

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

March 3, 2005

In Reply Refer To:
Millennium Power Partners, L.P.
Docket Nos. ER98-830-006 and
ER98-830-010

White & Case LLP
Attn: Mr. Peter P. Thieman, Esq.
701 Thirteenth Street N.W.
Washington, DC 20005

Dear Mr. Thieman:

1. On December 22, 2004, Millennium Power Partners, L.P. (Millennium), filed an updated market power analysis pursuant to the Commission's order issued on May 13, 2004.¹ The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.² Millennium's submittal is accepted for filing.³ As discussed below, the Commission concludes that Millennium satisfies the Commission's standards for market-based rate authority.

2. Millennium states that it is an exempt wholesale generator that owns a 360 MW natural gas-fired facility located in Charlton, Massachusetts, and sells the output of the facility under long-term contract to Merrill Lynch Commodities, Inc. Millennium further

¹ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order). The Commission granted Millennium market-based rate authority in *Millennium Power Partners, L.P.*, 82 FERC ¶ 61,024 (1998). On December 14, 2001, Millennium submitted an updated market power analysis in Docket No. ER98-830-006, which is addressed in this order.

² *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004) (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

³ Millennium concurrently filed market-based rate tariff revisions, including the Commission's market behavior rules, which were accepted in an unpublished letter order on February 8, 2005, in Docket No. ER05-397-000.

states that it is wholly-owned by Mach Gen, LLC (Mach Gen), a special purpose entity through which a syndicate of lender-owners holds interests in several generation facilities, each built after July 9, 1996.

3. Millennium states that the lenders owning interests in Mach Gen are financial institutions not primarily engaged in energy-related businesses. Millennium also states that several of the lenders who hold a five percent interest in Mach Gen indirectly own interests in other generating facilities in the ISO-New England, Inc. (ISO-NE) market and elsewhere.

4. Millennium was previously owned by National Energy & Gas Transmission, Inc., an affiliate of Pacific Gas & Electric Company (PG&E), a traditional electric utility. Millennium's December 14, 2001, updated market power analysis was filed as a part of a group of entities owned by PG&E, with whom Millennium is no longer affiliated.

Procedural Matters

5. Notice of the December 14, 2001, updated market power analysis filed by Millennium and other then-affiliated Applicants was issued on December 20, 2001, with comments, protests, and interventions due on or before January 4, 2002. Massachusetts Municipal Wholesale Electric Company filed a timely motion to intervene and protest concerning the evidence submitted in the December 14, 2001, filing and the alleged market power of certain of PG&E's generation affiliates. Specifically, Massachusetts Municipal Wholesale Electric Company expressed concern in its protest that Millennium and the other Applicants in the December 14, 2001, updated market power analysis had not performed the Supply Margin Assessment screen (as permitted for sales into markets administered by an independent system operator (ISO) or regional transmission organization (RTO)) and provided only "minimal information" in its place, and argued that as a result, there was no evidentiary basis for the Commission to consider the possible market power of certain PG&E generating facilities in New England. On January 17, 2002, Millennium (and the other then-affiliated Applicants) filed a motion for leave to file answer and answer to Massachusetts Municipal Wholesale Electric Company's protest.

6. Notice of Millennium's December 22, 2004, updated market power analysis was published in the *Federal Register*⁴ with comments, protests, and interventions due on or before January 11, 2005. None was filed.

⁴ 70 Fed. Reg. 1,884 (2005).

Discussion

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ the timely, unopposed motion to intervene of Massachusetts Municipal Wholesale Electric Company serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁶ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept in this proceeding the answer of Millennium and the other then-affiliated Applicants and will, therefore, reject it. With regard to the protest of Massachusetts Municipal Wholesale Electric Company, we note that in the April 14 Order, the Commission replaced the Supply Margin Assessment screen, along with the ISO/RTO exemption, with two indicative screens for assessing generation market power. Additionally, Millennium is no longer affiliated with PG&E. For these reasons, the Commission will dismiss the protest as moot, to the extent it relates to Millennium.

8. 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.⁷ As discussed below, the Commission concludes that Millennium satisfies the Commission's standards for market-based rate authority.

9. In its April 14 Order, the Commission adopted two indicative screens for assessing generation market power. Millennium has prepared both the pivotal supplier and the wholesale market share screen analyses for the ISO-NE market. The Commission has reviewed Millennium's generation market power screen analyses for the ISO-NE market and has determined that Millennium passes the screens in that market. In addition, all of Millennium's affiliates located outside ISO-NE were built after July 9, 1996, for which Millennium 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

⁵ 18 C.F.R. § 385.214 (2004).

⁶ 18 C.F.R. § 385.213(a)(2) (2004).

⁷ 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).

with respect to sales from capacity constructed after July 9, 1996.⁸ Accordingly, the Commission finds that Millennium satisfies the Commission's generation market power standard for the grant of market-based rate authority.

10. Millennium states that neither it nor any of its affiliates currently owns, controls, or operates any transmission facilities. Based on Millennium's representation, the Commission finds that Millennium satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

11. Millennium states that neither it nor any of its affiliates owns or controls natural gas distribution or transmission facilities, sites for potential construction of new generation or any other key input into the domestic power supply industry that could be used to impose barriers to entry on competing power suppliers. Based on this representation, the Commission is satisfied that neither Millennium, nor any of its affiliates, can erect barriers to entry.

12. Millennium states that it is not affiliated with any utility having a franchised electric service territory. Further, Millennium states that it agrees not to make sales of electric energy or capacity to any future affiliate with a franchised service territory, should it become so affiliated, without first receiving approval from the Commission pursuant to a separate filing under section 205 of the Federal Power Act. Based on this representation, the Commission finds that Millennium satisfies the Commission's concerns with regard to affiliate abuse.

13. 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.⁹ Electric

⁸ 18 C.F.R. § 35.27(a) (2004). 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.

⁹ *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 <http://www.ferc.gov/docs-filing/eqr.asp>.

Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁰

14. Millennium 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.¹¹ 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. Any change in status must be filed no later than 30 days after the change in status occurs.

15. Order No. 652 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, Millennium 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 Order No. 652.

16. Millennium 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.

¹⁰ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10(b) (2004). 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.

¹¹ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Order No. 652).