

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

April 14, 2005

In Reply Refer To:
J. Aron & Company,
Docket Nos. ER02-237-002,
ER02-237-003;
Power Receivable Finance, LLC,
Docket Nos. ER03-1151-002,
ER03-1151-003;
Cogentrix Energy Power Marketing, Inc.,
Docket No. ER95-1739-022;
Cogentrix Lawrence County, LLC,
Docket Nos. ER01-1819-003,
ER01-1819-004,
ER05-630-000;
Green Country Energy, LLC,
Docket No. ER99-2984-004;
Quachita Power, LLC,
Docket No. ER02-2026-002;
Rathdrum Power, LLC,
Docket No. ER99-3320-002; and
Southaven Power, LLC,
Docket No. ER03-922-003

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Dear Ms. Moore:

1. On December 30, 2004, as amended on February 25, 2005, J. Aron & Company (J. Aron) and Power Receivable Finance, LLC (PRF) filed a combined updated market power analysis pursuant to the requirements of the Commission's orders granting J. Aron

and PRF authority to sell capacity and energy at market-based rates.¹ As discussed below, the Commission concludes that J. Aron and PRF satisfy the Commission's standards for market-based rate authority.

2. On November 1, 2004, Cogentrix Energy Power Marketing, Inc. (CEPM), Cogentrix Lawrence County, LLC (Cogentrix Lawrence), Green Country Energy, LLC (Green Country), Quachita Power, LLC (Quachita), Rathdrum Power, LLC (Rathdrum), and Southaven Power, LLC (Southaven) (collectively, the Cogentrix Entities), filed a combined updated market power analysis pursuant to the requirements of the Commission's orders granting the Cogentrix Entities authority to sell capacity and energy at market-based rates.² As discussed below, the Commission concludes that the Cogentrix Entities satisfy the Commission's standards for market-based rate authority.

3. J. Aron states that it is a New York general partnership with its principal place of business in New York City, and that it is an international commodities dealer primarily engaged in the purchase, sale, processing, storage and shipment of various commodities including natural gas, precious metals, base metals, currencies, crude oil, and petroleum products. PRF states that it is a Delaware limited liability company with its principal place of business in New York City and that it was created for the purpose of fulfilling the seller's obligations under the Amended and Restated Master Power and Purchase Sale Agreement (CDWR Agreement) between Allegheny Trading Finance Company and the State of California Department of Water Resources (CDWR).³ PRF states that because its jurisdictional sales are limited to its obligation under the CDWR Agreement, its activities are limited to the market operated by the California Independent System Operator Corporation (CAISO).

¹ See *J. Aron & Co.*, Docket No. ER02-237-000 (Dec. 31, 2001) (unpublished letter order); *Power Receivable Finance, LLC*, Docket No. ER03-1151-000 (Sept. 5, 2003) (unpublished letter order). J. Aron's and PRF's market behavior rules were previously accepted by the Commission. See *Acadia Power Partners, LLC*, Docket Nos. ER02-237-001 and ER03-1151-001 (March 29, 2004) (unpublished letter order).

² See *Cogentrix Energy Power Marketing, Inc.*, Docket No. ER95-1739-000 (Oct. 13, 1995) (unpublished letter order); *Cogentrix Lawrence County, LLC*, Docket No. ER01-1819-000 (Aug. 16, 2001) (unpublished letter order); *Front Range Associates LLC*, 88 FERC ¶ 61,047 (1999) (Green Country Energy, LLC); *Quachita Power, LLC*, Docket No. ER00-2235-000 (May 18, 2000) (unpublished letter order), *Illinova Power Marketing, Inc.*, 88 FERC ¶ 61,189 (1999) (Rathdrum Power, LLC); *Southaven Power, LLC*, Docket No. ER03-922-000 (July 7, 2003) (unpublished letter order).

³ This agreement provides for the sale of 250-800 MW per hour of energy to CDWR over a term extending until 2011.

4. The Cogentrix Entities state that CEPM is a power marketer and that aside from CEPM's FERC rate schedule and power sales contracts, CEPM owns no additional jurisdictional assets. The Cogentrix Entities also state that Cogentrix Lawrence, Green Country, Quachita, Rathdrum, and Southaven (the Cogentrix Generators) are exempt wholesale generators (EWG) under section 32 of the Public Utility Holding Company Act of 1935.⁴ Additionally, the Cogentrix Entities state that the generating facilities owned or controlled by the Cogentrix Generators were constructed after July 9, 1996.

