

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 17, 2006

In Reply Refer To:
Merrill Lynch Capital Services, Inc.
Merrill Lynch Commodities, Inc.
Docket Nos. ER99-830-000,
ER99-830-011,
ER99-830-012,
ER99-830-013,
ER99-830-014,
ER99-830-015,
ER04-925-000,
ER04-925-002,
ER04-925-003,
ER04-925-004,
ER04-925-005,
ER04-925-006,
ER04-925-007, and
RM04-14-000

McDermott Will & Emery
Attn: Catherine M. Krupka, Esq.
Attorney for Merrill Lynch Capital Services, Inc. and Merrill Lynch Commodities, Inc.
600 13th Street, N.W.
Washington, D.C. 20005

Dear Ms. Krupka:

1. On January 25, 2005, July 20, 2005, July 29, 2005, October 28, 2005, December 14, 2005, and January 9, 2006, Merrill Lynch Commodities, Inc. (Merrill Lynch Commodities) and Merrill Lynch Capital Services, Inc. (Merrill Lynch Capital) (collectively, Merrill Lynch Companies) filed notices of several changes in status. Additionally, on July 20, 2005, Merrill Lynch Companies submitted a motion for

clarification of Order No. 652.¹ As discussed below, the Commission accepts the notices of changes in status filed by Merrill Lynch Companies. The Commission rejects their request for clarification of Order No. 652 as an untimely request for rehearing.

2. On January 25, 2005, Merrill Lynch Commodities filed a notice of non-material change in circumstances. Merrill Lynch Commodities states that on October 27, 2004 it entered into an Energy Services Agreement (ESA) with Liberty Electric Power, LLC (Liberty). Merrill Lynch Commodities states that Liberty owns an approximately 567 MW generating facility located in Pennsylvania and is authorized to sell power at market-based rates.²

3. On July 20, 2005, as supplemented on November 29, 2005, Merrill Lynch Companies filed a notice of change in status stating that Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch PFS), a non-energy affiliate of Merrill Lynch Companies, acquired 32 percent of the preferred shares in Metcalf Energy Center, LLC (Metcalf). Merrill Lynch Companies state that Metcalf is authorized to sell power at market-based rates and owns a 602 MW facility in California. Merrill Lynch Companies state that Merrill Lynch PFS' passive interest in Metcalf does not give Merrill Lynch PFS, Merrill Lynch Capital, or Merrill Lynch Commodities the right to manage, direct or control operations of Metcalf.

4. Merrill Lynch Companies state that although they are filing this notice of change in status because their non-energy affiliate acquired a passive membership interest in a company that owns generation, they do not believe that Merrill Lynch PFS' passive membership interest in Metcalf constitutes the type of event warranting a change in status notice. Accordingly, on July 20, 2005, Merrill Lynch Companies submitted a motion for clarification of Order No. 652, requesting that the Commission clarify that a change in status filing is not required when a non-energy affiliate of a power marketer acquires a passive (*i.e.*, non-controlling) ownership, membership or other comparable legal interest in an unaffiliated company that owns generation or transmission. Merrill Lynch Companies argue that Order No. 652 appears to apply to such acquisitions even when the ownership interest does not convey to either the market-based rate utility or its non-energy affiliate the right to control the day-to-day operations of the generation or transmission asset in question.

¹ *Reporting Requirements 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).

² *Liberty Electric Power, LLC*, Docket No. ER01-2398-000 (November 20, 2001) (unpublished letter order).

5. On July 29, 2005, Merrill Lynch Companies filed a notice of change in status in which equity interests in Granite Ridge I SPE, LLC (Granite Ridge I), the upstream owner of Granite Energy, LLC (Granite Ridge), which is a 720 MW facility located in Londonberry, New Hampshire, were transferred between JP Morgan Chase Bank, N.A., Merrill Lynch Credit Products, LLC (Merrill Lynch Credit), SPO Partners II, L.P., and Castlerigg Partners LLC (Granite Ridge I Transactions).³ Merrill Lynch Companies state that Merrill Lynch Credit is a non-energy affiliate of Merrill Lynch Companies. Merrill Lynch Companies further state that Merrill Lynch Credit's non-controlling ownership interest does not give Merrill Lynch Credit, Merrill Lynch Capital, or Merrill Lynch Commodities the right to manage, direct or control operations. Merrill Lynch Companies state that Merrill Lynch Credit completed the acquisition of additional non-controlling ownership interests in Granite Ridge I from Kreditanstalt für Wiederaufbau and Bayerische Hypo-und Vereinsbank AG, NY Branch on June 29, 2005 and July 21, 2005, respectively, and that this is the first in a series of transactions authorized by the *Granite Ridge Order* which will result in the reallocation of the equity interests in Granite Ridge I.⁴ Merrill Lynch Companies assert that the Granite Ridge generation is not material to their generation market power analysis.

6. On October 28, 2005, Merrill Lynch Companies filed a notice of change in status informing the Commission that Merrill Lynch Credit completed the assignment of interests in Granite Ridge I to Cargill Financial Services International, Inc. on September 16, 2005, and transferred voting control over equity interests in Granite Ridge I to Electron Holdings, LLC on September 30, 2005. Merrill Lynch Companies state that this closing represents several in a series of transactions authorized by the Commission in the *Granite Ridge Order* which will result in the reallocation of the equity interests in Granite Ridge I.

7. On December 14, 2005, Merrill Lynch Companies filed a notice of change in status informing the Commission that Merrill Lynch Credit completed the acquisition of non-controlling ownership interests in Granite Ridge I from Deutsche Bank Trust Company on November 15, 2005. Merrill Lynch Companies state that this acquisition represents several in a series of transactions authorized by the Commission in the *Granite Ridge Order* which will result in the reallocation of the equity interests in Granite Ridge I.

