

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Conectiv Energy Supply, Inc.

Docket No. ER06-840-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued May 18, 2006)

1. In this order, we grant an application by Conectiv Energy Supply, Inc. (Conectiv) requesting Commission authorization for Conectiv to make wholesale power sales to its affiliate, Potomac Electric Power Company (Pepco), as the result of a request for proposal (RFP) process issued by Pepco and approved by the Maryland Public Service Commission (Maryland Commission). This order concludes that this competitive solicitation, as described below, satisfies the Commission's concerns regarding affiliate abuse and will result in rates that are just and reasonable.

Background

2. On April 6, 2006, Conectiv filed the instant application under section 205 of the Federal Power Act (FPA)¹ requesting authorization to make sales to its affiliate, Pepco. Conectiv has been selected as a result of Pepco's RFP to supply full requirements wholesale power supply service to portions of Pepco's standard offer service load in the state of Maryland. Through its RFP, Pepco sought supplies for four service types: (1) Residential, (2) Type I Non-Residential (3) Type II-A Non-Residential, and (4) Type II-B Non-Residential. Conectiv states that service under its full requirement service agreement with Pepco will commence on June 1, 2006.

3. Conectiv and Pepco are subsidiaries of Pepco Holdings, Inc. Pepco is a franchised public utility company serving retail customers in Maryland and the District of Columbia. Pepco does not own any generation facilities and has transferred control of its

¹ 16 U.S.C. § 824d (2000).

transmission facilities to PJM Interconnection, L.L.C. (PJM). Conectiv is a power marketer that does not own generation, transmission, or distribution facilities but has authority to sell wholesale power at market-based rates.²

4. Conectiv states that the Maryland Commission approved a settlement that dictated how utilities in Maryland would obtain the wholesale power required to meet their standard offer service load obligations. Conectiv states that this settlement delineated the bidder qualification requirements, the RFP process, and an objective bid evaluation methodology. Conectiv notes that the Commission has previously approved affiliate sales resulting from the competitive solicitation process in Maryland.³

5. Conectiv states that Pepco used the Maryland solicitation process for selection of the wholesale suppliers required to meet standard offer service load requirements beginning on June 1, 2006. Conectiv states that Pepco commenced the solicitation process by sending notice of the RFP to more than 60 potential bidders and issuing trade press releases. Conectiv states that the solicitation consisted of three rounds of bidding in which load was divided into bid blocks of approximately 50 MW each. Bidders were prequalified so that non-price factors were not a part of the bid evaluation process. Bids were evaluated on price alone and were binding. Further, no negotiation was allowed after winning bidders were selected.

6. Conectiv states that an independent consultant hired by the Maryland Commission monitored and supervised the solicitation and bid evaluation process. Conectiv states that based on the Maryland Commission's consultation with the independent monitor and its own review of the RFP, the Maryland Commission did not reject any of the awards. All such awards were therefore deemed to be final.⁴

Notice and Pleadings

7. Notice of Conectiv's filing was published in the *Federal Register*, 71 Fed. Reg. 24,847 (2006), with motions to intervene and protests due on or before April 27, 2006. None was filed.

² *Conectiv Energy Supply, Inc.*, 91 FERC ¶ 61,076 (2000), *order on reh'g*, 94 FERC ¶ 61,068 (2001); *Atlantic City Electric Co.*, 111 FERC ¶ 61,256 (2005).

³ Conectiv application at 6, *citing Allegheny Energy Supply, Inc.*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

⁴ We note that Conectiv was not the sole supplier selected to supply service to Pepco's standard offer service load and that Conectiv won bids to provide standard offer service supplies for only one of four service types.

Discussion

8. As noted above, Conectiv seeks Commission authorization to make sales to its affiliate with a franchised service territory, Pepco, pursuant to a service agreement entered into as a result of a competitive solicitation process. In order to meet the Commission's requirements for sales between affiliates, Conectiv offers evidence that Pepco's RFP is consistent with the Commission's guidelines for determining when a competitive bidding process satisfies the Commission's concerns regarding affiliate abuse.⁵

9. The Commission has stated that, in cases where affiliates are entering into market-based rate sales agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted.⁶ The Commission has approved affiliate sales resulting from competitive bidding processes after the Commission has determined that, based on the evidence, the proposed sale was a result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.⁷ When an entity presents this kind of evidence, the Commission has required assurance that: (1) a competitive solicitation process was designed and implemented without undue preference for an affiliate; (2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and (3) the affiliate was selected based on some reasonable combination of price and non-price factors.⁸

10. In *Allegheny*, the Commission provided guidance as to the factors the Commission will consider in determining whether a competitive solicitation process such as Pepco's RFP meets the *Edgar* criteria. As the Commission stated, the underlying principle when evaluating a competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process. The Commission indicated that the following four guidelines will help the Commission determine if a competitive solicitation process satisfies that underlying principle: (1) Transparency: the

⁵ *Allegheny Energy Supply, Inc.*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

⁶ See *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 at 62,167 (1991) (*Edgar*).

⁷ See *Connecticut Light & Power Co. and Western Massachusetts Electric Co.*, 90 FERC ¶ 61,195 at 61,633-34 (2000); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217 at 61,857-58 (1999); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027 at 61,059-60 (1999); *Edgar*, 55 FERC at 62,167-69; *Allegheny*, 108 FERC ¶ 61,082 (2004); *Conectiv Energy Supply, Inc.*, 115 FERC ¶ 61,076 (2006).

⁸ *Edgar*, 55 FERC at 62,168.

competitive solicitation process should be open and fair; (2) Definition: the product or products sought through the competitive solicitation should be precisely defined; (3) Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders; (4) Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection. As discussed below, the Commission finds that the bidding process used here is an example of a process that meets these guidelines.

