

112 FERC ¶ 61,322
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

September 20, 2005

In Reply Refer To:
J.P. Morgan Ventures Energy Corporation
Docket No. ER05-1232-000

McDermott Will & Emery
Attn: Catherine M. Krupka, Esq.
Counsel for JP Morgan Ventures Energy Corporation
600 Thirteenth Street, N.W.
Washington, D.C. 20005-3096

Dear Ms. Krupka:

1. On July 22, 2005, J.P. Morgan Ventures Energy Corporation (Ventures Energy) filed an application for market-based rate authority with an accompanying tariff.¹ The proposed market-based rate tariff provides for the sale of capacity, energy, and ancillary services at market-based rates and for the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs).² Ventures Energy's submittal includes the Commission's market behavior rules³ and the change in status reporting requirement

¹ In its initial filing, Ventures Energy listed its name as "JP Morgan Ventures Energy Corporation." By letter dated July 29, 2005, Ventures Energy notified the Commission that the correct formatting of its name is "J.P. Morgan Ventures Energy Corporation."

² Ventures Energy plans to sell certain ancillary services in the markets administered by PJM Interconnection, LLC (PJM), the New York Independent System Operator (NYISO), ISO New England (ISO-NE), and the California Independent System Operator Corporation (CAISO).

³ *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).

adopted by the Commission in Order No. 652.⁴ Ventures Energy's submittal satisfies the Commission's standards for market-based rate authority and is accepted for filing as modified, effective as of the date of this order, as discussed below.

2. Ventures Energy states that it is a Delaware corporation with its principal place of business in New York, New York. Ventures Energy states that it is a direct subsidiary of JP Morgan Ventures Corporation, an indirect non-bank subsidiary of JPMorgan Chase & Co. (JP Morgan), and an affiliate of JPMorgan Chase Bank, N.A. (JPMorgan Chase Bank).⁵ Ventures Energy states that it is regulated by the Federal Reserve Bank as a non-bank subsidiary of JPMorgan.

3. JPMorgan is a financial holding company incorporated in Delaware with its principal place of business in New York, New York. JP Morgan's principal bank subsidiaries are JPMorgan Chase Bank and Chase Manhattan Bank USA, National Association. Ventures Energy states that JPMorgan and its affiliates will conduct transactions subject to regulation under the Federal Power Act (FPA) through JPMorgan Chase Bank and Ventures Energy.

4. Ventures Energy states that it intends to sell, market and trade wholesale power, capacity, ancillary services and related services in various markets in the United States.

Procedural Matters

5. Notice of Ventures Energy's July 22, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 44,350 (2005), with interventions and protests due on or before August 12, 2005. None was filed.

Discussion

Market-Based Rate Authorization

6. 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

⁴ *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) (Order No. 652).

⁵ The Commission granted market-based rate authority to JPMorgan Chase Bank, N.A. in *JPMorgan Chase Bank, N.A.*, 110 FERC ¶ 61,292 (2005).

whether there is evidence of affiliate abuse or reciprocal dealing.⁶ As discussed below, the Commission concludes that Ventures Energy satisfies the Commission's standards for market-based rate authority.

7. 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, the pivotal supplier screen and the wholesale market share screen. However, we note that, under section 35.27 of the Commission's regulations, applicants need not demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.⁷ Further, 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.⁸ The Commission clarified that in circumstances where construction on all of an applicant's generation commenced after July 9, 1996, no generation market power analysis need be performed.⁹ Ventures Energy states that it does not own or control any generation. However, Ventures Energy's affiliates own generation in the PJM, ISO-NE, NYISO, Midwest Independent System Operator (MISO), and CAISO markets and the Arizona Public Service (APS), Entergy, and Salt River Project (SRP) markets. Ventures Energy states that all of its facilities and the facilities of its affiliated generation located in the NYISO, MISO, CAISO, APS, Entergy, and SRP markets is post-July 1996 capacity.

8. Ventures Energy also states that its affiliates have passive ownership in distressed generation assets and investment holdings in companies that own generation. However, neither JPMorgan Chase Bank nor its affiliates manage or control the day-to-day operations of the generation in which they have a passive ownership or other investment interest. Finally, Ventures Energy states that PJM and ISO-NE are the only relevant

⁶ 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).

⁷ 18 C.F.R. § 35.27(a) (2005). 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 our regulations.

