

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

March 25, 2005

In Reply Refer To:
Wisconsin River Power Company
Docket Nos. ER05-453-000
ER05-453-001

Bruder, Gentile & Marcoux, L.L.P.
Attn: William D. Booth, Esq.
Counsel for Wisconsin River Power Company
1701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20006-5807

Dear Mr. Booth:

1. On January 14, 2005, as amended on March 2, 2005, Wisconsin River Power Company (Wisconsin River) filed an application for market-based rate authority with an accompanying tariff and code of conduct.¹ The proposed market-based rate tariff provides for the sale of energy, capacity, and ancillary services at market-based rates, and the resale of financial transmission rights or their equivalent. The proposed market-based rate tariff limits Wisconsin River's market-based rate sales to the markets administered by Midwest Independent System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM) and includes the Commission's market behavior rules.² Wisconsin River has also filed revisions to two previously accepted power sales agreements (PSAs).³ Wisconsin River's submittal satisfies the Commission's standards for market-based rate authority. Wisconsin River's market-based rate tariff and revised PSAs are accepted for filing, as modified, effective on the date that Midwest ISO becomes a single market and performs functions such as central commitment and dispatch with Commission approved market monitoring and mitigation, currently scheduled for April 1, 2005 (hereafter referred to as the Midwest ISO Energy Market).

¹ FERC Electric Tariff Original Volume No. 1, Original Sheet Nos. 1 - 7.

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 Fourth Revised Rate Schedule FERC No. 2, Original Sheet No. 1 – 28; First Revised Rate Schedule FERC No. 3, Original Sheet Nos. 1 – 29.

2. Wisconsin River owns three generation facilities, two run-of-the-river hydroelectric units and a combustion turbine with a total generating capacity of 51 MW located in Midwest ISO. Wisconsin River is owned 50 percent by Wisconsin Public Service Corporation (WPS) and 50 percent by Wisconsin Power and Light Company, a subsidiary of Alliant Energy Corporation (Alliant). Through WPS, Wisconsin River is affiliated with Upper Peninsula Power Company (UPPCo).

Procedural Matters

3. Notice of Wisconsin River's January 14, 2005, filing was published in the *Federal Register*, 70 Fed. Reg. 4,835 (2005), with protests and motions to intervene due on or before February 4, 2005. None was filed.

4. Notice of Wisconsin River's March 2, 2005, filing was published in the *Federal Register*, 70 Fed. Reg. 12,672 (2005), with protests and motions to intervene due on or before March 14, 2005. 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.⁴ As discussed below, we conclude that Wisconsin River's submittal as modified below, satisfies the Commission's standards for market-based rate authority.

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), the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. Wisconsin River has prepared both the pivotal supplier and the wholesale market share screen analyses for the Midwest ISO and PJM markets. Wisconsin River's study assumes that Alliant and WPS are part of the same corporate family and only studies the Midwest ISO and PJM markets since these are the only markets in which Wisconsin River seeks to make sales at market-based rates. Wisconsin River states that considering its owners as one corporate family is a conservative assumption because Alliant and WPS operate as different entities with

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).

different corporate objectives and operate separate control areas. Based on the analysis provided by Wisconsin River, Wisconsin River states that it passes both the pivotal supplier screen and the wholesale market share screen for the Midwest ISO and PJM markets.

7. The Commission has reviewed Wisconsin River's generation market power screens analyses for the Midwest ISO and PJM markets and has determined that Wisconsin River passes both the pivotal supplier and wholesale market share screens in those markets. As the Commission noted in the April 14 Order, once Midwest ISO becomes a single market and performs functions such as a central commitment and dispatch with Commission-approved market monitoring and mitigation, Midwest ISO would be considered to have a single geographic market for purposes of our generation dominance screens. Accordingly, we find that Wisconsin River satisfies the Commission's generation market power standard for the grant of market-based rate authority once the Midwest ISO becomes a single market and performs these functions with Commission-approved market monitoring and mitigation.

8. Wisconsin River states that it does not own transmission facilities. It further states that its parent companies, Alliant and WPS, divested their transmission facilities to American Transmission Company, LLC. Wisconsin River states that these transmission facilities are operated by Midwest ISO according to an open access transmission tariff on file with the Commission.⁵ Based on this representation, we find that Wisconsin River satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

9. Wisconsin River states that its affiliates operate natural gas distribution facilities in Wisconsin, Michigan, Iowa, and Minnesota. Wisconsin River also states that neither it nor its affiliates control any natural gas transportation pipelines. Further, Wisconsin River states that neither it nor its affiliates control sites for potential construction of new generation facilities that could be used to create a barrier to entry. Based on Wisconsin River's representations, that the Commission is satisfied that Wisconsin River cannot erect barriers to entry. However, if Wisconsin River denies, delays, or requires unreasonable rates, terms, or conditions for natural gas service to a potential electric competitor, then the Commission may suspend Wisconsin River's authority to sell electricity at market-based rates.⁶

⁵ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (2004), *order on reh'g*, 109 FERC ¶ 61,157 (2004).

⁶ *Louisville Gas & Electric Company*, 62 FERC ¶ 61,016 (1993).