5. Cogentrix Lawrence filed for market-based rate authorization with respect to an 810 megawatt (MW) gas-fired combined cycle generation facility (the Lawrence Facility). The Cogentrix Entities state that the Lawrence Facility is no longer under active development and propose to cancel Cogentrix Lawrence's market-based rate tariff.⁵ Green Country operates a 795 MW gas-fired combined cycle power plant which is interconnected with the Public Service Company of Oklahoma. Quachita owns and operates a 903 MW gas-fired combined-cycle generating facility interconnected with Entergy Louisiana, Inc. Rathdrum owns and operates a 355 MW gas-fired combined-cycle power generating facility interconnected to the Bonneville Power Administration. Southaven owns and operates an 810 MW gas-fired combined cycle generating facility interconnected with the Entergy Corporation system and the Tennessee Valley Authority system.

6. The Cogentrix Entities state that they are indirect subsidiaries of The Goldman Sachs Group (GS Group), while J. Aron and PRF state that they are wholly-owned indirect subsidiaries of GS Group. GS Group, together with its consolidated subsidiaries, is described as a leading global investment banking, securities, and investment management firm that provides a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments and high-net worth individuals. The Cogentrix Entities, J. Aron, and PRF state that GS Group or its affiliates currently holds for investment purposes less than 10 percent of the voting shares of several energy companies.⁶ The Cogentrix Entities, J. Aron, and PRF

⁴ 15 U.S.C. § 79 (2000).

⁵ On February 22, 2005, Cogentrix Lawrence filed a notice of cancellation of its market-based rate tariff, FERC Electric Tariff Original Vol. No. 1. The notice of cancellation filed in the referenced docket, along with the proposed designations, is accepted for filing, effective February 23, 2005. First Revised Sheet No. 1, FERC Electric Tariff, Original Vol. No. 1 (cancels FERC Electric Tariff Original Volume No. 1). 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.

⁶ The Cogentrix Entities, J. Aron, and PRF explain that GS Group may hold such positions either as principal or as a fiduciary and that the interests held are transitory and may fluctuate as often as hourly or daily.

explain that GS Group indirectly owns interests in power marketers, and through various subsidiaries holds indirect interests in electric generating facilities, all of which are qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 or eligible EWGs. Cogentrix Entities, J. Aron, and PRF state that several of those entities are authorized to sell energy at market-based rates.

7. The Cogentrix Entities' filing includes revised rate schedules for Green Country, Quachita, and Rathdrum incorporating the Commission's market behavior rules.⁷ The Cogentrix Entities' filing also corrects the tariff designations of Green Country, Quachita, and Rathdrum in accordance with Order No. 614.⁸ The Cogentrix Entities' submittal is accepted for filing.⁹

Procedural Matters

8. Notice of the Cogentrix Entities' filing was published in the *Federal Register*, 69 Fed. Reg. 67,337 (2004), with protests and interventions due on or before November 22, 2004. None was filed. Notice of J. Aron's and PRF's filing was published in the *Federal Register*, 70 Fed. Reg. 3010 (2005), with protests and interventions due on or before January 19, 2005 and March 18, 2005. None was filed. Notice of Cogentrix Lawrence County's filing was published in the *Federal Register*, 70 Fed. Reg. 10,391 (2005), with protests and interventions due on or before March 15, 2005. None was filed.

Discussion

9. 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

⁷ *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). CEPM's and Southaven Power's market behavior rules were previously accepted by the Commission. See *Acadia Power Partners, LLC*, Docket Nos. ER95-1739-021 and ER03-922-002 (March 29, 2004) (unpublished letter order).

⁸ See *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000).

⁹ The correct designations are: Quachita Power, LLC, FERC Electric Tariff, First Revised Volume No. 1, Original Sheet Nos. 1-3 (supersedes FERC Electric Tariff, Original Volume No.1); Green Country Energy, LLC, FERC Electric Tariff, First Revised Volume No. 1, Original Sheet Nos. 1-3 (supersedes Rate Schedule FERC No.1); Rathdrum Power, LLC, FERC Electric Tariff, First Revised Volume No. 1, Original Sheet Nos. 1-4 (supersedes FERC Electric Tariff, Original Volume No.1). The revised tariff sheets incorporating the market behavior rules are effective December 17, 2003.

transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.¹⁰ As discussed below, the Commission concludes that J. Aron, PRF, and the Cogentrix Entities satisfy the Commission's standards for market-based rate authority.

10. 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) (July 8 Order), the Commission adopted two indicative screens for assessing generation market power. Section 35.27(a) of the Commission's regulations 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, 1996.¹¹

11. The Cogentrix Entities state that CEPM solely purchases power to provide service to a buyer in Washington State and is fully committed under that transaction. They state that CEPM does not intend to engage in transactions in other markets, and that, accordingly, it does not have generation market power. The Cogentrix Entities state that Green Country, Quachita, Rathdrum, and Southaven are not required to demonstrate that they lack generation market power because they satisfy the requirements of section 35.27(a).¹²

12. 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.¹³ The Commission clarified that in circumstances where construction on all of an applicant's generation commenced after July 9, 1996, no generation market power analysis need be performed.¹⁴ The Cogentrix Entities state that commercial operation of the Green Country, Quachita, Rathdrum and Southaven generating facilities commenced in February 2002, August 2002, September 2001, and June 2003, respectively. The Cogentrix Entities further state

¹⁰ 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).