Transparency Principle

11. Conectiv contends that the RFP satisfies the Commission's guidelines regarding the transparency principle. Conectiv states that this competitive solicitation process was open to all interested parties. Conectiv also states that it was widely advertised through a large, direct mailing program. Conectiv states that Pepco notified more than 60 potential bidders, sent press releases to trade publications and set up a public website which made information about the competitive solicitation available for bidders. It further states that Pepco posted answers to questions submitted by prospective bidders on this website so that all potential bidders could see Pepco's responses. Conectiv concludes that all bidders had equal access to the data relevant to Pepco's RFP.

12. The Commission finds that Pepco's RFP is consistent with the transparency principle guidelines.

Definition Principle

13. Conectiv contends that the RFP satisfies the Commission's guidelines regarding the definition principle. Conectiv states that the products sought by Pepco were well defined. Specifically, it states that Pepco was seeking full requirements wholesale power supply including energy, capacity, and ancillary services for its Maryland standard offer service load in bid blocks of approximately 50 MW each, reflecting specific percentages of Pepco's standard offer service load. As stated in the RFP, Pepco is responsible for the provision of network integration transmission service necessary for the winning bids. Conectiv states that the terms of the agreement that winning bidders were required to execute and other documentation involved in the RFP were available to all bidders via Pepco's website. Conectiv states no negotiation of non-price terms of the agreement was permitted and all winning bidders were required to execute the agreement, as approved by the Maryland Commission. Conectiv concludes that bidders knew the terms of the agreement and the standard offer service load requirements going into the solicitation process.

14. The Commission finds that Pepco's RFP is consistent with the definition principle guidelines.

Evaluation Principle

15. Conectiv contends that the RFP satisfies the Commission's guidelines regarding the evaluation principle. Conectiv states that potential bidders were pre-qualified before the bid process began, eliminating the need to evaluate bids based on non-price factors. Specifically, bidders were required to: (1) submit an expression of interest form containing contact information; (2) execute a confidentiality agreement; (3) certify that they meet the PJM membership and Commission authorization requirements; (4) submit a credit application and associated financial information; (5) execute a binding bid agreement; and (6) upon submission of bids, post bid assurance collateral in an amount directly proportional to the amount of load bid upon. The pre-qualification criteria were contained in the public document describing the RFP process and were available to all potential bidders. Conectiv states that the pre-qualification criteria were standardized and applied equally to all bidders. Conectiv states that this pre-qualification process assured bids were evaluated based on price alone.

16. In addition, Conectiv states that an independent consulting firm selected by the Maryland Commission actively monitored and interacted with Pepco personnel with respect to both the pre-qualification of bidders and the price bid evaluation processes to ensure that Pepco treated all bidders equally and otherwise followed the procedures approved by the Maryland Commission.

17. The Commission finds that Pepco's RFP is consistent with the evaluation principle guidelines.

Oversight Principle

18. Conectiv contends that the RFP satisfies the Commission's guidelines regarding the oversight principle. Conectiv states that the competitive solicitation process was developed through a settlement of interested parties and approved by the Maryland Commission. On this basis, Conectiv argues that there can be no assertion that Conectiv had any undue preference in the design phase of the competitive solicitation, including, but not limited to, the form of the agreement and the standards of qualifying bidders. As mentioned above, the Maryland Commission retained an independent consultant to monitor and supervise the solicitation and bid evaluation process. Conectiv states that the consultant was on-site on the date that bids were received and during bid evaluation. Conectiv states that after the competitive solicitation, the independent consultant reported in a closed session with the Maryland Commission on the integrity of the bid receipt and evaluation process and upon Pepco's compliance with the Maryland Commission-

approved RFP procedures. Based upon the consultant's report and upon the Maryland Commission's own review of the bids, the Maryland Commission did not act to reject the awards and therefore all of the bid awards became final.

19. The Commission finds that Pepco's RFP is consistent with the oversight principle guidelines.

20. Accordingly, the Commission concludes that the competitive solicitation process described by Conectiv satisfies the Commission's concerns regarding affiliate abuse. Therefore, the Commission grants Conectiv's request for authorization to make affiliate sales to Pepco as a result of the RFP discussed herein, effective June 1, 2006, as requested.

21. This order satisfies the requirement that Conectiv first receive Commission authorization pursuant to section 205 of the FPA before engaging in power sales at market-based rates with an affiliate. In addition to requesting that we find that the proposed RFP is consistent with the *Allegheny* guidelines, Conectiv also specifically requests that we accept for filing the agreement under which these sales will be made. However, the Commission's regulations provide that service agreements under market-based rate tariffs shall not be filed with the Commission.⁹

22. Consistent with the procedures the Commission adopted in Order No. 2001, Conectiv 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

⁹ 18 C.F.R. § 35.1(g) (2005) (“[A]ny market-based rate agreement pursuant to a tariff shall not be filed with the Commission.”). Order No. 2001, which implemented section 35.1(g) of the Commission's regulations, obviates the need to file with the Commission service agreements under market-based power sales tariffs, and requires, among other things, that public utilities electronically file Electric Quarterly Reports which include a summary of the contractual terms and conditions in every effective service agreement for market-based power sales. *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002).

power sales during the most recent calendar quarter.¹⁰ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹¹

The Commission orders:

The application for authorization for Conectiv to make sales to its affiliate, Pepco, is hereby granted, effective June 1, 2006, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁰ Required data sets for contractual and transaction information to be reported in Electric Quarterly Reports 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>.

¹¹ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). 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.