

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 25, 2005

In Reply Refer To:
Mitchell Electric Membership
Corporation
Docket Nos. ER05-350-000 and
ER05-350-001

Hodges, Erwin, Hedrick & Coleman, LLP
Attn: Mr. William A. Erwin, Esq.
Attorney for Mitchell Electric Membership Corporation
507 North Jefferson Street
Post Office Box 2320
Albany, Georgia 31702

Dear Mr. Erwin:

1. On December 16, 2004, as amended on February 4, 2005, Mitchell Electric Membership Corporation (Mitchell) 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 Mitchell'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. Mitchell states that it is an electric membership corporation with its principal place of business in Camilla, Georgia. Mitchell states that it is owned by and provides services to 23,000 residential and commercial members in fourteen Georgia counties. Mitchell further states that it is also a member of Georgia Energy Cooperative. Mitchell states that

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.

it obtains delivery service of all its power and requirements through Georgia Transmission Corporation (An Electric Membership Corporation) (GTC).³

Procedural Matters

3. Notice of Mitchell'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 Mitchell's February 4, 2005, filing was published in the *Federal Register*, 70 Fed. Reg. 7,929 (2005), with motions to intervene and protests due on February 25, 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 Mitchell 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. Mitchell has prepared both the pivotal supplier and the wholesale market share screens for the Southern Company control area. The Commission has reviewed Mitchell's generation market power screens, which indicate that Mitchell passes both the pivotal supplier and wholesale market share screens in the Southern Company control area. Accordingly, the Commission finds that Mitchell satisfies the Commission's generation market power standard for the grant of market-based rate authority.

6. Mitchell states that it does not own, operate, or control any transmission facilities. Mitchell further states that while it is a member of GTC, as one of thirty-nine members it has no ability to control GTC. In addition, Mitchell notes that, while not on file with the Commission, GTC has adopted an open access transmission tariff that is modeled on the

³ Mitchell states that GTC is a transmission-only cooperative that is a non-jurisdictional RUS borrower.

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).

Commission's *pro forma* tariff. Mitchell states that it owns 5,100 miles of distribution lines, all of which have voltages of 25kV or less. Based on Mitchell's representations, the Commission finds that Mitchell satisfies the Commission's transmission market power standard for the grant of market-based rate authority. However if GTC denies, delays or requires 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 Mitchell's authority to sell power at market-based rates.⁵

7. Mitchell states that it does not own or control sites for new generation in or near its service territory. Mitchell also 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 Mitchell's representations, the Commission is satisfied that Mitchell cannot erect barriers to entry.

8. Mitchell 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, Mitchell submits that there is no potential for affiliate abuse in regards to Mitchell's request for market-based rate authority. Based on this representation, the Commission finds that Mitchell satisfies the Commission's concerns with regard to affiliate abuse.

Other Waivers, Authorizations and Reporting Requirements

9. Mitchell 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.⁶ Notwithstanding

⁵ See, e.g., *SOWEGA Power LLC*, 89 FERC ¶ 61,222 (1999); *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 at 61,148 (1993).

⁶ 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

the waiver of the accounting and reporting requirements here, the Commission expects Mitchell 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 Mitchell 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, Mitchell 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 or assumption is for some lawful object within the corporate purposes of Mitchell, 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 Mitchell. 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 show in that neither the public nor private interests will be adversely affected by continued Commission approval of Mitchell's 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

34. *See Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities*, Order No. 627, 67 Fed. Reg. 67,691 (November 6, 2002), FERC Stats. & Regs. ¶ 31,134 at P 23-34 (2002).

(one year or greater) market-based power sales during the most recent calendar quarter.⁷ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁸ Accordingly, Mitchell must file its first Electric Quarterly Report no later than 30 days after the first quarter Mitchell's rate schedule is in effect.⁹

16. Mitchell 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.¹⁰ 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, Mitchell 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:

Mitchell 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.

⁷ *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>.

⁸ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

⁹ 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.

¹⁰ *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).

17. Mitchell 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.