

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

March 8, 2006

In Reply Refer To:  
North American Energy Credit and  
Clearing – Contract Merchant LLC  
North American Energy Credit and  
Clearing – Delivery LLC  
Docket Nos. ER06-318-000,  
ER06-318-001,  
ER06-318-002,  
ER06-326-000, and  
ER06-326-001

NECC Corp.  
Attn: Jeanine Hull, Esq.  
1333 New Hampshire Ave.  
2<sup>nd</sup> Floor  
Washington, D.C. 20036

Dear Ms. Hull:

1. On December 13, 2005, as amended on January 10, 2006 and January 27, 2006, North American Energy Credit and Clearing – Contract Merchant LLC (Merchant) and North American Energy Credit and Clearing – Delivery LLC (Delivery) (collectively, Applicants) filed applications for market-based rate authority with accompanying tariffs. The proposed market-based rate tariffs provide for the sale of capacity, energy, and ancillary services at market-based rates, the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs).<sup>1</sup> Applicants' submittals include the

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<sup>1</sup> Applicants plan to sell certain ancillary services in the markets administered by PJM Interconnection, LLC (PJM), the New York Independent System Operator, Inc. (NYISO), ISO New England (ISO-NE), and the California Independent System Operator Corporation, Inc. (CAISO).

Commission's market behavior rules<sup>2</sup> and the change in status reporting requirement adopted by the Commission in Order No. 652.<sup>3</sup> Applicants' submittals satisfy the Commission's standards for market-based rate authority and are accepted for filing, effective February 12, 2006.<sup>4</sup>

2. Applicants state that they are both Delaware limited liability companies. Applicants state they are owned by NECClear LLC (NECClear) which together with another wholly-owned subsidiary, North American Energy Credit and Clearing – Finance LLC (Finance), offers credit management and clearing support services to buyers and sellers of wholesale electricity. Applicants state that NECClear is owned by NECC Corp. which is 78 percent owned by eleven independent industry professionals and 22 percent owned by outside investor groups.

3. Delivery states that it will enter into transactions in the spot and next day markets as either a buyer or a seller. Merchant states that it will perform similarly to Delivery except it will enter into transactions in the forward market. Applicants state that they will trade with customers that have been pre-authorized to transact with them based upon NECClear's credit and clearing review.

### **Procedural Matters**

4. Notice of Merchant's December 13, 2005 filing was published in the *Federal Register*, 71 Fed. Reg. 108 (2006), with interventions and protests due on or before January 3, 2006. None was filed.

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<sup>2</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, 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. 9,695 (Feb. 27, 2006), 114 FERC ¶ 61,163 (2006).

<sup>3</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).

<sup>4</sup> Merchant FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-4; Delivery FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-4.

5. Notice of Delivery's December 13, 2005 filing was published in the *Federal Register*, 71 Fed. Reg. 596 (2006), with interventions and protests due on or before January 5, 2006. None was filed.
6. Notice of Merchant's January 10, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 3840 (2006), with interventions and protests due on or before January 31, 2006. None was filed.
7. Notice of Delivery's January 10, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 3840 (2006), with interventions and protests due on or before January 31, 2006. None was filed.
8. Notice of Merchant's January 27, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 7027 (2006), with interventions and protests due on or before February 10, 2006. None was filed.

## **Discussion**

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

9. 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>5</sup> As discussed below, the Commission concludes that Applicants satisfy the Commission's standards for market-based rate authority.
10. 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. Applicants state that they do not currently own, operate or control any generation. Applicants further state that they are not affiliated with any other entities that own, operate or control any generation. Based on Applicants' representations, the Commission finds that Applicants satisfy the Commission's generation market power standard for market-based rate authority.

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<sup>5</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).

11. Applicants state that neither they nor any of their affiliates own or control any transmission facilities. Based on this representation, the Commission finds that Applicants satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

12. Applicants state that they do not have the ability to erect barriers to entry because neither they nor their affiliates own or control any sites for the construction of new generation capacity, natural gas lines, or other essential resources or inputs that could be used to restrict market entry by competing suppliers. Based on this representation, the Commission is satisfied that Applicants cannot erect barriers to entry.

13. Applicants state that neither they nor any of their affiliates have a franchised service territory for the sale of electricity. Additionally, the proposed tariff prohibits transactions with any public utilities with franchised service territories that are controlled by, under common control with, or control Applicants, without first receiving Commission approval under a separate filing under section 205 of the Federal Power Act. Based on this representation, the Commission finds that Applicants satisfy the Commission's concerns with regard to affiliate abuse.

14. Applicants request 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 Applicants' request.<sup>6</sup>

15. Applicants also request 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 Applicants' request; however, this grant does not relieve Applicants of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2005).<sup>7</sup>

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<sup>6</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>7</sup> See *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

16. Applicants also request authority to reassign transmission capacity and to resell FTRs or their equivalent. The Commission finds Applicants' proposed provisions consistent with the Commission's requirements.<sup>8</sup> Accordingly, the Commission will grant this request.

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

17. Applicants request 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.

18. The Commission will deny Applicants' 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.<sup>9</sup>

19. With regard to the other waivers and authorizations requested by Applicants, the Commission will grant those waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>10</sup> Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Applicants to keep their accounting records in accordance with generally accepted accounting principles.

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<sup>8</sup> See *California Independent System Operator, Corp.*, 89 FERC ¶ 61,153 (1999); *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997).

<sup>9</sup> See *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 70 Fed. Reg. 55,717 (September 23, 2005), FERC Stats. & Regs. ¶ 31,194 at P 34 (2005), *order on reh'g*, Order No. 664-A, 114 FERC ¶ 61,142 (2006).

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

20. 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 Applicants 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).

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

22. 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 Applicants' issuances of securities or assumptions of liabilities.

23. 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>11</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>12</sup> Accordingly, Applicants must file their first Electric Quarterly Reports no later than 30 days after the first quarter Applicants' rate schedules are in effect.

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<sup>11</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>12</sup> The exact filing 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.

24. Applicants 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>13</sup>

25. Applicants' 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.

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<sup>13</sup> See Order No. 652, FERC Stats. & Regs. ¶ 31,175.