FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 30, 2006

In Reply Refer To:
Acadia Power Partners, LLC
Docket Nos. ER02-1406-013,
ER06-964-000

Cleco Power LLC
Docket Nos. ER01-1099-012,
ER06-965-000

Cleco Evangeline LLC
Docket No. ER99-2928-009

Chadbourne & Parke LLP
Ms. Donna J. Bobbish
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Dear Ms. Bobbish:

1. On April 21, 2006, Acadia Power Partners, LLC (Acadia), Cleco Power LLC (Cleco Power), and Cleco Evangeline LLC (Cleco Evangeline) (collectively, Petitioners) filed a notice of change in status pursuant to Order No. 652[1] regarding changes in the operation of a 1,160 MW electric generating facility (facility) that Acadia owns which is located in the Cleco Power control area. Petitioners state that Acadia is 50 percent owned by Acadia Power Holding, which is wholly owned by Cleco Midstream Resources (Cleco Midstream). Petitioners also state that Acadia is also 50 percent owned by Calpine Acadia Holdings, a wholly owned subsidiary of Calpine Corporation (Calpine). On May 5, 2006, Acadia and Cleco Power filed proposed revisions to Acadia's market-based rate tariff that would permit a non-affiliated marketer to manage the facility and sell the

[1] *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

power to any third party purchaser, which may include Cleco Power.[2] As discussed below, the Commission will accept Petitioners' notice of change in status and will accept in part, with the tariff modification directed herein, Acadia's proposed market-based rate tariff revisions, effective May 26, 2006, as requested.[3]

2. Petitioners state that they are notifying the Commission of a change in status which took place in two steps: (1) Acadia acquired control of its 1,160 MW electric generation facility (facility) in the Cleco Power control area as a consequence of amendments to power purchase agreements (PPAs) between Acadia and Calpine Energy Services, L.P. (Calpine Services) under which Calpine Services had purchased the output of the facility for resale; and (2) Acadia entered into an energy management services agreement (EMSA) with a non-affiliated marketing entity, Tenaska Power Services Co. (Tenaska), under which Acadia confers control of the facility to Tenaska.[4] Petitioners state that this change in status does not reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority to Acadia, Cleco Power, and Cleco Evangeline.

3. Petitioners state that, in the past, Acadia entered into two long-term PPAs with Calpine Services, pursuant to which Calpine Services had supplied the natural gas needed to fuel the Acadia facility, dispatched the facility, and owned and marketed the facility's output. Petitioners state that on December 20, 2005, however, Calpine and its subsidiaries, including Calpine Services, filed for bankruptcy. Petitioners state that recently, due to the bankruptcy, Acadia and Calpine Services have agreed to amend the PPAs to permit Acadia to suspend performance of its obligations under the PPAs so that Acadia might mitigate its damages for Calpine Services' non-payment of amounts it owes

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[2] The proposed tariff revisions also remove the market-behavior rules from Acadia's tariff. On February 16, 2006, the Commission issued an order rescinding market behavior rules 2 and 6, effective February 27, 2006. *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006). Also on February 16, 2006, the Commission adopted a final rule codifying market behavior rules 1, 3, 4 and 5 in the Commission's regulations, effective February 27, 2006. *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 71 Fed. Reg. 9695 (Feb. 27, 2006), FERC Stats. & Regs. ¶ 31,208 (2006). As a result, the market behavior rules no longer will be part of a seller's market-based rate tariffs.

[3] FERC Electric Tariff, Original Volume No. 1, First Revised Sheet Nos. 3, 7, 8 and Original Sheet No. 3A. (supersedes Original Sheet Nos. 3, 7, and 8).

[4] The Commission has granted Tenaska market-based rate authorization. *See Tenaska Power Services Co.*, Docket No. ER94-389-000 (May 26, 1994) (unpublished letter order).

Acadia under the PPAs. Petitioners state that under the amended PPAs, Acadia is permitted to make other arrangements for the sale of capacity, energy and ancillary services from the facility, and has sole right, as owner, to dispatch the facility for its own account.

4. Petitioners also state that on April 7, 2006, Acadia entered into an EMSA with Tenaska. Petitioners state that under the EMSA, Tenaska will dispatch the facility; take title to the power dispatched from the facility; enter into wholesale power transactions without prior consent from Acadia; market power from the facility to third party purchasers; and arrange payment for anything required to consummate the sales to third party purchasers. In sum, Acadia and Cleco Power state that due to this agreement Acadia has no ability to direct or influence the selection of customers to whom Tenaska makes sales from the facility. They state that Tenaska will receive a marketing fee and a portion of the net revenues from the sales.

