

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

March 24, 2005

In Reply Refer To:
Georgia Energy Cooperative
Docket Nos. ER05-349-000 and
ER05-349-001

Autry, Horton & Cole, LLP
Attn: Charles T. Autry, Esq.
Attorney for Georgia Energy Cooperative
2100 East Exchange Place, Suite 210
Tucker, Georgia 30084

Dear Mr. Autry:

1. On December 16, 2004, as amended on February 2, 2005, Georgia Energy Cooperative (GEC) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity and energy at market-based rates. It also includes the Commission's market behavior rules.¹ GEC's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective February 15, 2005, as requested.²
2. GEC states that it is a Georgia Electric Membership Corporation with its principal place of business in Tucker, Georgia. GEC states that it will be providing wholesale power, energy and other services to each of its eleven electric distribution cooperative

¹ *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).

² FERC Electric Tariff No. 1, Original Sheet Nos. 1-3.

members in Georgia pursuant to individual long-term power purchase and scheduling agent service agreements commencing on April 1, 2005. GEC states that its members are all not-for-profit electric distribution cooperatives.³

Procedural Matters

3. Notice of GEC's December 16, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 78, 406 (2004), with motions to intervene and protests due on January 6, 2005. Notice of GEC's February 2, 2005 amendment was published in the *Federal Register*, 70 Fed. Reg. 8,356 (2005), with motions to intervene and protests due on February 18, 2005. 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.⁴ As discussed below, the Commission concludes that GEC satisfies the Commission's standards for market-based rate authority.

5. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. GEC has prepared both the pivotal supplier and the wholesale market share screens for the Southern Company control area. The Commission has reviewed GEC's generation market power screens, which indicate that GEC passes both the pivotal supplier and wholesale market share screens in the Southern

³ GEC's members are: Canoochee Electric Membership Corporation, Coastal Electric Membership Corporation, Habersham Electric Membership Corporation, Hart Electric Membership Corporation, Jefferson Energy Cooperative, Little Ocmulgee Electric Membership Corporation, Mitchell Electric Membership Corporation, Planters Electric Membership Corporation, Amicalola Electric Membership Corporation, Slash Pine Electric Membership Corporation and Sumter Electric Membership Corporation.

⁴ 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).

Company control area.⁵ Accordingly, the Commission finds that GEC satisfies the Commission's generation market power standard for the grant of market-based rate authority.

6. GEC states that it does not own, operate, or control any electric transmission lines or transmission facilities or any distribution lines. GEC states that its member distribution cooperatives obtain transmission service for their system requirements through Georgia Transmission Corporation (GTC), a non-jurisdictional transmission-only cooperative owned by 39 electric distribution cooperatives in Georgia, including GEC's 11 member-owners. GEC states that it does not control, is not controlled by, and is not under common control with GTC. GEC notes that the Commission has previously raised concerns that the members of a generation and transmission cooperative could raise market power concerns through denial of transmission service to potential competitors by its distribution cooperative members.⁶ However, GEC states that no competitor of GEC or its members has ever filed a complaint or otherwise asserted that GEC's members have violated the Commission's open access policies. Further, GEC and its members agree to accommodate all lawful requests to interconnect or for transmission service across their systems. Based on GEC's representations, the Commission finds that GEC satisfies the Commission's transmission market power standard for the grant of market-based rate authority. However, if GEC or its members deny, delay or require unreasonable terms, conditions, or rates for transmission to a potential electric competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in the revocation of GEC's authority to sell power at market-based rates.⁷

7. GEC states that neither it nor its members own or control the only sites for new generation in or near its members' service territories. GEC states that it does not control, and is not affiliated with an entity that controls, barriers to the electric power generation business, including fuel suppliers, transporters of supplies or electric equipment suppliers. Based on GEC's representations, the Commission is satisfied that neither GEC, nor any of its affiliates, can erect barriers to entry.

⁵ GEC states that all the generation to which the GEC members have access is through long-term wholesale power agreements and is connected to the Georgia Integrated Transmission System (ITS).

⁶ GEC cites *Wolverine Power Supply Coop., Inc.*, 81 FERC ¶ 61,369 at 62,754-55 (1997) and *Pacific Northwest Generating Coop.*, 78 FERC ¶ 61,018 at 61,074, *reh'g granted*, 78 FERC ¶ 61,275 (1997) (*Pacific Northwest Generating*).

⁷ See, e.g., *Pacific Northwest Generating*, 78 FERC at 61,077; *Louisville Gas & Elec. Co.*, 62 FERC ¶ 61,016 at 61,148 (1993).

8. GEC states that the Commission has held that concerns as to affiliate abuse or reciprocal dealing do not exist in a cooperative structure, because a cooperative's ratepayers are also its owners who would receive the benefit of any profits earned by an affiliate. On this basis, GEC submits that there is no potential for affiliate abuse in regard to GEC's request for market-based rate authority. Based on this representation, the Commission finds that GEC satisfies the Commission's concerns with regard to affiliate abuse.

Other Waivers, Authorizations and Reporting Requirements

9. GEC 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.

10. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.⁸ Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects GEC to keep its accounting records in accordance with generally accepted accounting principles.

11. 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 GEC 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).

12. Absent a request to be heard within the period set forth above, GEC is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue

⁸ 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 (2002), FERC Stats. & Regs. ¶ 31,134 at P 23 and P 24 (2002).

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

13. 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 GEC. Any such person instead shall file a sworn application providing the following information:

- a. full name and business address; and
- b. all jurisdictional interlocks, identifying the affected companies and the positions held by that person

14. 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 GEC' issuances and securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

15. 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 Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁰ Accordingly, GEC must file its first Electric Quarterly Report no later than 30 days after the first quarter GEC' rate schedule is in effect.¹¹

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

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

¹¹ 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.

16. GEC 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.¹² 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, GEC is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

GEC 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. 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.

17. GEC 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.

¹² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).