

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

AIG Energy Inc.	Docket Nos.	ER03-770-002
Altorfer Inc.		ER01-1758-002
Bollinger Energy Corp.		ER98-1821-005
Community Energy, Inc.		ER01-1836-002
Dartmouth Power Associates Limited Partnership		ER96-149-010
Electrade Corporation		ER94-1478-017
Front Range Power Company, LLC		ER02-1173-003
Haleywest, LLC		ER01-1760-003
The Legacy Energy Group, LLC		ER99-3571-003
TransCanada Energy Ltd.		ER95-692-000
TransCanada Power Marketing Ltd.		ER97-1417-002
TransCanada Hydro Northeast Inc.		ER98-564-008
TEC Trading, Inc.		ER01-2783-007
Storm Lake Power Partners I, LLC		ER98-4643-003
Strategic Energy Management Corp.		ER00-167-002
Vandolah Power Company L.L.C.		ER02-1336-003
		EL05-111-000

ORDER ON UPDATED MARKET POWER ANALYSES AND TERMINATING  
SECTION 206 PROCEEDING

(Issued February 2, 2006)

1. In this order, the Commission accepts the updated market power analyses filed by the above-captioned market-based rate sellers in response to the Commission order issued on May 31, 2005.<sup>1</sup> This order also accepts tariff revisions filed by some of the above-captioned entities and directs certain compliance filings, as discussed below. In addition,

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<sup>1</sup> *3E Technologies, Inc., et al.*, 111 FERC ¶ 61,295 (2005) (May 31 Order).

this order terminates the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to the above-captioned entities.

### **Background**

2. As a condition of receiving market-based rate authority, the Commission requires market-based rate sellers to submit an updated market power analysis every three years<sup>2</sup> to allow the Commission to evaluate the reasonableness of their charges and to provide for ongoing monitoring of their ability to exercise market power. In the absence of an updated market power analysis, the Commission cannot exercise its statutory duty to ensure that market-based rates are just and reasonable and that market-based rate sellers continue to lack the potential to exercise market power so that market forces are in fact determining the price.

3. In the May 31 Order, the Commission announced its policy with respect to entities that have failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated or revised market power analysis. In that order, the Commission directed market-based rate sellers, which had failed to comply with the requirement to submit an updated or revised market power analysis, to file their updated or revised market analyses within 60 days from the issuance of that order or provide satisfactory support for why they should not be required to do so. The Commission also established a refund effective date pursuant to the provisions of section 206 of the Federal Power Act (FPA) for the protection of customers.<sup>3</sup>

4. The above-captioned market-based rate sellers filed timely updated market power analyses in response to the May 31 Order. We herein accept their updated market power analyses and terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to these entities, as discussed below.

### **Updated Market Power Analyses**

5. AIG Energy Inc. (AIG Energy), Dartmouth Power Associates Limited Partnership (Dartmouth), Front Range Power Company, LLC (Front Range), and Vandolah Power Company, L.L.C. (Vandolah) (collectively, the AIG Entities) state that they pass the Commission's indicative screens in the markets where they own generation. In total, the AIG Entities own 686 MW in the Western Area Power Administration Colorado

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<sup>2</sup> See, e.g., *Western Resources, Inc., et al.*, 94 FERC ¶ 61,050 at 61,247 (2001); *Entergy Services, Inc.*, 58 FERC ¶ 61,234 at 61,760 (1992); *PSI Energy, Inc.*, 51 FERC ¶ 61,367 at 62,209 (1990).

<sup>3</sup> 16 U.S.C. § 824e (2000).

Missouri control area, 541 MW in the Public Service Company of Colorado control area, 48.2 MW in the Nevada Power Company control area, 986.1 MW in the Florida Power Company control area, 180 MW in the Southern Company control area, 34.3 MW in the California Independent System Operator Corp. (CAISO) market, 168 MW in the ISO New England, Inc. (ISO-NE) market, and 189.9 MW in the PJM Interconnection, L.L.C. (PJM) market. The AIG Entities further state that neither they nor their affiliates own or control transmission facilities or inputs to electric power generation that could be used to erect barriers to entry. Lastly, the AIG Entities state that neither they nor their affiliates have a franchised electric service territory. One of the AIG Entities has revised its market-based rate tariff to include the Commission's change in status reporting requirement and the Commission's market behavior rules.<sup>4</sup> Two of the AIG Entities have revised their market-based rate tariffs to include the Commission's change in status reporting requirement.<sup>5</sup>

6. Altorfer Inc. (Altorfer) states that its 25 MW of generation capacity was constructed after July 9, 1996 and that, under section 35.27 (a) of the Commission's regulations,<sup>6</sup> it does not need to demonstrate any lack of generation market power. Altorefer states that neither it nor its affiliates owns or controls transmission facilities and that neither it nor its affiliates could erect barriers to entry. Lastly, Altorfer states that it is not affiliated with an entity that has a franchised service territory for the sale of electricity.