¹¹ 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.

¹² The Cogentrix Entities included Cogentrix Lawrence in the filing, though the Cogentrix Lawrence project has been cancelled. See *supra* P 5.

¹³ See April 14 Order, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

¹⁴ See July 8 Order, 108 FERC ¶ 61,026 at P 110.

that neither they nor any of their affiliates owns or controls any other generation in the relevant markets. Based on these representations, the Commission finds that the Cogentrix Entities satisfy the Commission's generation market power standard for the grant of market-based rate authority.

13. J. Aron and PRF have prepared both the pivotal supplier and the wholesale market share screen analyses for the fifteen relevant markets in which their affiliates own or control generation, including markets in which the affiliated generation consisted entirely of generating facilities constructed after July 9, 1996.¹⁵ The Commission has reviewed J. Aron's and PRF's generation market power analyses for the fifteen relevant geographic markets, which indicate that J. Aron and PRF pass the screens in those markets.¹⁶ Accordingly, the Commission finds that J. Aron and PRF satisfy the Commission's generation market power standard for the grant of market-based rate authority.

14. The Cogentrix Entities, J. Aron, and PRF state that neither they nor any of their affiliates own or operate any transmission facilities in the relevant geographic markets, other than certain limited facilities used to interconnect facilities to transmission systems. Based on these representations, the Commission finds that the Cogentrix Entities, J. Aron, and, PRF satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

15. The Cogentrix Entities, J. Aron, and, PRF state that neither they nor any of their affiliates own or control fuel supplies, unique land sites, or other inputs to electrical power generation in the relevant geographic markets that could be used to prevent

¹⁵ The fifteen relevant markets include: PJM Interconnection, L.L.C., Bonneville Power Administration, California Independent System Operator Corporation, Carolina Power & Light (CPL), Central and South West Services, Inc. (CSWS), Entergy Corporation, ISO New England Inc., Northern States Power (NSP), New York Independent System Operator, Inc., Northwestern Energy Montana (NWMT), Dominion Virginia Power (VAP), Wisconsin Electric Corporation (WEC), Florida Power and Light Company, PacifiCorp East, Public Service Company of Colorado.

¹⁶ In some instances, J. Aron and PRF used simultaneous import capability data from filings currently pending before the Commission. However, J. Aron and PRF pass the indicative screens without considering competing supplies imported into the CSWS, CPL, VAP, NSP, WEC, and NWMT control areas. The Commission accepts as an appropriate simplifying assumption no imports of competing supplies. The Commission clarifies that it relied on the applicant's data from FERC Form 714 filings, EIA-860, and other public sources rather than on data which is pending before the Commission or that the Commission has found to be deficient. Similarly, in some instances, the Commission relied on conservative simplifying assumptions (*i.e.*, exclusion of planned outages) to verify that J. Aron and PRF pass both indicative screens.

competitors from entering the market. In addition, the Cogentrix Entities, J. Aron, and PRF state that although GS Group, through its subsidiaries, holds for investment purposes less than 10 percent of the voting shares of companies that own or control fuel supplies, such voting securities are held for investment purposes only and do not confer control over any fuel supplies, unique land sites, or other inputs to electric power generation. Based on these representations, the Commission is satisfied that the Cogentrix Entities, J. Aron, and PRF cannot erect barriers to entry. However, if Cogentrix Entities, J. Aron, PRF or any of their affiliates deny, delay or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, then that electric competitor may file a complaint with the Commission that could result in the suspension of the authority to sell power at market-based rates.¹⁷

16. The Cogentrix Entities, J. Aron, and PRF state that their market-based rate tariffs prohibit sales of electric energy and capacity to a franchised electric utility affiliate. The Cogentrix Entities, J. Aron, and PRF further state that neither they nor any of their affiliates are a public utility with a franchised electric service territory. Based on these representations, the Commission finds that the Cogentrix Entities, J. Aron, and PRF satisfy the Commission's concerns with regard to affiliate abuse.

17. 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.¹⁸ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁹

¹⁷ See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

¹⁸ *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>.

¹⁹ 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.

18. The Cogentrix Entities, J. Aron, and PRF 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.²⁰ 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, J. Aron, PRF, and the Cogentrix Entities are directed, within 30 days of the date of issuance of this order, to revise their 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.

19. J. Aron and PRF propose to consolidate their triennial updates to make the process more efficient. Cogentrix Entities also make a similar request in their filing. The Commission grants these requests, and notes that J. Aron, PRF, and the Cogentrix Entities are subsidiaries of the GS Group. J. Aron, PRF, and the Cogentrix Entities are directed to file a combined 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.

²⁰ *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).