

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

April 14, 2005

In Reply Refer To:
Frederickson Power L.P.
EPCOR Merchant and Capital (US) Inc.
EPCOR Power Development, Inc.
EPDC, Inc.
Docket Nos. ER01-2262-005
ER02-783-003
ER02-852-003
ER02-855-003

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Dear Ms. Rizzo:

1. On February 22, 2005, Frederickson Power L.P. (Frederickson), EPCOR Management and Capital (US), Inc. (EMC), EPCOR Power Development, Inc. (EPCOR Power), and EPDC, Inc. (EPDC) (collectively, the EPCOR Parties), filed an updated market power analysis pursuant to the requirements of the Commission's orders granting the EPCOR Parties authority to sell capacity and energy at market-based rates.¹ The EPCOR Parties also submitted revised tariff sheets incorporating the change in status

¹ *Frederickson Power, L.P.*, Docket Nos. ER01-2262-000 and ER01-2262-001 (February 21, 2002) (unpublished letter order). *EPCOR Merchant Capital (US) Inc.*, Docket No. ER02-783-000 (March 1, 2002) (unpublished letter order). *EPCOR Power Development, Inc.*, Docket No. ER02-852-000 (March 6, 2002) (unpublished letter order). *EPDC, Inc.*, Docket No. ER02-855-000 (March 6, 2002) (unpublished letter order).

reporting requirement pursuant to Order No. 652.² The EPCOR Parties already have on file the Commission's market behavior rules.³ As discussed below, the Commission concludes that the EPCOR Parties satisfy the Commission's standards for market-based rate authority and accepts the revised tariff sheets for filing.⁴

2. Frederickson is a limited partnership organized under the laws of the state of Washington. Frederickson has one general partner, Frederickson Power Management Inc. (FPMI) and one limited partner, EPDC. EPDC, EPCOR Power, and EMC are wholly-owned subsidiaries of EPCOR Energy (U.S.) G.P. (EPCOR G.P.), which in turn is owned by EMCC Limited and EPCOR Power Development Corporation. Both EMCC Limited and EPCOR Power are wholly-owned subsidiaries of EPCOR Utilities, Inc. (EPCOR Utilities). EPCOR Parties state that EPCOR Utilities, headquartered in Edmonton, Alberta, is the upstream owner of generation, transmission, and distribution facilities to provide electricity and natural gas to customers in Canada and is the ultimate owner of the EPCOR Parties.⁵

² *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).

³ *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). EPCOR Parties' market behavior rules were previously accepted by the Commission. *See Frederickson Power, L.P.*, Docket ER01-2262-004 (March 29, 2004) (unpublished letter order); *EPCOR Merchant and Capital (US) Inc.*, Docket No. ER02-783-002 (March 29, 2004) (unpublished letter order); *EPCOR Power Development, Inc.*, Docket No. ER02-852-002 (March 29, 2004); *EPDC, Inc.*, Docket No. ER02-855-002 (March 29, 2004) (unpublished letter order).

⁴ EPCOR Merchant and Capital (US) Inc. FERC Electric Tariff, Original Volume No.1, Original Sheet No. 5; EPCOR Power Development, Inc. FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 5; EPDC, Inc. FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 5; Frederickson Power, L.P. FERC Electric Tariff Original Volume No. 1, Original Sheet No. 9.

⁵ EPCOR Parties describe various changes in status that have occurred since their initial market-based rate authorizations. In March 2002 in *Engage Energy America, LLC*, 98 FERC ¶ 61,207 (2002), Westcoast Energy, Inc. (Westcoast) became an indirect wholly-owned subsidiary of Duke Energy Corporation (Duke Energy). Thus, Frederickson became an indirect, wholly-owned subsidiary of Duke Energy. In August 2002, in *Frederickson Power, L.P.*, 100 FERC ¶ 62,112 (2002), Duke Energy, Westcoast, and Westcoast Energy Enterprises, transferred their outstanding share of capital stock in FPMI and Frederickson to EPDC and EPCOR Power. Thus, EPCOR parties were no

(continued...)

3. EPCOR Parties state that Frederickson is an exempt wholesale generator that owns a 50.15 percent interest in a generating facility, equating to approximately 138 MW, with a total nameplate capacity of 275 MW located in Frederickson, Washington (Frederickson Facility). The Frederickson Facility is located in the Western Electricity Coordinating Council region and is interconnected with the transmission system of the Bonneville Power Administration (BPA). EPCOR Parties additionally state that Frederickson maintains three long-term power purchase agreements to supply 125 MW of power to various public utility districts in Washington.

4. EPCOR Parties state that EMC is a power marketer incorporated in Delaware with its principal place of business in Calgary, Canada. EMC is the U.S. power marketing affiliate of EPCOR Utilities. EPCOR Parties state that, as a power marketer, EMC neither owns nor controls generating capacity in the United States.