7. Bollinger Energy Corp. (Bollinger) states that neither it nor its affiliates owns or controls any generation or transmission facilities and that neither it nor its affiliates can erect barriers to entry. Lastly, Bollinger states that neither it nor its affiliates has a franchised service territory for the sale of electricity. Bollinger has filed a revised market-based rate tariff to include the Commission's market behavior rules and change in status reporting requirement.<sup>7</sup>

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<sup>4</sup> AIG Energy Inc., Rate Schedule FERC No. 1, Second Revised Sheet No. 3 (superseding First Revised Sheet No. 3) and Original Sheets Nos. 4-5;

<sup>5</sup> Front Range Power Company, LLC, FERC Electric Tariff, First Revised Volume No. 1, First Revised Sheet No. 3 (superseding Substitute Original Sheet No. 3) and Vandolah Power Company, L.L.C., FERC Electric Tariff, First Revised Volume No. 1, Original Sheet No. 4.

<sup>6</sup> 18 C.F.R. § 35.27(a) (2005). The Commission notes that it 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.

<sup>7</sup> Bollinger Energy Corporation, First Revised Rate Schedule FERC No. 1, Original Sheet No. 2.

8. Community Energy, Inc. (CEI) states that neither it nor its affiliates owns or controls any generation or transmission facilities and that neither it nor its affiliates owns or controls resources or inputs that could be used to restrict market entry by competing power suppliers. Lastly, CEI states that neither it nor its affiliates has a franchised service territory.

9. Electrade Corporation (Electrade) states that neither it nor its affiliates owns or controls any generation or transmission facilities or other inputs to electric power production that would allow them to erect barriers to entry. Lastly, Electrade states that it is not affiliated with any entity that has a franchised service territory. Electrade has filed a revised market-based rate tariff to include the Commission's market behavior rules and change in status reporting requirement.<sup>8</sup>

10. Haleywest, LLC (Haleywest) states that it operates a 6 MW generation facility in the Avista Corporation control area, whose output is committed under long-term contract. Haleywest states that neither it nor its affiliates owns transmission facilities and that they cannot erect barriers to entry. Lastly, Haleywest states that neither it nor its affiliates has a franchised service area for the sale of electricity. Haleywest has filed a revised market-based rate tariff to include the Commission's market behavior rules and change in status reporting requirement.<sup>9</sup>

11. The Legacy Energy Group, LLC (Legacy) states that neither it nor its affiliates owns or controls and generation or transmission facilities. Further, Legacy states that neither it nor its affiliates can erect barriers to entry because it does not own resources such as fuel supplies, unique land sites, or other inputs to electric power generation. Lastly, Legacy states that it is not affiliated with any entity that serves retail load and that it does not have any captive customers. Legacy has filed a revised market-based rate tariff to include the Commission's market behavior rules and change in status reporting requirement.<sup>10</sup>

12. TransCanada Energy, Ltd., TransCanada Power Marketing, Ltd., and TransCanada Hydro Northeast, Inc. (collectively, the TransCanada Entities) state that they pass the Commission's indicative screens in the markets where they own generation. The TransCanada Entities state that they own or are affiliated with entities that own a total of 131 MW of capacity in the New York Independent System Operator (NYISO) market

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<sup>8</sup> Electrade Corporation, FERC Electric Rate Schedule No. 1, Original Sheet No. 1-3.

<sup>9</sup> Haleywest, LLC, Rate Schedule FERC No. 1, Original Sheet No. 1-3.

<sup>10</sup> The Legacy Energy Group, LLC, FERC Electric Rate Schedule No. 1, Original Sheet No. 1-4.

and 984 MW in the ISO-NE market. The TransCanada Entities state that neither they nor their affiliates own or operate transmission facilities and can therefore not exercise transmission market power. The TransCanada entities state that they do not control and are not affiliated with any entity that controls potential barriers to the electric power generation business. Lastly, the TransCanada entities state that neither they nor their affiliates have a franchised service territory.

