

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

February 10, 2005

In Reply Refer To:
TransCanada Hydro Northeast Inc.
Docket Nos. ER05-111-000 and
ER05-111-001

Andrews Kurth LLP
Attn: Mr. Kenneth L. Wiseman, Esq.
1701 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20006

Dear Mr. Wiseman:

1. On October 29, 2004, as amended on December 13, 2004, TransCanada Hydro Northeast Inc. (TC Hydro NE) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based tariff provides for the sale of capacity, energy and ancillary services at market-based rates and the reassignment of transmission rights.¹ The submittal also includes the Commission's market behavior rules.² TC Hydro NE's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective on the date that the disposition of jurisdictional facilities occurs.³

2. TC Hydro NE is a newly-formed Delaware corporation with its principal place of business in Westborough, Massachusetts. The sole business purpose of TC Hydro NE will be the ownership and operation of five hydro electric facilities (facilities), with generation assets totaling approximately 476 MW. TC Hydro NE has entered into an

¹ TC Hydro NE plans to sell certain ancillary services in the markets administered by ISO New England, Inc. (ISO-NE) and New York Independent System Operator, Inc. (NYISO).

² *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).

³ FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1– 3.

asset purchase and sale agreement with USGen New England, Inc. (USGenNE).⁴ The electric output of the facilities will be sold into the ISO-NE control area.

3. TC Hydro NE is indirectly owned by TransCanada Pipelines Limited, a Canadian corporation, which is wholly-owned by TransCanada Corporation (TransCanada), a diversified energy company doing business in Canada and the United States. TransCanada owns the 508 MW Ocean State Power Plant located in Burrillville, Rhode Island, in the ISO-NE. TransCanada also manages, operates and owns the 72 MW Castleton gas-fired plant at Castleton-On-Hudson, New York and the 59 MW Curtis Palmer hydroelectric plant in New York located in the NYISO. Lastly, TransCanada owns the 300 MW Manchief plant located in Colorado, which began commercial operation in July 2000. TC Hydro NE states that since this plant commenced commercial operation in July 2000, pursuant to section 35.27(a) of the Commission's regulations, which provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996, it is not necessary for a market power study to be performed for this plant.

Procedural Matters

4. Notice of TC Hydro NE's October 29, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 65,421 (2004), with comments, protests, and interventions due on or before November 19, 2004. None was filed. Notice of TC Hydro NE's December 13, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 77,751 (2004), with comments, protests, and interventions due on or before December 23, 2004. 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 whether there is evidence of affiliate abuse or reciprocal dealing.⁵ As discussed below, we conclude that TC Hydro NE satisfies the Commission's standards for market-based rate authority.

⁴ TC Hydro NE and USGenNE's section 203 filing seeking approval of the sale and transfer of jurisdictional facilities associated with five hydro projects from USGenNE to TC Hydro NE was accepted in *USGen New England, Inc., TransCanada Hydro Northeast Inc.*, 109 FERC ¶ 62,245 (2004).

6. 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) (July 8 Order), the Commission adopted two indicative screens for assessing generation market power. TC Hydro NE has prepared both the pivotal supplier and the wholesale market share screens for the ISO-NE and NYISO markets. The Commission has reviewed TC Hydro NE's generation market power screens, which included the generation capacity owned by TransCanada in the ISO-NE and NYISO market areas, which indicate that TC Hydro NE passes both the pivotal supplier and wholesale market share screens in those geographic markets.

7. TC Hydro NE estimates simultaneous import capability into ISO-NE through the use of total transfer capability (TTC). As discussed in the April 14 and July 8 Orders, the Commission replaced the use of TTC with simultaneous transmission import capability as the appropriate measure of the transmission capability available for imports. The Commission reiterates that using TTC as a proxy for simultaneous transmission import capability is insufficient because it assumes an unrealistically high degree of transmission access for competitors. However, TC Hydro NE passes both indicative screens without considering competing supplies imported into the ISO-NE market. Therefore, TC Hydro NE passes the indicative screens using this simplifying assumption.

8. Regarding the Manchief plant, TC Hydro NE cites section 35.27(a) of the Commission's regulations, which provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.⁶ If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must address whether its new capacity, when added to existing capacity, raises generation market power concerns.⁷

9. Construction of the Manchief plant commenced after July 9, 1996, and the Manchief plant is not located in an area where TC Hydro NE or its affiliates own or control other generation assets, and therefore TC Hydro NE is not required to

⁵See, 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 61,899-900 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

⁶ 18 C.F.R. § 35.27(a) (2004). We note that the Commission intends to address as part of the generic rulemaking proceeding in Docket No. RM04-7-000 whether to retain or modify section 35.27 of its regulations.

⁷ *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

demonstrate a lack of market power with regard to the Manchief plant. Accordingly, the Commission finds that TC Hydro NE satisfies the Commission's generation market power standard for the grant of market-based rate authority.

