

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

September 2, 2005

In Reply Refer To:  
Societe Generale Energie (USA) Corp.  
Docket Nos. ER05-1244-000, and  
ER05-1244-001

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Dear Mr. Warnement:

1. On July 25, 2005, as amended August 17, 2005, Societe Generale Energie (USA) Corp (Societe USA) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based tariff provides for the sale of capacity, energy and ancillary services at market-based rates and the reassignment of transmission capacity.<sup>1</sup> It also includes the Commission's market behavior rules,<sup>2</sup> and the change in status reporting requirement adopted by the Commission in Order No. 652.<sup>3</sup> Societe USA's submittal satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective July 26, 2005, as requested.<sup>4</sup>

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<sup>1</sup> Societe USA 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 (ISO-NE), and California Independent System Operator, Inc. (CAISO).

<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> *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, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

<sup>4</sup> FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1 - 4.

2. Societe USA is a Delaware corporation and is a wholly-owned subsidiary of a French entity, Societe Generale Energie S.A., which is wholly-owned subsidiary of Societe Generale, a bank formed under the laws of France. Societe USA states that it will engage in energy-related marketing and trading and physical commodity trading activities, provide energy-related asset management services, sell energy-related financial and capital products, and invest in energy-related assets.

### **Procedural Matters**

3. Notice of Societe USA's July 25, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 45,382 (2005), with comments, protests, and interventions due on or before August 15, 2005. None was filed.

4. Notice of Societe USA's August 17, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 50,313 (2005), with comments, protests, and interventions due on or before August 29, 2005. None was filed.

### **Discussion**

#### **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>5</sup> As discussed below, the Commission concludes that Societe USA's submittal satisfies the Commission's standards for market-based rate authority.

6. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. Societe USA states that it does not own or control generation or uncommitted capacity in any of the relevant markets. However, Societe USA states that its affiliates own generation in the ISO-NE, CAISO, NYISO, and Midwest Independent System Operator, Inc. (MISO) markets, the Arizona Public Service Company (APS) control area, and the Entergy control area, and it has prepared the indicative screens for these markets. The Commission's review of these generation market power screens indicates that Societe USA passes the pivotal supplier and

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<sup>5</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996), 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).

wholesale market share screens in each of these markets. Accordingly, the Commission finds that Societe USA satisfies the Commission's generation market power standard for the grant of market-based rate authority.

7. Societe USA states that neither it nor its affiliates own or control transmission or distribution facilities other than those necessary to interconnect its generating assets with the grid. Based on this representation, the Commission finds that Societe USA satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. Societe USA states that its parent, Societe Generale, indirectly owns 4.9 percent of the Trans-Union Interstate Pipeline, L.P. (Trans-Union). Societe USA states that Trans-Union has an approved open access gas transportation tariff on file with the Commission. Societe USA states that other than its parent's negligible ownership share of Trans-Union, neither it nor any of its affiliates owns or controls the type of resources that might be used to create barriers to entry. As the Commission has explained, affiliation with an interstate natural gas pipeline does not raise market power concerns because the pipeline is subject to the Commission's open access requirements for natural gas pipelines.<sup>6</sup> Further, no intervenors have raised concerns regarding barriers to entry. Based on these representations, the Commission is satisfied that Societe USA cannot erect barriers to entry.

9. Societe USA states that it has no franchised utility affiliates. Societe USA further states that it will not sell electric energy or capacity to any electric utility affiliate with a franchised service area without first receiving approval by the Commission under a specific filing under section 205 of the Federal Power Act (FPA).<sup>7</sup> Based on Societe USA's representation, the Commission finds that Societe USA satisfies the Commission's concerns with regard to affiliate abuse.

10. Societe USA 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 ISO-NE, PJM, NYISO, and the CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the

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<sup>6</sup> See *Vantus Energy Corporation*, 73 FERC ¶ 61,099 (1995); *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993).

<sup>7</sup> 16 U.S.C. § 824d (2000).

Commission will grant Societe USA's request.<sup>8</sup> In addition, Societe USA 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. The Commission grants Societe USA's request in this regard; however, our grant does not relieve Societe USA 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>

11. Societe USA also requests that the Commission grant authority to reassign transmission capacity. The Commission finds this provision to be consistent with our requirements.<sup>10</sup> Accordingly, the Commission grants this request.

### **Waivers, Authorizations and Reporting Requirements**

12. Societe USA 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) waiver of the full filing requirements of Parts 45 and 46 of the Commission's regulations, (requiring only an abbreviated filing identifying any interlocking directorates); and (4) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions liability. 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

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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).

<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 (Oct. 10, 2002), FERC Stats. & Regs. ¶ 32,558, at P 23-24 (2002).

waiver of the accounting and reporting requirements here, the Commission expects Societe USA to keep its accounting records in accordance with generally accepted accounting principles.

13. Until further order of the 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 Societe USA. Any such person instead shall file a sworn application providing the following information:<sup>12</sup>

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

14. The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Societe USA's issuances of securities or assumptions of liabilities or by the continued holding of any affected interlocks. Societe USA's request for waiver of Part 46 of the Commission's regulations regarding interlocking directors is denied. The Commission has stated that the requirements of Part 46 regarding interlocking directors are statutory in nature and may not be waived.<sup>13</sup>

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 Societe USA 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. §§ 385.211 and 385.214 (2005).

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<sup>12</sup> For current interlocks, applications should be filed within 30 days of the date of this order. We note that the Commission has issued a proposed rulemaking, *Commission Authorization to Hold Interlocking Directorates*, 110 FERC ¶ 61,343 (2005), which is considering modifications to 18 C.F.R. Part 45. The Commission is considering changing its requirements as to timing and also is examining the possibility of no longer granting a waiver of the full requirements of Part 45 in its orders granting market-based rate authority.

<sup>13</sup> *Enron Power Marketing, Inc.* 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994).

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

17. Consistent with the procedures the Commission adopted in Order No. 2001, Societe USA 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>14</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>15</sup> Accordingly, Societe USA must file its first Electric Quarterly Report no later than 30 days after the first quarter Societe USA's tariff is in effect.

18. Societe USA 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.<sup>16</sup> 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. As previously mentioned, Societe USA included the change in status reporting requirement in its tariff.

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<sup>14</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/docs-filing/eqr.asp>.

<sup>15</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b. Failure to file an Electronic Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electronic 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.

<sup>16</sup> *See supra* Note 3.

19. Societe USA 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.