

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

March 23, 2005

In Reply Refer To:  
Colton Power, L.P.  
Docket No. ER01-2644-006

Thelen, Reid, & Priest  
Attn: Philip G. Lookadoo, Esq.  
Counsel for Colton Power, L.P.  
701 Pennsylvania, NW, Suite 800  
Washington, D.C. 20004-2608

Dear Mr. Lookadoo:

1. On February 1, 2005, Colton Power, L.P. (Colton) filed a notice of change in status and an updated market power analysis pursuant to the requirements of the Commission's order granting Colton authority to sell capacity and energy at market-based rates.<sup>1</sup> Colton already has on file the Commission's market behavior rules.<sup>2</sup> As discussed below, the Commission concludes that, with the tariff modification directed herein, Colton satisfies the Commission's standards for market-based rate authority.

2. Colton informs the Commission that since its initial market-based rate filing, one of its upstream owners, GE Capital Services Structured Finance Group, Inc., changed its name to GE Structured Finance, Inc. (GESF). Other than this name change, Colton states that there have been no other material changes in status that would reflect a departure from the characteristics the Commission relied upon in approving Colton's market-based rate schedule on January 30, 2002.

---

<sup>1</sup> *Colton Power, L.P.*, Docket No. ER01-2644-001 (January 30, 2002) (unpublished letter order).

<sup>2</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003). Colton's market behavior rules were previously accepted by the Commission. *Colton Power, LLC*, Docket No. ER01-2644-005 (June 23, 2004) (unpublished letter order).

3. Colton states that it owns two 40 MW natural gas-fired electric power plants located in the City of Colton, California, within the California Independent System Operator's (CAISO) market. In addition, Colton supplies electricity to the California Department of Water Resources (CDWR) pursuant to the terms of a ten-year power purchase agreement dated April 23, 2001, and may sell power not dispatched by the CDWR into the CAISO market.

4. Colton states that it is affiliated with PE-Colton, LLC (PE-Colton) which has active control of Colton and the facilities, and is a wholly-owned subsidiary of PurEnergy, LLC (PurEnergy). Colton's two limited partners are Alliance-Colton, LLC (Alliance Colton) and GPSF-F. GPSF is a wholly-owned subsidiary of General Electric Company (GE).

### **Procedural Matters**

5. Notice of Colton's filing was published in the *Federal Register*, 70 Fed. Reg. 7,727 (2005), with motions to intervene and protests due on or before February 22, 2005. None was filed.

### **Discussion**

#### **Market-Based Rate Authorization**

6. 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.<sup>3</sup> As discussed below, the Commission concludes that, with the tariff modifications directed herein, Colton satisfies the Commission's standards for market-based rate authority.

7. 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 new interim screens for assessing generation market power. Colton cites section 35.27 of the Commission's regulations which provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after

---

<sup>3</sup> 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., et al.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

July 9, 1996.<sup>4</sup> Further, if an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.<sup>5</sup>

8. Colton states that it commenced construction of its facilities in the summer 2001, thus meeting the section 35.27(a) exemption. Accordingly, Colton contends that it does not present any generation dominance concerns. With respect to its affiliates, Colton explains that its general partner, PE-Colton, and their parent company, PurEnergy, are affiliated with entities that own and operate certain qualifying facilities (QF) and exempt wholesale generator (EWG) plants in the CAISO market, including some facilities that were in operation prior to July 9, 1996. Colton states that all of this capacity is committed under long-term power purchase agreements. Furthermore, Colton states that it and its affiliates have no uncommitted capacity in the CAISO control area. Based upon these representations, the Commission finds that Colton satisfies the Commission's generation market power standard for the grant of market-based rate authority.

9. Colton states that it does not own or control any transmission facilities other than certain limited facilities specifically used to interconnect its facilities to the regional transmission grid, which is subject to the functional control of the CAISO. Based on this representation, the Commission finds that Colton satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

10. Colton explains that neither it nor any of its affiliates own, operate, or control resources that could be used to restrict the market entry of competing suppliers, marketers, or brokers. Further, Colton states that neither it nor its affiliates own natural gas transportation or distribution facilities, nor do they provide natural gas transportation service to electric generating units. Based on this representation, the Commission is satisfied that Colton cannot erect barriers to entry.

11. Colton states that neither it nor any of its affiliates are affiliated with an electric utility with a franchised service territory. Furthermore, Colton states that its market-based rate schedule on file with the Commission prohibits it from selling power to or purchasing power from any affiliate that has a franchised service territory without prior Commission approval pursuant to section 205 of the Federal Power Act.<sup>6</sup>

---

<sup>4</sup> 18 C.F.R. § 35.27(a) (2004). We note that 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(a) of its regulations.

<sup>5</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 69. (2004)

<sup>6</sup> 16 U.S.C. § 824d (2000).

However, Colton's tariff does not state that Colton will not make sales to its affiliates with a franchised service territory "without first receiving" Commission authorization of the transaction under section 205 of the FPA. Therefore, consistent with Commission precedent, Colton is directed to make a compliance filing within 30 days of the date of issuance of this order to revise its market-based rate tariff to include such language.<sup>7</sup> Based on Colton's representations, and subject to the tariff revision we direct herein, the Commission finds that Colton satisfies the Commission's concerns with regard to affiliate abuse.

12. 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.<sup>8</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>9</sup>

13. Colton 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.<sup>10</sup> 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, Colton is directed, within 30 days of the

---

<sup>7</sup> See *Aquila, Inc.*, 101 FERC ¶ 61,331, at P 7-9, 12 (2002).

<sup>8</sup> *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/doc-filing/eqr.asp>.

<sup>9</sup> 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.

<sup>10</sup> *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).

date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

Colton 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.

14. In addition, Colton 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.