

109 FERC ¶ 61,199  
FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

November 22, 2004

In Reply Refer To:  
Styrka Energy Master Fund LLC  
Docket No. ER04-1251-000

Bracewell & Patterson, L.L.P.  
Attn: Jeffrey D. Watkiss, Esq.  
Counsel for Styrka Energy Master Fund LLC  
2000 K Street, NW, Suite 500  
Washington, D.C. 20006-1872

Dear Mr. Watkiss:

1. On September 28, 2004, Styrka Energy Master Fund LLC (SEMF) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of capacity, energy and ancillary services at market-based rates,<sup>1</sup> the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs). The submittal also includes the Commission's market behavior rules.<sup>2</sup> SEMF's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective October 1, 2004.<sup>3</sup>
2. SEMF is a limited liability company with its principal place of business in Wayzata, Minnesota. SEMF is owned by Styrka Energy Fund LLC and by Styrka Energy Fund Ltd (the feeders). The feeders are owned by the Provident Premier Fund LP, a Delaware limited partnership and the Provident Premier Fund Ltd. (Provident), a

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

<sup>2</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

<sup>3</sup> Rate Schedule FERC No. 1, Original Sheet Nos. 1 – 4.

Cayman Islands corporation.<sup>4</sup> SEMF states that it intends to make financial trades in the energy markets and to engage in other energy provision, trading, and ancillary activities and services.

### **Procedural Matters**

3. Notice of SEMF's filing was published in the *Federal Register*, 69 Fed. Reg. 60,852 (2004), with comments, protests, and interventions due on or before October 19, 2004. None was filed.

### **Discussion**

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

4. 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 SEMF satisfies the Commission's standards for market-based rate authority.

5. In its order issued in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. SEMF states that neither it nor any of its affiliates owns or controls generation facilities or has any long-term power purchase agreements in place. Accordingly, the Commission finds that SEMF satisfies the Commission's generation market power standard for the grant of market-based rate authority.

6. SEMF states that neither it nor any of its affiliates owns, operates or controls any transmission facilities. Based on SEMF's representation, the Commission finds that

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<sup>4</sup> Provident is an investment management company that serves a global clientele of banks, insurance companies, pension funds, foundations, endowments, high net worth individuals, family offices, and related financial intermediaries.

<sup>5</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996), *Letter Order Approving Settlement*, 79 FERC ¶ 61,149 (1997); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc., et al.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

SEMF satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

7. SEMF states that neither it nor any of its affiliates owns or controls any sites for the construction of new generating capacity, interstate or intrastate natural gas transmission lines, or other essential resources or inputs that could be used to restrict market entry by competing power suppliers. Based on this representation, we are satisfied that neither SEMF nor any of its affiliates can erect barriers to entry.

8. SEMF states that it does not have a franchised service territory, nor is it affiliated with an electric utility that has a franchised service territory. Based on this representation, we find that SEMF satisfies the Commission's concerns with regard to affiliate abuse.

9. SEMF requests 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 CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant SEMF's request.<sup>6</sup> In addition, SEMF proposes to sell additional ancillary services in these markets and in additional geographic markets 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/or capacity at market-based rates. We will grant SEMF's request in this regard; however, our grant does not relieve SEMF of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).<sup>7</sup>

10. SEMF also requests authority to reassign transmission capacity and resell FTRs. The Commission finds these provisions to be consistent with the Commission's requirements.<sup>8</sup> Accordingly, we grant this request.

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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); *Atlantic City Electric Company, et al.*, 86 FERC ¶ 61,248, clarified, 86 FERC ¶ 61,310 (1999); *Central Hudson Gas & Electric Corporation, et al.*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 (1999); *AES Redondo Beach, L.L.C., et al.*, 85 FERC ¶ 61,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g and clarification*, 90 FERC ¶ 61,036 (2000).

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

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

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

11. SEMF requests 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.

12. We will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>9</sup> Notwithstanding the waiver of the accounting and reporting requirements here, we expect SEMF to keep its accounting records in accordance with generally accepted accounting principles.

13. 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 SEMF 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 (2004).

14. Absent a request to be heard within the period set forth above, SEMF is hereby authorized to issue securities and assume obligations or liabilities as guarantor, endorser, 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 SEMF, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

15. Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate

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<sup>9</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 and P 24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

involving SEMF. Any such person instead shall file a sworn application providing the following information:

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

16. 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 SEMF's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

17. 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>10</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>11</sup> Accordingly, SEMF must file its first Electric Quarterly Report no later than 30 days after the first quarter SEMF's market-based rate tariff is in effect.<sup>12</sup>

18. SEMF is directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These characteristics include, but are not limited to: (1) ownership of generating or transmission facilities or inputs to electric power

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<sup>10</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/Electric/eqr/eqr.htm>.

<sup>11</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

<sup>12</sup> 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.

production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.<sup>13</sup>

19. SEMF is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. 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> The Commission issued a Notice of Proposed Rulemaking in Docket No. RM04-14-000 in which the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates. *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004). The change of status requirements outlined herein are subject to the outcome of the rulemaking.