13. TEC Trading, Inc. (TEC Trading) states that it passes the Commission's indicative screens in the PJM market, where its affiliate, Old Dominion Electric Cooperative, owns 2,103 MW of capacity. In addition, TEC Trading states that neither it nor its affiliates owns any transmission facilities other than those necessary to interconnect to the transmission grid and that neither it nor its affiliates can erect barriers to entry. Lastly, TEC Trading states that there is no potential for affiliate abuse because of the cooperative relationship between TEC Trading and its only affiliate Old Dominion. TEC Trading notes that the Commission has previously recognized that restrictions on interactions between sellers with market-based rates and affiliates with franchised service territories are not necessary in the context of cooperative utilities. Because Old Dominion is a cooperative utility its customers are its shareholders. TEC Trading argues that for this reason there is no potential for affiliate abuse with respect to TEC Trading.

14. Storm Lake Power Partners I LLC (Storm Lake I) states that the only generation it and its affiliates own in the relevant geographic market was constructed after July 9, 1996 and that, under section 35.27 (a) of the Commission's regulations,<sup>11</sup> Storm Lake I does not need to demonstrate any lack of generation market power. Storm Lake I states that its transmission owning affiliate has transferred operational control of its transmission assets to the CAISO which operates those facilities pursuant to an open access transmission tariff on file with the Commission.<sup>12</sup> Storm Lake I states that neither it nor its affiliates owns or controls any resources or inputs to power generation that could impede potential competition. Lastly, Storm Lake I states that its tariff contains a prohibition on affiliate sales and a code of conduct that governs its relationship with its affiliate with a franchised service territory.

15. Strategic Energy Management Corp. (SEMC) states that it does not own and is not affiliated with any entity that owns generation or transmission assets. In addition, SEMC states that it cannot erect barriers to entry. Lastly, SEMC states that it has no affiliates at this time. SEMC has filed a revised market-based rate tariff to include the Commission's

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<sup>11</sup> 18 C.F.R. § 35.27(a) (2005).

<sup>12</sup> *Cal. Indep. Sys. Operator Corp.*, 81 FERC ¶ 61,122 (1997).

market behavior rules and change in status reporting requirement. SEMC has also revised its market-based rate tariff to comply with Order No. 614.<sup>13</sup>

### **Notices**

16. Notice of AIG Energy's filing was published in the *Federal Register*, 70 Fed. Reg. 48,696 (2005), with interventions or protests due on or before August 17, 2005. Notice of Dartmouth's, Front Range's, and Vandolah's filing was published in the *Federal Register*, 70 Fed. Reg. 42,542 (2005), with interventions or protests due on or before August 4, 2005. None was filed.

17. Notice of Altofer's filing was published in the *Federal Register*, 70 Fed. Reg. 46,162 (2005), with interventions or protests due on or before August 18, 2005. None was filed.

18. Notice of Bollinger's filing was published in the *Federal Register*, 70 Fed. Reg. 37,386 (2005), with interventions or protests due on or before July 8, 2005. None was filed.

19. Notice of CEI's filing was published in the *Federal Register*, 70 Fed. Reg. 47,189 (2005), with interventions or protests due on or before August 19, 2005. None was filed.

20. Notice of Electrade's filing was published in the *Federal Register*, 70 Fed. Reg. 42,543 (2005), with interventions or protests due on or before August 3, 2005. None was filed.

21. Notice of Haleywest's filing was published in the *Federal Register*, 70 Fed. Reg. 46,162 (2005), with interventions or protests due on or before August 18, 2005. None was filed.

22. Notice of Legacy's filing was published in the *Federal Register*, 70 Fed. Reg. 43,140 (2005), with interventions or protests due on or before August 1, 2005. None was filed.

23. Notice of the TransCanada Entities' filing was published in the *Federal Register*, 70 Fed. Reg. 36,931 (2005), with interventions or protests due on or before July 5, 2005. None was filed.

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<sup>13</sup> Strategic Energy Management Corp., FERC Rate Schedule No. 1, Original Sheet No. 1-5.

24. Notice of Storm Lake I's filing was published in the *Federal Register*, 70 Fed. Reg. 48,117 (2005), with interventions or protests due on or before August 22, 2005. None was filed.

25. Notice of SEMC's filing was published in the *Federal Register*, 70 Fed. Reg. 41,215 (2005), with interventions or protests due on or before July 26, 2005. None was filed.

### **Discussion**

26. 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>14</sup> As discussed below, the Commission concludes that the above-captioned entities satisfy the Commission's standards for market-based rate authority.

27. On April 14, 2004, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.<sup>15</sup> The above-captioned entities that own or are affiliated with an entity that owns generation have prepared the pivotal supplier and the wholesale market share screens for the markets in which they are located. In addition, many of the above-captioned entities do not have and are not affiliated with an entity that has generation assets. The Commission has reviewed the above-captioned entities' generation market power analyses. Based on the representations of these entities, the Commission finds that the above-captioned entities satisfy the Commission's generation market power standard for the grant of market-based rate authority.

