

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

March 3, 2005

In Reply Refer To:
Rainbow Energy Marketing Corporation
Docket No. ER94-1061-024

Leonard, Street, and Deinard, PA
Attn: Steven A. Weiler, Esq.
The Army and Navy Club Building
1627 Eye Street, NW
Suite 610
Washington D.C. 20006

Dear Mr. Weiler:

1. On December 13, 2004, Rainbow Energy Marketing Corporation (Rainbow), filed an updated market power analysis in accordance with Commission orders requiring that all entities with market-based rate authorization file updated market power analyses every three years.¹ Rainbow has already filed the Commission's market behavior rules.² As discussed below, the Commission concludes that Rainbow satisfies the Commission's standards for market-based rate authority.

2. Rainbow is an unaffiliated power marketer that does not own or operate electric generation or transmission facilities. Rainbow is not affiliated with any entity which owns generation or transmission facilities or other inputs to electric power production, and it is not affiliated with any entity that has a franchised service area. Rainbow states that there were no material changes to report regarding the characteristics relied upon by the Commission when it granted Rainbow market-based rate authority.

¹ *Citing AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 7 n.3. The Commission granted Rainbow market-based rate authority in *Rainbow Energy Marketing Corp.*, Docket No. ER94-1061-000 (June 10, 1994) (unpublished letter order).

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). We note that Rainbow's market behavior rules were previously accepted by the Commission. *Acadia Power Partners, LLC*, Docket No. ER03-1372-000 (March 29, 2004) (unpublished letter order).

Procedural Matters

3. Notice of Rainbow's filing was published in the *Federal Register*, 69 Fed. Reg. 77,752 (2004), with motions to intervene and protests due on or before December 28, 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 barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.³ As discussed below, the Commission concludes that Rainbow satisfies the Commission's standards for market-based rate authority.

5. Rainbow states that neither it nor any of its affiliates owns generation assets, or has any long-term power purchase agreements in place. Based on this representation, the Commission finds that Rainbow satisfies the Commission's generation market power standard for the grant of market-based rate authority.

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

7. Also, Rainbow states that neither it nor any of its affiliates owns or controls natural gas transportation and distribution facilities, or provides natural gas transportation service to electric generating units. Further, Rainbow states that neither it nor its affiliates owns or controls essential resources or inputs that could be used to restrict market entry by competing suppliers in the relevant market. Based on Rainbow's representations, the Commission is satisfied that Rainbow cannot erect barriers to entry.

8. Rainbow states it is not affiliated with any entity that has a franchised service territory or that provides service to captive customers. Based on this representation, the

³ 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.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

Commission finds that Rainbow satisfies the Commission's concerns with regard to affiliate abuse.

Other Waivers, Authorizations and Reporting Requirements

9. 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.⁴ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁵ Accordingly Rainbow must file its first Electric Quarterly Report no later than 30 days after the first quarter Rainbow's rate schedule is in effect.⁶

10. Rainbow 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.⁷ 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.

⁴ *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>.

⁵ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10(b) (2004).

⁶ Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in a 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.

⁷ *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).

11. 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, Rainbow 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.

12. Rainbow 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.