5. Acadia and Cleco Power state that Tenaska will control the Acadia facility under the EMSA and Tenaska will sell power to third party purchasers, which may at times include Cleco Power. Due to the possibility of sales being made to Acadia's affiliate, Cleco Power, Acadia proposes to amend its market-based rate tariff to include language to protect against affiliate abuse. Specifically, Acadia's proposed market-based rate tariff would: (1) limit the length of any sales to Cleco Power to 30 days and the price of any sale to Cleco Power to the weighted average price of Acadia's non-affiliate energy transactions for the consecutive hour, or if Acadia makes no non-affiliate sales, Acadia's incremental cost of production, plus a ten percent adder; and (2) include language which would require Acadia to submit informational filings to the Commission on a confidential basis specifying quantities of sales, hours of sales, prices of sales, and various costs.

Notice of Filings and Responsive Pleadings

6. Notice of Petitioners' April 21, 2006, filing was published in the *Federal Register*, 71 Fed. Reg. 27,490 (2006), with interventions and protests due on or before May 12, 2006.

7. On May 12, 2006, Tenaska filed a motion to intervene and comments, for the purpose of clarifying its role under the EMSA. On May 30, 2006, Tenaska filed supplemental comments, clarifying that its agreement with Acadia would expressly convey control over the facility to Tenaska.

8. Notice of Acadia and Cleco Power's May 5, 2006, filing was published in the *Federal Register*, 71 Fed. Reg. 29,329 (2006), with interventions and protests due on or before May 19, 2006.

9. On May 17, 2006, the Louisiana Public Service Commission (Louisiana Commission) filed a notice of intervention and on May 18, 2006, it filed comments in support of Petitioners' filing. The Louisiana Commission states that it will protect retail ratepayers from any potential affiliate abuse that could arise from the arrangements that are the subject of this filing. The Louisiana Commission further states that as an added protection it intends to institute an audit to verify the reasonableness and prudence of the purchases and pricing of any purchases by Cleco Power.

10. On May 19, 2006, Williams Power Company, Inc. (Williams) filed a motion to intervene and protest. Williams states that it does not oppose the Acadia revised tariff, but it does request that the Commission: (1) specify that the authorization to make indirect sales and purchases by and between Acadia and Cleco will expire after one year; and (2) require Acadia and Cleco to retain any and all records related to the solicitation, submission and selection of bids for the indirect sales and purchases. Williams argues that the circumstances that arose due to the Calpine bankruptcy should not and cannot provide justification for permanent waiver of the Commission rules governing affiliate transactions and that subsequent review and evaluation are necessary. On June 5, 2006, Acadia and Cleco Power filed an answer to Williams' protest.

Discussion

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention and timely, unopposed motions to intervene of Tenaska, the Louisiana Commission, and Williams serve to make them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Acadia's and Cleco Power's answer and will, therefore, reject it.

13. We will accept Acadia's proposal and tariff revisions in part. We note that the arrangement here is similar to previously approved arrangements for sale of the output of the Acadia facility to entities, including Cleco Power, that were in place before the Calpine bankruptcy. Any sales of power from the facility to Cleco Power will be made by Tenaska, a non-affiliated marketing entity that is independent of Cleco Power and that has market-based rate authorization to sell to third party purchasers. We further note that each Petitioner's code of conduct contains marketing and trading provisions which they are required to abide by. Finally, no intervenor has contested the tariff revision to allow sales to Cleco Power under specified conditions set forth in Acadia's tariff. Accordingly, we approve this arrangement, which the Petitioners claim will enhance Cleco Power's reliability. In addition, we accept Petitioners' notice of change in status and Acadia's market-based rate tariff revisions in part, with the tariff modification directed herein.

14. We decline as unnecessary at this time Petitioners' offer to provide the Commission with certain informational filings. Accordingly, Acadia is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff in accordance with these findings. The Electric Quarterly Reports[5] will provide the Commission with the information it routinely collects and the Commission, on its own motion, may obtain information as necessary in the context of an audit.

15. We will not limit our authorization herein to one year as Williams requested. Williams did not provide convincing justification for limiting authorization for sales by Tenaska to Cleco Power and we are not persuaded to impose such restrictions. The Commission requires that market-based rate sellers file an updated market power analysis every three years, and may require such an analysis at any time. We feel that provides adequate opportunity for subsequent review and evaluation.

By direction of the Commission.

Magalie R. Salas,
Secretary.

[5] *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.