10. Wisconsin's River's relationship to its owners is analogous, though not identical, to that of a service company. Under two PSAs currently on file with the Commission, Wisconsin River sells power to WPS and Alliant at cost-based rates. Wisconsin River states that these two PSAs provide for the sharing of capacity and energy from Wisconsin River's generators and the allocation of Wisconsin River's costs between its owners, WPS and Alliant. Wisconsin River further states that the energy produced by its generators has been used to serve WPS's and Alliant's native load customers and that, in return, WPS and Alliant have paid all of Wisconsin River's costs as defined in the two PSAs. Further, Wisconsin River is operated by WPS's in-house energy supply group that is responsible for purchasing energy to serve WPS's customers. Wisconsin River states that its units are essentially a part of the WPS and Alliant generation fleets dedicated to serve native load.

11. In the instant filing, Wisconsin River has filed revisions to these two previously accepted PSAs. Wisconsin River states that these revisions are made to permit the scheduling and the sales of its energy and capacity into the Midwest ISO and PJM markets. Under the revised PSAs, Wisconsin River states that if it makes sales into the Midwest ISO or PJM under its proposed market-based rate tariff, the revenue from those sales is first used to cover Wisconsin River's costs as defined in the PSAs. Wisconsin River states, under the revised PSAs, revenue from sales under its proposed market-based rate tariff in excess of Wisconsin River's costs is allocated to WPS and Alliant.

12. Wisconsin River's proposed market-based rate tariff contains a code of conduct that governs the relationship between Wisconsin River and the power marketing affiliates of WPS and Alliant. Wisconsin River submits that since any revenue it receives from market-based rate sales into Midwest ISO or PJM above its costs is allocated to WPS and Alliant, it is appropriate for the code of conduct to govern the relationship between Wisconsin River and the power marketing affiliates of WPS and Alliant. Further, Wisconsin River notes that the Commission's standards of conduct apply to WPS and Alliant staff involved in transmission system operation and reliability functions and any personnel at WPS and Alliant that perform merchant functions and their marketing affiliates.

13. In addition, Wisconsin River's proposed market-based rate tariff restricts sales of electricity to, or purchases of electricity from its affiliates with franchised service territories without first receiving Commission approval of the transaction under section 205 of the FPA. Based on Wisconsin River's representations, the Commission finds that Wisconsin River satisfies the Commission's concerns with regard to affiliate abuse.

14. Wisconsin River requests authority to engage in the sale of certain ancillary services (listed in the proposed tariff) at market-based rates into the markets administered by PJM and Midwest ISO. Wisconsin River also proposes to sell additional ancillary

services in PJM and Midwest ISO as the Commission may specify and authorize in the future in orders that extend such authority to all sellers previously authorized to sell energy and/or capacity at market-based rates. Consistent with Commission precedent granting authority to sellers to engage in such transactions in the PJM market, the Commission will grant Wisconsin River's request with regard to PJM.⁷ With regard to additional ancillary services the Commission may specify and authorize in the future, we will grant Wisconsin River's request for the PJM market; however, our grant does not relieve Wisconsin River of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).⁸

15. There is no organized market in Midwest ISO for the sale of ancillary services at market-based rates. Therefore, we direct Wisconsin River to make a compliance filing within 30 days of the date of issuance of this order revising the ancillary services section of its market-based rate tariff to remove the reference to sales in the Midwest ISO market including the provision of the proposed market-based rate tariff allowing the sale of any ancillary services that the Commission may authorize in the future in the Midwest ISO. We note that if the Commission does authorize such sales, Wisconsin River may then revise its market-based rate tariff to allow the sale of ancillary services in the Midwest ISO.

16. Wisconsin River also requests authority to resell financial transmission rights or their equivalent. We find these provisions consistent with the Commission's requirements.⁹ Accordingly, the Commission will grant this request.

17. Wisconsin River has also filed revisions to two previously accepted PSAs. Wisconsin River states that these two PSAs provide for the sharing of capacity and energy from Wisconsin River's generators and the allocation of Wisconsin River's costs between its owners, WPS and Alliant. Wisconsin River further states that the revisions to the PSAs are made to permit the scheduling and the sales of energy and capacity into the Midwest ISO and PJM markets. Under the PSAs, if Wisconsin River sells power into the Midwest ISO or PJM market, the revenue for the market-based rate sales is first used to cover Wisconsin River's costs. Revenue in excess of Wisconsin River's costs is allocated to WPS and Alliant.

⁷ See, e.g., *Atlantic City Electric Co.*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (1999).

⁸ *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

⁹ See *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997), and *California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

Other Waivers, Authorizations, and Reporting Requirements

18. Wisconsin River 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.

19. We will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁰ Notwithstanding the waiver of the accounting and reporting requirements here, we expect Wisconsin River to keep its accounting records in accordance with generally accepted accounting principles.

20. 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 Wisconsin River 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.

21. Absent a request to be heard within the period set forth above, Wisconsin River 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 Wisconsin River, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

22. 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

¹⁰ 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, at P 23 and P 24, 67 Fed. Reg. 67,691 (Nov. 6, 2002), FERC Stats. & Regs. ¶ 31,134 (2002).

involving Pastoria. 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.

23. 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 Wisconsin River's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

24. 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.¹¹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹² Accordingly, Wisconsin River must file its first Electric Quarterly Report no later than 30 days after the first quarter Wisconsin River's rate schedule is in effect.¹³

25. Wisconsin River 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.¹⁴ Order No. 652 requires that the change in status reporting

¹¹ *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>.

¹² The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b.

¹³ 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.

¹⁴ *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).

requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, Wisconsin River 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:

Wisconsin River 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.

26. Wisconsin River 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.