28. We note that Storm Lake I is affiliated with an entity that owns transmission assets, which are operated pursuant to an OATT on file with the Commission, while the remainder of the above-captioned entities do not own or control transmission facilities, other than those necessary to interconnect to the grid. No intervenor has raised transmission market power concerns with respect to these entities. Accordingly, we find that, based on their representations, the above-captioned entities satisfy the Commission's transmission market power standard.

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<sup>14</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., LLC*, 75 FERC ¶ 61,281 at 61,899 (1996); accord *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

<sup>15</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

29. Additionally, we note, that no intervenor has raised concerns regarding barriers to entry. Based on the representations of the above-captioned entities, the Commission is satisfied that these entities cannot erect barriers to entry.

30. Finally, the Commission is concerned with the potential for affiliate abuse and reciprocal dealing. No intervenor has raised affiliate abuse concerns. Based on the representations of the above-captioned entities, we find that they satisfy the Commission's concerns with regard to affiliate abuse.

### **Market-Based Rate Tariffs**

31. As discussed above, some of the above-captioned market-based rate sellers have filed revised tariffs to include the Commission's market behavior rules. With the exception of the entities discussed below, we accept those tariff revisions herein. The market behavior rules were effective December 17, 2003.<sup>16</sup>

32. CEI and Storm Lake I failed to revise their market-based rate tariffs to include the Commission's market behavior rules. Accordingly, we direct CEI and Storm Lake I, within 30 days of the date of issuance of this order, to revise their market-based rate tariff to include the Commission's market behavior rules.<sup>17</sup>

33. Bollinger, Electrade, Haleywest, Legacy, and SEMC filed revised tariffs to include the Commission's market-behavior rules, but did not file the correct language. Specifically section 2(b) of their market behavior rules should state, "(...or scheduling non-firm service for products sold as firm)..." Accordingly, we direct these entities, within 30 days of the date of issuance of this order, to revise their market-based rate tariff to include such language, without variation, consistent with the Commission's market behavior rules.<sup>18</sup>

34. As discussed above, some of the above-captioned market-based rate sellers have filed revised tariffs to include the Commission's change in status reporting requirement,

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<sup>16</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on red's*, 107 FERC ¶ 61,175 at P 73 (2004).

<sup>17</sup> *Id.*

<sup>18</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).

and we accept those tariff revisions herein. The change in status reporting requirement was effective March 21, 2005.<sup>19</sup>

35. CEI and Storm Lake I failed to revise their market-based rate tariffs to include the Commission's change in status reporting requirement. Accordingly, we direct CEI and Storm Lake I, within 30 days of the date of issuance of this order, to revise their market-based rate tariff to include the Commission's change in status reporting requirement.

36. CEI, Haleywest, and Legacy have failed to designate and paginate their tariff in compliance with Order No. 614.<sup>20</sup> We direct these entities to file revised tariff in compliance with Order No. 614 within 30 days of the date of issuance of this order.

### **Other Reporting Requirements**

37. Consistent with the procedures the Commission adopted in Order No. 2001, the above-captioned entities are required to 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>21</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>22</sup>

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<sup>19</sup> *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005), *order on reh'g*, 111 FERC ¶ 61,413 (2005).

<sup>20</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221 (Mar. 31, 2000), FERC Stats. & Regs. ¶ 31,096 (2000).

<sup>21</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>22</sup> 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.

38. The above-captioned entities are 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.

39. 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>23</sup> Thus, consistent with Order No. 664, any of the above-captioned entities who previously sought and were granted waiver of the full requirements of Part 45 will be required henceforth to comply with the full requirements of Part 45.

The Commission orders:

- (A) The updated market power analyses discussed above are accepted for filing.
- (B) Bollinger, Electrade, Haleywest, Legacy, and SEMC are directed to revise their market-based rate tariffs, consistent with the Commission's market behavior rules, within 30 days of the date of issuance of this order.
- (C) CEI and Storm Lake I are directed to revise their market-based rate tariffs to include the Commission's market behavior rules within 30 days of the date of issuance of this order.
- (D) CEI and Storm Lake I are directed to revise their market-based rate tariffs to include the Commission's change in status reporting requirement within 30 days of the date of issuance of this order.
- (E) CEI, Haleywest, and Legacy are directed to revise their market-based rate tariffs to comply with Order No. 614, within 30 days of the date of issuance of this order.

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<sup>23</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* 18 C.F.R. Part 45 (2005)).

(F) The section 206 proceeding instituted in Docket No. EL05-111-000 is hereby terminated with regard to the above-captioned entities.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.