⁸ See *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 69 (2004).

⁹ See *AEP Power Marketing, Inc.*, 108 FERC ¶ 61,026 at P 110 (2004).

geographic markets for the purpose of a market power study and that the results of the indicative screens indicate that neither Ventures Energy nor its affiliates are pivotal suppliers or have a market share of uncommitted capacity of twenty percent or higher. Based on these representations, the Commission finds that Ventures Energy satisfies the Commission's generation market power standard for market-based rate authority.

9. Ventures Energy also states that neither it nor any of its affiliates own or control any transmission facilities in the United States. Based on these representations, the Commission finds that Ventures Energy satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

10. Ventures Energy states that it does not have the ability to erect barriers to entry because neither it nor its affiliates own or control any sites for the construction of new generation capacity, construction or engineering firms, or natural gas pipelines. Based on this representation, the Commission is satisfied that Ventures Energy cannot erect barriers to entry.

11. Ventures Energy states that neither Ventures Energy nor any of its affiliates has a franchise or service territory for the transmission, distribution or sale of electric power in the United States. Additionally, the proposed tariff prohibits transactions with any public utilities with franchised service territories that are controlled by, under common control with, or control Ventures Energy, without first receiving Commission approval under a separate filing under section 205 of the FPA. Based on this representation, the Commission finds that Ventures Energy satisfies the Commission's concerns with regard to affiliate abuse.

12. Ventures Energy 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 PJM, NYISO, ISO-NE, and the CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant Ventures Energy's request.¹⁰

13. Ventures Energy also requests authority to sell additional ancillary services 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 capacity at market-based rates. The Commission will grant Ventures Energy's request; however, this grant does

¹⁰ See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 ¶ 61,074 (2001); *PJM Interconnection, LLC*, 86 FERC ¶ 61,247 (1999), *California Independent System Operator*, 100 FERC ¶ 61,060 (2002), *order on reh'g*, 101 FERC ¶ 61,061 (2002); and *New York Independent System Operator, Inc.*, 89 FERC ¶ 61,196 (1999), *New York Independent System Operator, Inc.*, 90 FERC ¶ 61,317 (2000).

not relieve Ventures Energy of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2005).¹¹

14. Ventures Energy also requests authority to reassign transmission capacity and to resell FTRs or their equivalent. The Commission finds Ventures Energy's proposed provisions consistent with the Commission's requirements.¹² Accordingly, the Commission will grant this request.

15. Ventures Energy states that its submittal incorporates the Commission's Market Behavior Rules, as required by the Commission.¹³ However, we find that Market Behavior Rule 2(b), as included in Ventures Energy's submittal, fails to comply with the Market Behavior Rules Rehearing Order, where we clarified that the parenthetical clause "scheduling non-firm service *or* products as firm" as it appears in Market Behavior Rules 2(b) should be revised to read: "scheduling non-firm service *for* products as firm" (emphasis added).¹⁴ Accordingly, Ventures Energy is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to include this required clarification.

Other Waivers, Authorizations and Reporting Requirements

16. Ventures 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; (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.

¹¹ See *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

¹² See *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997); *Calif. Indep. Sys. Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

¹³ *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 at P. 73 (2004) (Market Based Rules Rehearing Order).

¹⁴ *Id.*

17. The Commission will deny Ventures Energy's request for waiver of the full requirements of Part 45 of the Commission's regulations. The Commission has stated that it will no longer grant waivers of the full requirements of Part 45 in orders granting market based rate authority.¹⁵

18. With regard to the other waivers and authorizations requested by Ventures Energy, the Commission will grant those waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁶ Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Ventures Energy to keep its accounting records in accordance with generally accepted accounting principles.

19. 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 Ventures Energy 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).

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

¹⁵ See *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 112 FERC ¶ 61,298 at P 34 (2005) at P 34 ("[W]e intend to no longer grant waivers of the full requirements of part 45 in our orders granting market based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of part 45").

¹⁶ 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).

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 Ventures Energy's issuances of 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.¹⁷ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁸ Accordingly, Ventures Energy must file its first Electric Quarterly Report no later than 30 days after the first quarter Ventures Energy's rate schedule is in effect.
23. Ventures 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. 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 noted above, Ventures Energy has included the change in status reporting requirement in its tariff.

¹⁷ *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>.

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

24. Finally, Ventures 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.