in 2001. Hot Spring anticipates start-up testing to commence in March 2005. The Hot Spring power plant will be interconnected with the transmission system of Entergy Arkansas, Inc., which is a wholly owned public utility subsidiary company of Entergy Corporation.

3. Hot Spring is a wholly-owned subsidiary of TNA Merchant Projects, Inc. (TMPI), which is a wholly-owned subsidiary of Tractebel North America, Inc. (TNA), a North American energy services company that participates in the development and ownership of energy facilities. Tractebel Power, Inc. (TPI), another affiliate of TNA, directly owns and operates several cogeneration facilities and small power production facilities that are qualified under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).

4. Hot Spring states that it is affiliated with Tractebel Energy Marketing, Inc. (TEMI), and that all capacity and energy, except for test energy, from the Hot Spring plant will be sold to TEMI. TEMI is a wholly-owned subsidiary company of TMPI. TEMI is authorized to engage in wholesale sales of electric capacity and energy at market-based rates. In conjunction with the sale of capacity and energy by Hot Spring to TEMI, Hot Spring states that the two companies will conclude a Fuels Supply Agreement under which TEMI will provide natural gas fuel to Hot Spring.

5. Hot Spring states that it is also affiliated with five independent power production facilities that are certified exempt wholesale generators. The first of which, Red Hills Power Station, is a 440 MW electric power plant located in Choctaw County, Mississippi. Second, the Ennis-Tractebel Power Project is a 340 MW gas-fired electric power plant located in Ennis, Texas, within the Electric Reliability Council of Texas (ERCOT). Third, the Wise County Power Project (Wise) is a 720 MW gas-fired electric power plant located in Wise County, Texas, within ERCOT. Fourth, Chehalis Power Generating, Limited Partnership (Chehalis) owns and operates a 520 MW gas-fired electric power plant located in Lewis County, Washington. The last facility is Hopewell Cogeneration which generates in excess of 300 MW. The Hopewell Cogeneration facility is a combined cycle, gas-fired cogeneration plant located in Hopewell, Virginia. The Hopewell plant is interconnected to Virginia Electric Power Company (VEPCO), a subsidiary of Dominion Resources, Inc., and all the electric capacity and energy from the Hopewell plant is sold to VEPCO under a long-term power purchase agreement.

Procedural Matters

6. Notice of Hot Spring's filing was published in the *Federal Register*, 70 Fed. Reg. 9,636 (2005) and 70 Fed. Reg. 12,466 (2005), with protests and interventions due on or before March 4, 2005 and March 11, 2005, respectively. 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.⁴ As discussed below, the Commission concludes that Hot Spring satisfies the Commission's standards for market-based rate authority.

8. Hot Spring 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, 1996.⁵ If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must address whether its new capacity, when added to existing capacity, raises generation market power concerns.⁶

9. Hot Spring states that it commenced construction of the facility in 2001 and expects the project to be placed in service by March 2005. Although affiliates of Hot Spring own or control generation facilities, Hot Spring asserts that none of these facilities are located in the same control area as the Hot Spring facility. Furthermore, it notes that the Hot Spring facility is interconnected to Entergy Arkansas, an unaffiliated entity, and all of the energy and capacity generated by the Hot Spring facility is committed to TEMI. Based on these representations, the Commission finds that Hot Spring satisfies the Commission's generation market power standard for the grant of market-based rate authority.

⁴ 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 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.

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

10. Hot Spring states that neither it nor its affiliates own or control any transmission facilities (apart from interconnection facilities and contracts for firm transmission capacity). Based on Hot Spring's representation, the Commission finds that Hot Spring satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

11. Hot Spring notes that neither it nor its affiliates control any interstate fuel transportation system that could be used to impede other potential suppliers of electric capacity and energy from the acquisition of low-cost natural gas or electric power generation. Hot Spring points out that it and its affiliates have contracts for firm gas transportation, however these contracts ensure that Hot Spring and its affiliates will have the fuel required for electric power generation. Hot Spring states that the amount of gas capacity is small relative to the total capacity on the relevant interstate natural gas pipelines. Further, Hot Spring states that it and its affiliates lack the ability to impose any barrier to entry by other suppliers of electric capacity and energy through control over resources, sites for generation assets or fuel supplies. Based on these representations, the Commission is satisfied that neither Hot Spring nor any of its affiliates can erect barriers to entry.

12. Hot Spring asserts that it is not affiliated with any investor-owned electric utility or with any entity that has a franchised service area for the sale of electric power to captive customers. Hot Spring concludes, therefore, that there is no need for a code of conduct requirement, and requests the Commission, therefore, to waive this requirement. Based on this representation, the Commission finds that Hot Spring satisfies the Commission's concerns with regard to affiliate abuse, and will waive the code of conduct requirement.

13. Hot Spring 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 NYISO, ISO-NE, PJM, and the CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in these markets, the Commission will grant Hot Spring's request.⁷ Hot Spring also intends to engage in the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista*. We will grant this request.

⁷ See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *Atlantic City Electric Co.*, 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).

14. Hot Spring also requests authority to reassign transmission capacity and to resell FTRs or their equivalent. We find these provisions consistent with the Commission's requirements.⁸ Accordingly, we will grant this request.

Other Waivers, Authorizations and Reporting Requirements

15. Hot Spring 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; (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.

16. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.⁹ Notwithstanding the waiver of the accounting and reporting requirements here, we expect Hot Spring to keep its accounting records in accordance with generally accepted accounting principles.

17. 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 Hot Spring 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.

18. Absent a request to be heard within the period set forth above, Hot Spring 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

⁸See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997); *California Independent System Operator Corporation*, 89 FERC ¶ 61,153 (1999).

⁹ 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 (Nov. 6, 2002), FERC Stats. & Regs. ¶ 31,134 (2002).

such issue or assumption is for some lawful object within the corporate purposes of Hot Spring, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

19. 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 Hot Spring. 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.

20. 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 Hot Spring's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

21. Hot Spring also requests blanket pre-approval for facilities disposition for those facilities not involved in the transmission and sale for resale of electric power in interstate commerce under section 203 of the Federal Power Act.¹⁰ We note that Hot Spring did not provide any justification for such blanket pre-approval, identify the facilities for which such blanket pre-approval is sought, or provide any information as to the impact of these transactions on competition, rates and regulation. Therefore, we will deny Hot Spring's request for such pre-approval.

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.¹¹ Electric

¹⁰ 16 U.S.C. § 824b (2000).

¹¹ *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/doc-filing/eqr.asp>.

Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹² Accordingly, Hot Spring must file its first Electric Quarterly Report no later than 30 days after the first quarter Hot Spring's rate schedule is in effect.¹³

22. Hot Spring 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.¹⁴ 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, Hot Spring is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

Hot Spring 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. Any change in status must be filed no later than 30 days after the change in status occurs.

¹² The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

¹³ 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.

¹⁴ *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 (2005).

24. Hot Spring 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.

Linda Mitry,
Deputy Secretary.