

111 FERC ¶ 61,039
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

April 14, 2005

In Reply Refer To:
Dartmouth PPA Holdings LLC and
Dartmouth Power Associates L.P.
Docket Nos. ER05-598-000 and
ER05-599-000

Bingham McCutchen LLP
Attn: Mark C. Williams, Esq.
Counsel for Dartmouth PPA Holdings LLC
and Dartmouth Power Associates L.P.
1120 20th Street, N.W.
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Dear Mr. Williams:

1. On February 17, 2005, Dartmouth PPA Holdings LLC (Dartmouth PPA) filed an application for market-based rate authority, with an accompanying tariff and code of conduct. The proposed market-based rate tariff provides for the sale of capacity, energy, and ancillary services at market-based rates, the reassignment of transmission capacity, and the resale of firm transmission rights and their equivalents.¹ Dartmouth PPA states that the market-based rate tariff includes the Commission's market behavior rules² and the change in status reporting requirement recently adopted by the Commission in Order No. 652.³ As discussed below, the Commission concludes that, with the tariff

¹ Dartmouth PPAs' market-based rate tariff provides for the sale of certain ancillary services in the markets administered by the New York Independent System Operator, Inc. (NYISO) and ISO New England, Inc. (ISO-NE).

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 *See 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).

modification directed herein, Dartmouth PPA's submittal satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective March 23, 2005, as requested.⁴

2. Also on February 17, 2005, Dartmouth Power Associates L.P. (Dartmouth Power), a Dartmouth PPA affiliate, filed revisions to Dartmouth Power's market-based rate tariff to permit sales of power to affiliates⁵ and to include the change in status reporting requirement recently adopted by the Commission in Order No. 652. Dartmouth Power request waiver of the 60 day prior notice requirement to allow for an effective date of March 23, 2005. Dartmouth Power's revised market-based rate tariff, as modified below, is accepted for filing, effective March 23, 2005, as requested.⁶

3. Dartmouth PPA states that it is a Delaware limited liability company. According to the submittal, one or more affiliates of American International Group, Inc. (AIG), a global insurance, leasing and financial services firm, through AIG Financial Products or another affiliate, will be a lender to and have a lien interest in Dartmouth PPA. AIG indirectly owns AIG Energy Inc. (AIG Energy), a power marketer in Connecticut which is authorized to make wholesale sales of electric power and ancillary services.

4. Dartmouth PPA is an indirect subsidiary of Dartmouth Power's parent Northern Star Generation LLC (NSG). NSG is a Delaware limited liability company that is owned 50 percent by AIG Highstar Generation LLC (which in turn is wholly-owned by AIG Highstar Capital under the control of AIG Global Asset Management Holdings, Inc.) and 50 percent by OTPPB US Power, L.L.C. Dartmouth PPA states that NSG will exercise control over Dartmouth PPA.

⁴ FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-4. Waiver of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2004), is granted to allow for the effective date noted above. The market behavior rules are effective December 17, 2003.

⁵ The Commission granted Dartmouth Power market-based rate authority in *Dartmouth Power Associate Limited Partnership*, 74 FERC ¶ 61,037 (1996). Dartmouth Power's market behavior rules were accepted in *Acadia Power Partners*, Docket Nos. ER03-1372-001, *et al.* (March 29, 2004) (unpublished letter order). The Commission has accepted Dartmouth Power's updated market power analysis in Docket Nos. ER96-149-004 (1999) and ER96-149-007 (2002).

⁶ Second Revised Rate Schedule FERC No. 3, (Superseding First Revised Rate Schedule FERC No. 3). Waiver of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2004), is granted to allow for the effective date noted above.

5. Dartmouth PPA states that generation owned or controlled by Dartmouth PPA and its affiliates is located in the ISO-NE, NYISO, and PJM Interconnection LLC (PJM) markets as described below. It states that SEMASS Partnership, a Massachusetts limited partnership, owns and operates a small production plant in Rochester, Massachusetts (SEMASS Facility) with a nameplate capacity of 98.5 MW. The power from the SEMASS Facility is committed under long-term contract through December 31, 2015. American Ref-Fuel Company of Southeastern Connecticut owns a facility in Preston, Connecticut with a nameplate capacity of 18 MW (the SECONN Facility). The power from the SECONN Facility is committed under long-term contract through 2017. MASSPOWER owns and operates a facility with a nameplate capacity of 270 MW in Springfield, Massachusetts (the MASSPOWER Facility). Seventy-four percent of the MASSPOWER Facility's output is committed under long-term contract. American Ref-Fuel Company of Hempstead operates a 78.6 MW facility in Hempstead, New York. The entire output of this facility is committed under long-term contract through October 2009. American Ref-Fuel Company of Niagara (ARC Niagara) owns a 50 MW facility in Niagara Falls, New York. The ARC Niagara facility has a long-term agreement to sell power to Niagara Mohawk which expires in 2014. Under that agreement, the ARC Niagara facility has the right to sell the output of the facility to third parties. Panther Creek Partners controls the output of a 94 MW facility in Nesquehoning, Pennsylvania. The total output of this plant is under a long-term contract until October 2012. Cambria CoGen Company owns a 98 MW facility in Pennsylvania. The entire output of this facility is committed under a long-term contract through March 2011. NSG Colver Holdings holds an interest in a 131 MW facility in Pennsylvania. The entire output of this facility is committed under long-term contract through May 2020. American Ref-Fuel Company of Delaware Valley (ARC-Delaware Valley) operates a 90 MW facility in Pennsylvania. ARC-Delaware Valley sells 75 MW of the facility's output under a long-term contract, and the remaining output is sold at market-based rates.⁷ American Ref-Fuel Company of Essex County (ARC-Essex) operates a 69.8 MW facility in New Jersey. The entire output of the ARC-Essex facility is committed under a long-term contract through November 2020. Gilberton Power Company operates an 88.4 MW facility in Pennsylvania. The entire output of this facility is committed under a long-term contract that expires in December 2007.