10. TC Hydro NE states that neither TC Hydro NE nor TransCanada owns any transmission other than the interconnection facilities that are necessary to connect each of TransCanada's or TC Hydro NE's respective facilities to transmission facilities owned by others. Based on TC Hydro NE's representation, the Commission finds that TC Hydro NE satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

11. TC Hydro NE states that neither TC Hydro NE nor TransCanada has the ability to erect barriers to entry in New England or New York. TC Hydro states that a TransCanada subsidiary has a 40.96 percent ownership interest in the Iroquois pipeline, which serves parts of New York and Connecticut.⁸ However, TransCanada states it does not operate the pipeline and cannot use its minority interest to block capacity expansions or to make other operational decisions that would foreclose access to competitors. TransCanada also states that it operates and owns a majority of the Portland Natural Gas Transmission System and that much of this line is part of a joint facility pipeline with Maritime & Northeast Pipeline. TC Hydro NE notes that the Commission recently adopted Order No. 2004, which is designed to ensure that transmission providers cannot extend their market power over transmission to wholesale energy markets by giving their energy affiliates unduly preferential treatment.⁹ TC Hydro NE claims these protections ensure that TransCanada could not use Iroquois or PNGTS to block entry by gas-fired electric generation plants.

12. Additionally, TC Hydro NE states that TransCanada does not produce or transport any other fuel supplies for New England and New York, and it cannot control sites for new generation capacity and does not manufacture fuel transportation or electric generating equipment. Based on these representations, the Commission is satisfied that neither TC Hydro NE nor its affiliates can erect barriers to entry. However, should TC Hydro or TransCanada deny, delay or require unreasonable terms, conditions, or rates for

⁸ Maritimes & Northeast Pipeline and Portland Gas Transmission deliver gas from Canada and Distrigas operates an LNG terminal in Boston. Iroquois provides less than 15 percent of the capacity for delivering natural gas into New England and about 10 percent of the capacity entering New York.

⁹ Standards of Conduct for Transmission Providers, Order No. 2004, FERC Stats, & Regs ¶ 31, 155, at 30,817.

natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of TC Hydro NE's authority to sell power at market-based rates.¹⁰

13. TC Hydro NE states that neither it nor TransCanada has a franchised service area for the sale of electricity. Accordingly, TC Hydro NE states that neither TC Hydro NE nor TransCanada has the power to gain a competitive advantage by causing any captive ratepayers to subsidize excessive costs paid to affiliates for power or to cause captive ratepayers to subsidize a preferential pricing of services. Based on this representation, we find that TC Hydro NE satisfies the Commission's concerns with regard to affiliate abuse.

14. TC Hydro NE requests authority to engage in the sale of certain ancillary services (listed in the proposed rate schedule) at market-based rates into the markets administered by the ISO-NE and NYISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in these markets, the Commission will grant TC Hydro NE's request.¹¹

15. In addition, TC Hydro NE proposes to sell additional ancillary services 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 TC Hydro NE's request in this regard; however, our grant does not relieve TC Hydro NE of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).¹²

16. TC Hydro NE also requests authority to reassign transmission capacity. We find these provisions consistent with the Commission's requirements.¹³ Accordingly, we grant this request.

¹⁰ See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

¹¹ See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *Central Hudson Gas & Electric Corporation*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 (1999).

¹² *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

¹³ See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997).

Waivers, Authorizations and Reporting Requirements

17. TC Hydro NE 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, except as to sections 141.14 and 141.15;¹⁴ (3) permission to make 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 obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of any person.

18. We will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁵ Notwithstanding the waiver of the accounting and reporting requirements here, we expect TC Hydro NE to keep its accounting records in accordance with generally accepted accounting principles.

19. 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 TC Hydro NE 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).

20. Absent a request to be heard within the period set forth above, TC Hydro NE 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

¹⁴ *Citizens Energy Corp.*, 35 FERC ¶ 61,198 (1986); *Citizens Power and Light Corp.*, 48 FERC ¶ 61,210 (1989) (*Citizens Power*); *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994) (*Enron*).

¹⁵ 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).

such issue or assumption is for some lawful object within the corporate purposes of TC Hydro NE, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

21. 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 involving TC Hydro NE. 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.

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 TC Hydro NE's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

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.¹⁶ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁷ Accordingly, TC Hydro NE must file its first Electric Quarterly Report no later than 30 days after the first quarter TC Hydro NE's market-based rate tariff is in effect.¹⁸

¹⁶ *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>.

¹⁷ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

¹⁸ Failure to file an Electric Quarterly Report (without an appropriate request for
(continued. . . .

24. TC Hydro NE 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. Any change in status must be filed no later than 30 days after the change in status occurs. A change in status includes, but is not limited to each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.¹⁹

25. The Change in Status Final Rule requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, TC Hydro NE is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the change in status reporting requirement adopted in the Change in Status Final Rule.

26. TC Hydro NE 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.

Linda Mitry,
Deputy Secretary.

. . . .continued)

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.

¹⁹ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Change in Status Final Rule). This rulemaking was in Docket No. RM04-14-000.