

122 FERC ¶ 61,125
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

February 12, 2008

In Reply Refer To:
Watson Cogeneration Company
Docket No. ER08-337-000

Mr. Michael C. Griffen, Esq.
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Attorney for Watson Cogeneration Company
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mr. Griffen:

1. On December 14, 2007, Watson Cogeneration Company (Watson) filed an application for market-based rate authority with an accompanying market-based rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity, and ancillary services at market-based rates.¹ Watson requests waivers commonly granted to similar market-based rate applicants. Watson also requests waiver of the requirement to provide an asset appendix with respect to the energy assets owned by its affiliates, Edison Mission Energy and Southern California Edison (SCE).²
2. As discussed below, Watson's submittal satisfies the Commission's standards for market-based rate authority and is conditionally accepted for filing, as modified to include a complete asset appendix, effective January 1, 2008, as requested.³

¹ Watson requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NY-ISO), ISO New England Inc. (ISO-NE), and California Independent System Operator, Inc. (CAISO). Watson also requests authorization to engage in the sale of certain ancillary services to third party suppliers in other markets.

² 18 CFR § 35.37(a)(2) (2007).

³ Watson's market-based rate tariff is designated as: FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-2.

3. Watson states that it owns and operates a 398 MW natural gas-fired cogeneration facility located in Carson, California that is a qualifying facility (QF). Watson's net electrical output that is not supplied to its thermal host is sold to SCE under a Watson power purchase agreement (Watson PPA), that Watson states is set to expire on April 6, 2008.
4. Watson states that it is wholly owned by Products Cogeneration Company, Carson Cogeneration Company, and Camino Energy Company, and is affiliated with several entities that own generation facilities in the CAISO market. These affiliates include SCE, which owns an indirect 49 percent interest in Watson through its subsidiary Edison International, the owner of Camino Energy Company.
5. Notice of Watson's filing was published in the *Federal Register*, 72 Fed. Reg. 74,280 (2007), with motions to intervene and protests due on or before January 4, 2008. SCE filed a motion to intervene and comment on January 4, 2008. Watson filed an answer on January 17, 2008.
6. SCE states that it does not object to Watson's request for market-based rate authority and that its concern is limited to the interconnection service that SCE provides to Watson. SCE states that it entered into an interconnection facilities agreement (IFA) with Watson in connection with the Watson PPA. SCE states that the IFA originally was a state-jurisdictional agreement. While Watson and SCE dispute the termination date of the Watson PPA,⁴ the California Public Utilities Commission (California Commission) has extended the non-price terms of that agreement, and SCE is still required to buy the full output of the Watson facility. SCE states that based on the California Commission's decision, it believes that the interconnection service it provides to Watson remains under state jurisdiction.
7. However, SCE also states that a recent Commission decision indicates that interconnection service provided to a QF is not state-jurisdictional, but rather is subject to Commission jurisdiction, if the QF is able to sell power to a third party, regardless of whether such a sale actually is made.⁵ SCE seeks confirmation that in the situation presented here, the extended Watson PPA will continue to be treated by the Commission as a full-output contract so that the interconnection service remains subject to state jurisdiction as long as SCE is in fact buying the full output under the Watson PPA.

⁴ While Watson maintains that the termination date is April 6, 2008, SCE maintains that the date is as early as December 31, 2007.

⁵ *Niagara Mohawk Power Corp.*, 121 FERC ¶ 61,183, at P 13 (2007).

8. SCE states that it is concerned that by obtaining market-based rate authority, Watson could, without notice to SCE's transmission function, begin selling power to third parties. This could place SCE at risk for time value penalties if it or the CAISO does not file SCE's interconnection service rate with the Commission within 30 days of the commencement of such third-party sales. The CAISO open access transmission tariff (OATT) mandates that if Watson needs Commission-jurisdictional interconnection service, it must obtain such service through the CAISO OATT process. To comply with the CAISO OATT, Watson would need to submit an affidavit to the CAISO and SCE, after which Watson, SCE and the CAISO would all execute a large generator interconnection agreement. SCE asks the Commission to confirm that Watson should not sell power to any entity other than SCE without complying with the interconnection regime described in the CAISO OATT.

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), SCE's timely, unopposed motion to intervene serves to make it a party to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Watson's answer and will, therefore, reject it.

11. As an initial matter, we reject SCE's comments as being outside the scope of this proceeding. SCE's arguments relate to whether certain interconnection facilities are subject to Commission jurisdiction. This is not a factor the Commission considers in granting market-based rate authority. In addition, SCE states that it has "no objection" to Watson's request for market-based rate authority.⁶ Accordingly, the Commission need not address SCE's jurisdictional concerns in this proceeding. SCE is free to raise the concerns it has expressed in a more appropriate proceeding.

12. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power and cannot erect other barriers to entry.

13. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.⁷ Watson has

⁶ SCE Intervention and Comments at 1.

⁷ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 at P 45, 62 (2007) (summarizing the Commission's horizontal market power analysis); *clarified*, 121 FERC ¶ 61,260 (2007).

prepared the pivotal supplier and wholesale market share screens for the CAISO market consistent with Order No. 697.⁸ Watson's horizontal market power analysis indicates that Watson passes both the pivotal supplier and wholesale market share screens in that market. Accordingly, we find that Watson satisfies the Commission's requirements for market-based rates regarding horizontal market power.

