

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

March 2, 2006

In Reply Refer To:  
Cantor Fitzgerald Brokerage, L.P.  
Docket Nos. ER06-196-000  
ER06-196-001

Thelen, Reid & Priest LLP  
Attn: Phillip G. Lookadoo, Esq.  
Attorney for Cantor Fitzgerald Brokerage, L.P.  
701 Eighth Street, N.W.  
Washington, D.C. 20001

Dear Mr. Lookadoo:

1. On November 10, 2005, as amended on January 6, 2006, Cantor Fitzgerald Brokerage, L.P. (CFB) filed an application for market-based rate authority and an accompanying tariff. The proposed market-based rate tariff provides for the sale of electric capacity, energy, and ancillary services at market-based rates,<sup>1</sup> the resale of firm transmission rights or their equivalents (FTRs),<sup>2</sup> and the reassignment of transmission capacity.<sup>3</sup> CFB's submittal includes the Commission's market behavior rules,<sup>4</sup> and the

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<sup>1</sup> CFB states that it plans to sell certain ancillary services in the markets administered by the California Independent System Operator Corporation (CAISO), ISO New England Inc. (ISO-NE), New York Independent System Operator, Inc. (NYISO), and PJM Interconnection, L.L.C. (PJM). FERC Electric Tariff Vol. No. 1, Substitute Original Sheet Nos. 1-2.

<sup>2</sup> FERC Electric Tariff Vol. No. 1, Substitute Original Sheet No. 3.

<sup>3</sup> *Id.*

<sup>4</sup> On February 16, 2006, the Commission issued an order rescinding market behavior rules 2 and 6 effective upon publication of the order in the *Federal Register*. *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006). On that date, the Commission also adopted a final rule codifying market behavior rules 1, 3, 4 and 5 in the Commission's regulations, (continued...)

change in status reporting requirement<sup>5</sup> adopted by the Commission in Order No. 652.<sup>6</sup> CFB requests waivers commonly given to similar market-based rate applicants. CFB's submittal satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective January 10, 2006, as requested.

2. CFB states that it is a Delaware limited partnership, with its principal place of business in New York, New York. CFB further states that its general partner, with a 1 percent interest, is CFBLP Holdings (CFLP) LLC, and that its sole limited partner, with a 99 percent interest, is Cantor Fitzgerald Securities. CFB states that it acts as a broker in emissions allowances, pollution credits and wholesale energy transactions, and provides consulting services regarding market-based emissions and environmental attribute trading programs and energy transactions. CFB states that it does not own or operate any electric generation facilities, nor any electric power transmission facilities, nor does it have a franchised electric service territory.

### **Procedural Matters**

3. Notice of the November 10, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 71,124 (2005), with interventions and protests due on or before December 1, 2005. None was filed.

4. Notice of the January 6, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 3,285 (2006), with interventions and protests due on or before January 27, 2006. 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

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effective on the date of publication of the final rule in the *Federal Register*. *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 71 Fed. Reg. 9695 (Feb. 27, 2006), 114 FERC ¶ 61,163 (2006).

<sup>5</sup> FERC Electric Tariff Vol. No. 1, Substitute Original Sheet No. 3.

<sup>6</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).

whether there is evidence of affiliate abuse or reciprocal dealing.<sup>7</sup> As discussed below, the Commission concludes that CFB 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, the pivotal supplier screen and the wholesale market share screen. CFB states that neither it nor any of its affiliates owns or operates any electric generation facilities. Accordingly, the Commission finds that CFB satisfies the Commission's generation market power standard for the grant of market-based rate authority.

7. CFB states that neither it nor any of its affiliates owns, operates, or controls any transmission facilities in the United States. Based on this representation, the Commission finds that CFB satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. CFB further states that it cannot erect barriers to entry that would prevent competitors from participating in the relevant markets. CFB states that neither it nor any of its affiliates has any undue control over sites for new generating capacity development, or any undue control over any equipment suppliers to generation. Based on these representations, the Commission is satisfied that CFB cannot erect barriers to entry.

9. CFB states that neither it nor any of its affiliates operates a franchised electric service territory for the sale of electricity to captive customers. Additionally, the proposed tariff prohibits sales to any affiliate with a franchised electric service territory without first receiving Commission authorization of the transaction under a separate filing pursuant to section 205 of the Federal Power Act.<sup>8</sup> Based on this representation, the Commission finds that CFB satisfies the Commission's concerns with regard to affiliate abuse.

10. CFB requests authority to engage in the sale of certain ancillary services (listed in the proposed tariff)<sup>9</sup> at market-based rates into the markets administered by CAISO,

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<sup>7</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>8</sup> 16 U.S.C. § 824d (2000).

<sup>9</sup> See FERC Electric Tariff Vol. No. 1, Substitute Original Sheet Nos. 1-2.

ISO-NE, NYISO, and PJM. Consistent with Commission precedent granting market-based rate authority to sellers to engage in such transactions in those markets, the Commission will grant CFB's request.<sup>10</sup>

11. CFB also requests authority to make sales of 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 CFB's request; however, this grant does not relieve CFB of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2005).<sup>11</sup>

12. CFB also requests authority to resell FTRs or their equivalent and to reassign transmission capacity. The Commission finds CFB's proposed provisions are consistent with the Commission's requirements.<sup>12</sup> Accordingly, the Commission will grant these requests.

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

13. CFB requests the following waivers and authorizations: (1) waiver of the accounting and reporting requirements contained in Parts 41, 101, and 141 of the Commission's regulations; (2) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15, and 35.16; (3) any waiver of section 35.3(a) that may be necessary to permit the filing to take effect on the requested effective date; and (4) blanket authorization under Part 34 of the Commission's regulations for the issuance of securities and the assumption of liabilities that have been granted to other applicants requesting market-based rate authority.

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

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

<sup>12</sup> See *California Independent System Operator Corp.*, 89 FERC ¶ 61,153 (1999); *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997).

14. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>13</sup>

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

15. Within 30 days of the date of 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 CFB should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, 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).

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

17. 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 CFB's issuances of securities or assumptions of liabilities.

18. 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

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<sup>13</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 at P 23-24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

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, CFB must file its first Electric Quarterly Report no later than 30 days after the first quarter CFB's rate schedule is in effect.

19. CFB 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>

20. CFB is directed to file an updated market power analysis 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.

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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 (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>16</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).