5. EPCOR Parties state that they have various affiliates which own or control generation located in Alberta and British Columbia, Canada. EPCOR Parties further state that EPCOR Transmission Inc. (EPCOR Transmission), another subsidiary, owns transmission facilities in Edmonton, Alberta. They note that the transmission facilities are controlled and operated by ESBI Alberta, Ltd. (ESBI), the independent transmission administrator for the province of Alberta.

Procedural Matters

6. Notice of EPCOR Parties' filing was published in the *Federal Register*, 70 Fed. Reg. 11,002 (2005), with motions to intervene and protests due on or before March 15, 2005. None was filed.

Discussion

Market-Based Rate Authorization

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

longer affiliated with Duke Energy. As a result of this transaction, the EPCOR Parties directly or indirectly owned a 100 percent interest in Frederickson. However, subsequently, Frederickson sold a 49.85 percent interest in the Frederickson Facility to Puget Sound Energy PSE in *Puget Sound Energy, Inc.*, 107 FERC ¶ 61,082 (2004). As a result of that transfer, the EPCOR Parties now maintain a 50.15 percent interest in the plant.

whether there is evidence of affiliate abuse or reciprocal dealing.⁶ As discussed below, the Commission concludes that the EPCOR Parties satisfy the Commission's standards for market-based rate authority.

8. 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. The EPCOR Parties cite 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 July 9, 1996.⁷ 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.⁸

9. The only generation facility owned by the EPCOR Parties in the United States is the Frederickson Facility. The EPCOR Parties state that construction of the Frederickson Facility commenced in 2000, and the facility became operational in 2002. Based on this representation, the Commission finds that the EPCOR Parties satisfy the Commission's generation market power standard for the grant of market-based rate authority.

10. The EPCOR Parties state that neither they nor any of their affiliates directly own, operate, or control any transmission facilities for the distribution of energy for interstate commerce in the United States beyond those necessary to interconnect Frederickson to the grid. As stated above, EPCOR Transmission owns a transmission system located entirely in Alberta, which is controlled by ESBI under ESBI's transmission tariff that provides open access transmission service across the Alberta grid.

11. The Commission has clarified that its concerns are more limited for foreign transmission-owning entities than for transmission-owning entities in the United States. The Commission has further stated that its concern is not transmission service to serve Canadian loads—it is transmission to serve United States load.⁹ The Commission

⁶ 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).

⁷ 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.

⁸ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 69 (2004).

⁹ *Energy Alliance Partnership*, 73 FERC ¶ 61,019 at 61,030 (1995) (*Energy Alliance*).

expanded its concern to include access for United States competitors into Canadian markets on a reciprocal basis.¹⁰ Thus, the Commission seeks to assure reciprocal service into and out of Canada when Canadian entities seek access to United States markets, but the Commission is not seeking to open intra-Canada electric markets through the imposition of open access tariffs for transactions wholly within Canada.¹¹

12. Therefore, the Commission requires a Canadian entity seeking market-based rate authority to demonstrate that its transmission-owning utility affiliate offers non-discriminatory access to its transmission system that can be used by competitors of the Canadian seller to reach United States markets.¹²

13. The Commission has previously found that ESBI's open access arrangements in Alberta effectively mitigate any transmission market power concerns.¹³ Based on this representation, the Commission finds that the EPCOR Parties satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

14. The EPCOR Parties state that nothing has occurred since the filing of their initial applications, for market-based rate authority to change the conclusion that the EPCOR parties do not control barriers to entry. Based on this representation, the Commission is satisfied that the EPCOR Parties cannot erect barriers to entry.

15. With regard to affiliate dealings, the EPCOR Parties state that their Canadian franchised utility affiliates are not subject to the Commission's jurisdiction, but instead are subject to the regulations of the City of Edmonton. The EPCOR Parties commit to filing a code of conduct with the Commission that conforms with the Commission's requirements should the EPCOR Parties become affiliated with a US-jurisdictional utility with a franchised service territory. Based on the EPCOR Parties' representation, the Commission finds that the EPCOR Parties satisfy the Commission's concerns with regard to affiliate abuse.

¹⁰ *TransAlta Enterprises Corp.*, 75 FERC ¶ 61,268 at 61,875 (1996) (*TransAlta*).

¹¹ *See British Columbia Power Exchange Corp.*, 78 FERC ¶ 61,024 at 61,100 (1997).

¹² *See, e.g., TransAlta*, 75 FERC ¶ 61,268, and *Energy Alliance*, 73 FERC ¶ 61,019.

¹³ In *TransAlta*, 75 FERC ¶ 61,268 at 61,875, the Commission concluded that, "these [transmission] arrangements are sufficient for a foreign utility of a United States marketer to address the market power concerns raised by the Commission in *Energy Alliance*, and to meet the general principles of transmission comparability in Order No. 888" (citation omitted). ESBI's transmission tariff was approved by the Alberta Energy and Utilities Board in Decision No. 2000-57.

16. 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.¹⁴ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁵

17. The EPCOR Parties 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.¹⁶ 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. As noted above, the EPCOR Parties have revised their tariffs to include the change in status reporting requirement.

18. In addition, the EPCOR Parties are 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.

¹⁴ *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>.

¹⁵ 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.

¹⁶ *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).