³ Merrill Lynch Companies state that the Commission authorized the disposition and acquisition of jurisdictional facilities in *Granite Ridge Energy, LLC, JP Morgan Chase Bank, N.A., Merrill Lynch Credit Products, LLC and SPO Partners II, L.P.*, 111 FERC ¶ 62,270 (2005) (*Granite Ridge Order*).

⁴ *Id.*

8. Finally, on January 9, 2006, Merrill Lynch Companies filed a notice of change in status informing the Commission that Merrill Lynch Credit completed the acquisition of non-controlling ownership interests in Lake Road Holding Company, LLC (HoldCo) from Societe Generale and Commerzbank AG on December 8, 2005 and December 12, 2005, respectively.⁵ Merrill Lynch Companies state that this acquisition represents several in a series of transactions authorized by the Commission which will result in the reallocation of the equity interests in HoldCo (HoldCo Transactions). Merrill Lynch Companies state that Merrill Lynch Credit's non-controlling ownership interest does not give Merrill Lynch Credit, Merrill Lynch Capital, or Merrill Lynch Commodities the right to manage, direct or control operations. Merrill Lynch Companies assert that the Lake Road Generating Company, L.P. (Lake Road) generation is not material to their generation market power analysis.

Procedural Matters

9. Notice of Applicants' January 25, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 6,434 (2005), with interventions or protests due on or before February 15, 2005. None was filed.

10. Notice of Applicants' July 20, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 44,351 (2005), with interventions or protests due on or before August 10, 2005. None was filed.

11. Notice of Applicants' July 29, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 47,192 (2005), with interventions or protests due on or before August 19, 2005. None was filed.

12. Notice of Applicants' October 28, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 68,435 (2005), with interventions or protests due on or before November 18, 2005. None was filed.

13. Notice of Applicants' December 14, 2005 filing was published in the *Federal Register*, 71 Fed. Reg. 109 (2006), with interventions or protests due on or before January 4, 2006. None was filed.

14. Notice of Applicants' January 9, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 3,285 (2006), with interventions or protests due on or before January 30, 2006. None was filed.

⁵ Merrill Lynch Companies state that the Commission authorized the disposition and acquisition of jurisdictional facilities in *Lake Road Holding Company, LLC and Lake Road Generating Company, L.P.*, 113 FERC ¶ 62,170 (2005).

Discussion

15. With regard to the ESA entered into between Merrill Lynch Commodities and Liberty, Merrill Lynch Commodities asserts that: (1) the ESA does not transfer any of Liberty's substantive control over the facility to Merrill Lynch Commodities; (2) the ultimate control and decision-making over the operation and dispatch of the output of the facility at all times remains with Liberty and is not transferred to Merrill Lynch Commodities; and (3) the ESA does not transfer approval rights or control over the facility to Merrill Lynch Commodities and does not provide Merrill Lynch Commodities with the ability to operate or withhold output from the facility. Thus, Merrill Lynch Commodities states that neither the execution of the ESA nor Merrill Lynch Commodities' provision of service under the ESA changes the circumstances upon which the Commission relied in granting market-based rate authorization. Based on Merrill Lynch Commodities' representation, this notice of change in status is accepted for filing.

16. Regarding Merrill Lynch PFS' acquisition of 32 percent of the preferred shares in Metcalf, generally, the Commission is concerned about the transfer of control when a preferred share is convertible into common stock. In this case, Merrill Lynch Companies state that the preferred shares that Merrill Lynch PFS acquired in Metcalf are not convertible to common stock. Furthermore, Merrill Lynch Companies state that Merrill Lynch PFS' passive interest does not give Merrill Lynch PFS, Merrill Lynch Capital, or Merrill Lynch Commodities the right to manage, direct or control operations. Merrill Lynch Companies assert that this acquisition is not material to their generation market power analysis. Based upon this representation, this notice of change in status is accepted for filing.

17. With regard to Granite Ridge I Transactions, Merrill Lynch Companies state that Merrill Lynch Credit's non-controlling ownership interest does not give Merrill Lynch Credit, Merrill Lynch Capital, or Merrill Lynch Commodities the right to manage, direct or control operations. Merrill Lynch Companies assert that the Granite Ridge generation is not material to their generation market power analysis. Based upon this representation, this notice of change in status is accepted for filing.

18. With regard to HoldCo Transactions, Merrill Lynch Companies state that Merrill Lynch Credit's non-controlling ownership interest does not give Merrill Lynch Credit, Merrill Lynch Capital, or Merrill Lynch Commodities the right to manage, direct or control operations. Thus, Merrill Lynch Companies assert that the Lake Road generation is not material to their generation market power analysis. Based upon this representation, this notice of change in status is accepted for filing.

19. We find that the pleading which the Merrill Lynch Companies style as a request for clarification of Order No. 652 is in reality an untimely request for rehearing. Under

section 313(a) of the Federal Power Act,⁶ a request for rehearing must be filed within 30 days of the issuance of a Commission order. Merrill Lynch Companies' pleading was filed more than 30 days after the issuance of Order No. 652. Accordingly, we must reject it as untimely filed.⁷ In any event, as discussed above the Commission accepts the notice of change in status for filing.

By direction of the Commission.

Magalie R. Salas,
Secretary.

⁶ 16 U.S.C. § 8251(a) (2000).

⁷ *See, e.g., New York Independent System Operator, Inc.*, 105 FERC ¶ 61,108 at P 13 (2003); *PJM Interconnection, L.L.C.*, 95 FERC ¶ 61,333 at n.11 (2001); *Houston Light and Power*, 84 FERC ¶ 61,183 (1988).