

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

April 14, 2005

In Reply Refer To:
Delta Energy Center, LLC
Docket No. ER02-600-003

Davis Wright Tremaine LLP
Attn: Mr. James B. Vasile, Esq.
1500 K Street, N.W.
Suite 450
Washington, D.C. 20005

Dear Mr. Vasile:

1. On February 14, 2005, Delta Energy Center, LLC (Delta) filed an updated market power analysis pursuant to the requirements of the Commission's order granting Delta authority to sell capacity and energy at market-based rates.¹ Delta already has on file the Commission's market behavior rules.² As discussed below, the Commission concludes that Delta satisfies the Commission's standards for market-based rate authority.

2. Delta, a Delaware limited liability company, is an indirect, wholly-owned subsidiary of Calpine Corporation (Calpine), which is a Delaware corporation engaged through subsidiaries in the development, financing, acquisition, ownership and operation of independent power production facilities and the wholesale marketing and sales of electricity in the United States and abroad. Delta is an exempt wholesale generator that owns and operates the Delta Energy Center, an 880-megawatt natural gas-fired combined-cycle generating facility located in Contra Costa County, California (the Facility). The Facility is interconnected to the Pacific Gas and Electric Company's (PG&E) transmission grid within the control area operated by the California Independent System Operator (CAISO).

¹ *Delta Energy Center, LLC*, 98 FERC ¶ 61,124 (2002).

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). Delta's market behavior rules were previously accepted by the Commission. *Acadia Power Partners, LLC*, Docket No. ER03-1372-001 (unpublished letter order).

3. Delta states that it sells the output of the Facility to an affiliated power marketer, Calpine Energy Services, L.P. (CES), under a long-term power marketing agreement. Delta further states that it has entered into the Reliability Must-Run service agreements with the CASIO, which the Commission accepted for filing in Docket No. ER03-510-000 on March 31, 2003 for the period of February 10, 2003 through December 31, 2003;³ and in Docket No. ER03-510-002 on December 9, 2003, for calendar year 2004.

4. Delta states that on September 12, 2003, Delta acquired an interest as a tenant in common with two affiliates, Gilroy Energy Center, LLC, and Los Medanos Energy Center, LLC, of approximately five miles of lateral natural gas pipelines previously owned by an affiliate, CPN Pipeline Company. Delta asserts that the lateral connects the Facility to natural gas pipeline facilities owned and operated by PG&E.

5. CES, Delta, and an affiliate, CES Marketing III, LLC, jointly filed an application on June 14, 2004, in Docket No. EC04-119-000, pursuant to section 203 of the Federal Power Act, seeking Commission authorization to transfer a power sales agreement from CES to one or more affiliates, including but not limited to Delta and CES Marketing III, LLC, as part of a financing transaction. Delta states that the Commission authorized this transfer on July 15, 2004, but the terms of the transaction have not been finalized.⁴

Procedural Matters

6. Notice of Delta's filing was published in the *Federal Register*, 70 Fed. Reg. 9,637 (2005), with motions to intervene and protests due on or before February 28, 2005. None was filed.

Discussion

7. 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.⁵ As discussed below,

³ *Delta Energy Center, LLC*, 102 FERC ¶ 61,352 (2003). The Commission approved a settlement agreement in this proceeding on September 10, 2003, *Delta Energy Center, LLC*, 104 FERC ¶ 61,247 (2003).

⁴ *Calpine Energy Services, L.P., Delta Energy Center, LLC, and CES Marketing III, LLC*, 108 FERC ¶ 62,048 (2004).

⁵ 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).

the Commission concludes that Delta satisfies the Commission's standards for market-based rate authority.

8. In its order issued in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. Delta states that Metcalf Energy Center, LLC (Metcalf), a generator affiliated with Delta and located in California, submitted a market-based rate application on October 25, 2004 in Docket No. ER05-67-000, including a generation market power analysis pursuant to the two indicative screens for itself and its affiliates in the CAISO control area, including Delta. The Commission accepted for filing Metcalf's market-based rate application and generation market power analysis on January 12, 2005.⁶ Delta submitted a copy of that analysis to the instant filing. The Commission has reviewed Delta's generation market power screen analyses for the CAISO market and has determined that Delta passes the screens in that market. Accordingly, based on these representations, the Commission finds that Delta satisfies the Commission's generation market power standard for the grant of market-based rate authority.

9. Delta states that neither it nor its affiliates can erect barriers to entry by virtue of transmission market power. Delta further states that neither it nor its affiliates owns transmission facilities. Based on Delta's representation, the Commission finds that Delta satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

10. Delta states that neither it nor its affiliates has control over scarce resources or inputs into generation in the relevant markets. Delta states that neither it nor any affiliates has control over sites for generating plants that could restrict entry by other suppliers. Delta further states that neither it nor any of its affiliates controls any interstate fuel transportation systems that could be used to impede downstream generators from gaining access to low-cost gas supplies in the relevant geographic markets. In addition, Delta asserts that neither it nor any of its affiliates owns or controls any fuel supply, transportation facility or generation sites in the relevant regions that could be used to restrict entry by other generators or otherwise impose barriers to market entry and competition. We note that Delta has acquired an interest as a tenant of approximately five miles of lateral natural gas pipelines. Based on these representations, the Commission is satisfied that Delta cannot erect barriers to entry. However, should Delta or any of its affiliates deny, delay or require unreasonable terms, conditions or rates for natural gas service to a potential electric competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in the suspension of Delta's authority to sell power at market-based rates.⁷

⁶ *Metcalf Energy Center, LLC*, 110 FERC ¶ 61,013 (2005).

⁷ *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

11. Delta states that neither it nor any of its affiliates has a franchised service area (other than generation interconnection facilities). Based on this representation, Delta 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.⁸ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁹

13. Delta 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, Delta is required, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

[insert 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

⁸ *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>.

⁹ The exact 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 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).

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, Delta 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.