6. Dartmouth Power owns a natural gas-fired facility in Dartmouth, Massachusetts. Dartmouth Power currently sells the entire output of the Dartmouth power facility (77 MWs) to subsidiaries of NStar, retail providers serving customers in eastern Massachusetts.

⁷ See *American Ref Fuel Company of Delaware Valley L.P.*, Docket No. ER00-2677-000, (July 14, 2000) (unpublished delegated letter order).

7. Dartmouth PPA plans to purchase from the NStar retail subsidiaries the power purchaser rights under Dartmouth Power's existing power sales agreements with the NStar retail subsidiaries (the NStar PSAs). Dartmouth PPA states that it will then resell the entire net capacity output from the Dartmouth Power facility into the ISO-NE.

8. As noted above, Dartmouth Power additionally seeks Commission authority to amend its market-based rate tariff to allow for affiliate sales. Dartmouth Power states that it requests such authorization to give Dartmouth PPA the right to purchase the capacity and energy now held by the NStar retail subsidiaries under the NStar PSAs. Dartmouth Power states that these affiliate sales will not involve any affiliate with a franchised service territory.

Procedural Matters

9. Notice of Dartmouth Power and Dartmouth PPA's February 17, 2005 Filing was published in the *Federal Register*, 70 Fed. Reg. 10,390 (2005), with protests and motions to intervene due on or before March 10, 2005. None was filed.

Discussion

Market-Based Rate Authorization

10. 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.⁸ As discussed below Dartmouth PPA satisfies the Commission's standards for market-based rate authority.

11. 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. Dartmouth PPA has prepared both the pivotal supplier and the wholesale market share screen analyses for the ISO-NE and NYISO markets. Dartmouth PPA states that it passes both the pivotal supplier screen and the wholesale market share screen for the ISO-NE and NYISO markets.

12. The Commission has reviewed Dartmouth PPA's generation market power analyses for the ISO-NE and NYISO markets and has determined that Dartmouth PPA passes both the pivotal supplier and wholesale market share screens in those markets.

⁸ 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).

We also note that Dartmouth PPA states that its affiliates control 34 MW of uncommitted capacity in the PJM market; however, Dartmouth PPA does not apply the generation market power analyses to this market. The Commission reiterates that the two screens should be provided for the relevant geographic markets where an applicant owns or controls any amount of capacity. However, the Commission recently found that an applicant with a similar amount (42 MW) of uncommitted capacity in the PJM market passed the indicative screens in that market.⁹ Thus, we find that Dartmouth PPA would pass the screens with 34 MW of uncommitted capacity in the PJM market. Accordingly, the Commission finds that Dartmouth PPA satisfies the Commission's generation market power standard for the grant of market-based rate authority.

13. Dartmouth PPA states that neither it nor its affiliates own, operate or control any transmission facilities. Based on Dartmouth PPA's representation, the Commission finds that Dartmouth PPA satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

14. Dartmouth PPA states that its affiliate, Southern Star Central Gas Pipeline, owns a natural gas transmission system which serves markets such as St. Louis, Wichita and Kansas City. Dartmouth PPA contends that the eastern-most point of this pipeline is located more than one thousand miles from the electric markets in which Dartmouth PPA seeks market-based rate authority. Based on Dartmouth PPA's representations, the Commission is satisfied that Dartmouth PPA cannot erect barriers to entry. However, if Dartmouth PPA or its affiliates deny, delay, or require unreasonable rates, terms, or conditions for natural gas service to a potential electric competitor, then the Commission may suspend Dartmouth PPA's authority to sell electricity at market-based rates.¹⁰

15. Dartmouth PPA states because Dartmouth PPA is not affiliated with any public utility in the United States that has a franchised service territory or captive customers, there is no concern that Dartmouth PPA has engaged in or has the potential to engage in affiliate abuse. Dartmouth PPA, therefore requests waiver of the Commission's code of conduct. In addition, Dartmouth PPA's proposed market-based rate tariff restricts sales of electricity to any affiliates with franchised service territories without first receiving Commission approval of the transaction under section 205 of the Federal Power Act.¹¹ As a result, Dartmouth PPA submits that it satisfies the Commission's standards for affiliate abuse.

