

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

October 25, 2005

In Reply Refer To:  
UBS AG  
Docket No. ER02-973-002

Covington & Burling  
Attn: Robert S. Fleishman, Esq.  
Attorney for UBS AG  
1201 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2401

Dear Mr. Fleishman:

1. On March 7, 2005, UBS AG (UBS) filed an updated market power analysis pursuant to the requirements of the Commission's order granting UBS authority to sell capacity and energy at market-based rates.<sup>1</sup> UBS AG also submits revised tariff sheets reflecting the Commission's reporting requirement adopted in Order No. 652 concerning changes in status.<sup>2</sup>
2. As discussed below, the Commission concludes that UBS satisfies the Commission's standards for market-based rate authority. We also conditionally accept the tariff modifications incorporating the Commission's change in status reporting requirement, as discussed below.
3. UBS states that it is a publicly held corporation organized under the laws of Switzerland, with its principal place of business located in Zurich, Switzerland and Basel, Switzerland. UBS states that it has assets of approximately \$1.1 trillion, and provides banking and financial services worldwide. In addition, UBS states that it is engaged in the trading and marketing of electricity and natural gas in the United States.

---

<sup>1</sup> *UBS AG*, 98 FERC ¶ 61,255 (2002) (*UBS AG*).

<sup>2</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).

4. Also, UBS states that UBS Investment Bank, UBS Securities LLC, UBS Financial Services, Inc., and UBS Energy LLC are among its subsidiaries and business units in the United States. UBS states, however, that neither UBS nor any of its affiliates owns, operates, or controls any facilities for the generation, transmission, or distribution of electricity, or any facilities for the transportation or distribution of natural gas in the United States.

5. In addition, UBS states that UBS and its affiliates currently hold, other than in a fiduciary capacity, less than 10 percent of the voting shares of certain companies engaged in the energy business. UBS states that the interests held by UBS or its affiliates in such companies are solely for investment purposes and that UBS does not have control over any of these companies.

6. UBS further states that, in January 2002, as the result of a bankruptcy proceeding concerning Enron Corp. (Enron) and certain of its affiliates, Enron granted certain licenses authorizing UBS the right to use certain technology owned and previously used by Enron in its trading of electricity and natural gas. UBS agreed to treat Enron and Enron's affiliate Portland General Electric Company (PGE) as affiliates for purposes of the Commission's restrictions regarding affiliate transactions. In *UBS AG*, however, the Commission determined that no generation market power screens were required because UBS was not affiliated with any entity that owns or controls generation resources and had no long-term purchase agreements in place.<sup>3</sup>

### **Procedural Matters**

7. Notice of UBS's filing was published in the *Federal Register*, 70 Fed. Reg. 13,023 (2005), with interventions and protests due on or before March 28, 2005. None was filed.

### **Discussion**

#### **Market-Based Rate Authorization**

8. 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

---

<sup>3</sup> 98 FERC ¶61,255 at 62,021 (2002).

whether there is evidence of affiliate abuse or reciprocal dealing.<sup>4</sup> As discussed below, the Commission concludes that UBS satisfies the Commission's standards for market-based rate authority.

9. In *AEP Power Marketing, Inc.*,<sup>5</sup> the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. UBS has submitted a streamlined application addressing the indicative screens, and states that neither UBS nor its affiliates controls through ownership any generation or uncommitted capacity. Based on UBS' representations, the Commission finds that UBS satisfies the Commission's generation market power standard for the grant of market-based rate authority.

10. UBS states that neither UBS nor any of its affiliates owns or controls any transmission. Based on UBS' representation, the Commission finds that UBS satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

11. UBS explains that neither UBS nor any of its affiliates owns or controls fuel supplies, land sites, or other inputs to electric power generation that could be used to prevent competitors from entering the market. Based on UBS's representations, the Commission is satisfied that UBS cannot erect barriers to entry.

12. UBS states that the UBS market-based rate tariff prohibits sales of electric energy and capacity to a franchised electric utility affiliate. However, our review of your tariff indicates that there is no such prohibition.<sup>6</sup> Therefore, consistent with Commission precedent, UBS is directed to make a compliance filing, within 30 days of the date of this order, to revise its market-based rate tariff to include language that states that UBS will not make sales to affiliates "without first receiving" Commission authorization of the transaction in a separate filing under section 205 of the FPA.<sup>7</sup> Based on UBS's representation and subject to the tariff revision directed herein, UBS satisfies the Commission's requirements with regard to affiliate abuse.

---

<sup>4</sup> 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).

<sup>5</sup> 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

<sup>6</sup> UBS states that it treated PGE as an affiliate in its initial market-based rate tariff and that section 5 of its proposed tariff contains certain restrictions on sales to, and purchases from, PGE.

<sup>7</sup> *Aquila Inc.*, 101 FERC ¶ 61,331 at P 12 (2002).

13. 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>8</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>9</sup>

14. UBS's market-based rate tariff language does not comply with the market behavior rules as established by the Commission.<sup>10</sup> Specifically, the parenthetical clause in section 2(b) of the market behavior rules that currently reads "(...or scheduling non-firm service or products sold as firm)" should be corrected to read: "(...or scheduling non-firm service for products sold as firm)..." Accordingly, UBS is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to include such language, without variation, consistent with the Commission's market behavior rules.

15. UBS 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>11</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

---

<sup>8</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>9</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). 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.

<sup>10</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 at P 73 (2004).

<sup>11</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).

market-based rates. UBS's proposed tariff language does not comply with the requirements of Order No. 652. Within 30 days of the issuance of this order, please revise your tariff to incorporate the following language, without variation, consistent with Order No. 652:

[insert market-based rate seller name] 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.

16. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of Part 45 in its 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.<sup>12</sup> With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).<sup>13</sup> Thus, consistent with Order No. 664, UBS will be required henceforth to comply with the full requirements of Part 45.

---

<sup>12</sup> *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 17,219 (Apr. 5, 2005), 112 FERC ¶ 61,298 at P 34 (2005) (discussing Part 45, 18 C.F.R. Part 45 (2005)).

<sup>13</sup> *Id.* at P 36.

17. UBS's next updated market power analysis is due within three years of the date of this order. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Magalie R. Salas,  
Secretary.