14. To address vertical market power concerns, the Commission requires in cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities that there be a Commission-approved OATT on file before granting a seller market-based rate authorization.⁹

15. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁰ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; or sources of coal supplies or the transportation of coal supplies, such as barges and rail cars (collectively, inputs to electric power production). The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.¹¹

16. Watson states that it does not have transmission market power. Watson states that, with one exception, it and its affiliates do not own or control any transmission facilities in the CAISO balancing authority area other than the limited interconnection facilities needed to interconnect generation facilities with the CAISO transmission system, none of which comprise a networked transmission system. Watson states that SCE owns a transmission system in California that is under the control of CAISO, an independent transmission operator, which has an OATT on file. Further, Watson states that it does not own or control inputs to electric power production and affirmatively states that it has not erected barriers to entry and will not erect barriers to entry in the future.

17. Based on Watson's representations, Watson's submittal satisfies the Commission's requirements for market-based rates regarding vertical market power.

⁸ *Id.* at P 62.

⁹ *Id.* at P 408.

¹⁰ *Id.* at P 440.

¹¹ *Id.* at P 447.

18. Order No. 697 created two categories of sellers.¹² Category 1 sellers are exempt from the requirement to automatically submit updated market power analyses because those sellers are not likely to present market power concerns. These Category 1 sellers are defined to have ownership or control of relatively small amounts of generation capacity (500 MW or less of generating capacity per region); no affiliation with an entity with a franchised service territory in the same region as the seller's generation facility; little or no ownership or control of transmission facilities and no affiliation with an entity that owns or controls transmission in the same region as the seller's generation facility; and no indication of an ability to exercise vertical market power.¹³ Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analysis.¹⁴

19. Based on Watson's representations, Watson meets the criteria for a Category 2 seller and is so designated because its affiliate, SCE, owns transmission in CASIO, the same region as Watson's generation facility. Thus, Watson must file an updated market power analysis in compliance with the regional reporting schedule adopted in Order No. 697.¹⁵

20. Order No. 697 adopted two standard required provisions that each seller must include in its market-based rate tariff: a provision requiring compliance with the Commission's regulations and a provision identifying any limitations and exemptions regarding the seller's market-based rate authority.¹⁶ In addition to the required tariff provisions, Order No. 697 adopted a set of standard provisions that must be included in a seller's market-based rate tariff to the extent that they are applicable.¹⁷

21. Accordingly, Watson's market-based rate tariff includes the Commission's two standard required provisions and a set of standard provisions with regard to sales of certain ancillary services in PJM, NY-ISO, ISO-NE, and CAISO, as well as to third party suppliers in other markets. Therefore, Watson's market-based rate tariff satisfies the Commission's requirements set forth in Order No. 697.

¹² *Id.* at P 848.

¹³ *Id.* at P 853, 864.

¹⁴ *Id.* at P 850.

¹⁵ *Id.* at P 882.

¹⁶ *Id.* at P 914.

¹⁷ *Id.* at P 917.

22. Watson includes an asset appendix, as required by Order No. 697,¹⁸ that identifies generation assets owned and controlled by Watson's affiliate, BP America Inc. However, Watson requests waiver of Order No. 697's requirement to provide an asset appendix with respect to energy assets owned or controlled by its other affiliates, Edison Mission Energy and SCE.¹⁹ Watson states that this waiver is appropriate because Watson does not control any of those assets, and Watson lacks access to data from Edison Mission Energy and SCE.

23. However, Order No. 697 states that market-based rate applicants are required to submit an asset appendix that lists all generation assets owned (clearly identifying which affiliate owns which asset) or controlled (clearly identifying which affiliate controls which asset) by the corporate family, by balancing authority area, and by geographic region, and provide the in-service date and nameplate and/or seasonal ratings by unit.²⁰ Watson has provided no compelling reason why it is unable to comply with this requirement. Therefore, we deny Watson's request for waiver of the requirement to provide an asset appendix with respect to energy assets owned by Edison Mission Energy and SCE. We direct Watson to submit, within 30 days of the date of this order, a revised asset appendix that includes a description of assets owned or controlled by its other affiliates, Edison Mission Energy and SCE, pursuant to the requirements in Order No. 697.

24. Watson requests 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. This request is granted. Watson also requests waiver of Part 41, Part 101, and Part 141 of the Commission's regulations concerning accounting and reporting requirements.²¹ This request is granted. Notwithstanding the waiver of the accounting and reporting requirements here, Watson is expected to keep its accounting records in accordance with generally accepted accounting principles.

25. Watson requests blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability. A separate notice will be published in the *Federal Register* following this letter order establishing a period during which protests may be filed. Absent a request to be heard within the period set, Watson is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person;

¹⁸ *Id.* at P 894.

¹⁹ Watson Application at 11.

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 894-895.

²¹ *Id.* at P 984-986.

provided that such issue or assumption is for some lawful object within the corporate purposes of Watson, compatible with the public interest, and reasonably necessary or appropriate for such purposes.²²

26. Watson must file electronically with the Commission Electric Quarterly Reports.²³ Watson further 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, in accordance with Order No. 697.²⁴

By direction of the Commission.

Kimberly D. Bose,
Secretary.

²² *Id.* at P 999-1000.

²³ *Id.* at P 334, 855. *See also Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). 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>.

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 1015-1017; 18 C.F.R. § 35.42(a)(1)-(2).