⁹ See *PEI Power Corporation*, 109 FERC ¶ 61,273 (2004).

¹⁰ *Louisville Gas & Electric Company*, 62 FERC ¶ 61,016 (1993).

¹¹ 16 U.S.C. § 824d (2004).

16. The Commission has granted requests for waiver of the code of conduct requirement where there are no captive customers (and thus no potential for affiliate abuse) or where the Commission is satisfied that the utility's captive wholesale and retail customers are adequately protected against affiliate abuse.¹² As noted above, Dartmouth PPA has no captive wholesale customers, and its retail customers have retail choice. Therefore, the Commission will grant their request to waive the code of conduct. We caution that should Dartmouth PPA become affiliated with an entity with a franchised service territory or obtain captive customers in the future, Dartmouth PPA is directed to notify the Commission and we reserve the right to impose the code of conduct requirement and the affiliate sales prohibition. In any event, the Commission's action here does not constitute a waiver of the separate standards of conduct requirements contained in 18 C.F.R. Part 37 (2004), nor does it constitute a waiver of the FPA requirement that all rates be just and reasonable and not unduly discriminatory or preferential. Based on Dartmouth PPA's representations, the Commission finds that Dartmouth PPA satisfies the Commission's concerns with regard to affiliate abuse.

17. Dartmouth PPA 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 ISO-NE and the NYISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions, the Commission will grant Dartmouth PPA's request in those markets.¹³

18. Dartmouth PPA also requests authority to resell firm transmission rights and to reassign transmission capacity. We find these provisions consistent with the Commission's requirements.¹⁴ Accordingly, the Commission will grant this request.

19. Dartmouth Power requests that the Commission accept for filing a revision to Dartmouth Power's market-based rate tariff which permits sales of power to affiliates who do not own a franchise service territory or have captive customers. Dartmouth Power requests such authorization to enable Dartmouth PPA to assume the rights and duties of the NStar subsidiaries under the NStar PSAs. Dartmouth Power argues that since Dartmouth PPA is not a franchised utility and Dartmouth PPA does not have any captive customers, there is no evidence that Dartmouth Power will engage in affiliate

¹² See, e.g., *Green Power Partners I LLC*, 88 FERC ¶ 61,005 (1999).

¹³ See, e.g., *New England Power Pool*, 85 FERC 61,379 (1998), *reh'g denied*, 95 FERC 61,074 (2001); *Central Hudson Gas & Electric Corp.*, 86 FERC 61,062, *order on reh'g*, 88 FERC 61,138 (1999).

¹⁴ See *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997), and *California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

abuse or reciprocal dealings.¹⁵ The Commission will grant Dartmouth Power's request to revise its market-based rate tariff to allow sales to an affiliate to the extent that these sales do not involve a public utility affiliate with a franchised service territory and/or captive customers.

Other Waivers, Authorizations, and Reporting Requirements

20. Dartmouth PPA 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.

21. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁶ Notwithstanding the waiver of the accounting and reporting requirements here, we expect Dartmouth PPA to keep its accounting records in accordance with generally accepted accounting principles.

22. 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 Dartmouth PPA 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).

¹⁵ See, e.g., *Potomac Power Res., Inc.*, 93 FERC ¶ 61,246 at 61,812-3 (2000) (allowing market-based sales between affiliates because there are no affiliate abuse concerns; none of the affiliates have franchised electric service territories); *Exelon Generation Co., L.L.C.*, 93 FERC ¶ 61,140 at 61,424-26 (2000) (waiving the restrictions on inter-affiliate transactions and ancillary inter-affiliate transactions at market-based rates).

¹⁶ 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).

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

24. 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 Dartmouth PPA. 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.

25. 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 Dartmouth PPA's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

26. 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.¹⁷ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the

¹⁷ *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>.

reporting quarter.¹⁸ Accordingly, Dartmouth PPA must file its first Electric Quarterly Report no later than 30 days after the first quarter Dartmouth PPA's rate schedule is in effect.

27. Dartmouth PPA and Dartmouth Power 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.¹⁹ 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. Although they state that they have revised their tariffs in this regard, the Commission finds that their revision does not comply with the requirements of Order No. 652 to our satisfaction. Accordingly, Dartmouth PPA and Dartmouth Power are directed, within 30 days of the date of issuance of this order, to revise their respective market-based rate tariffs to incorporate the following provision:

[Market-based rate seller name] 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.

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

¹⁹ Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).

28. The Commission reminds Dartmouth Power that its market power update is due no later than July 25, 2005. Dartmouth PPA 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.

Magalie R. Salas,
Secretary.