

111 FERC ¶ 61,242  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, and Joseph T. Kelliher.

Backbone Mountain Windpower, LLC	Docket Nos.	ER02-2559-001 ER02-2559-002 ER02-2559-003
Badger Windpower, LLC		ER01-1071-002 ER01-1071-003 ER01-1071-004
Bayswater Peaking Facility, LLC		ER02-669-002 ER02-669-004
Blythe Energy, LLC		ER02-2018-002 ER02-2018-004
Calhoun Power Company I, LLC		ER01-2074-002 ER01-2074-003 ER01-2074-004
Doswell Limited Partnership		ER90-80-002 ER00-2391-004
ESI Vansycle Partners, L.P.		ER98-2494-004 ER98-2494-006 ER98-2494-007
Florida Power & Light Co.		ER97-3359-003 ER97-3359-005 ER97-3359-006 ER97-3359-007
FPL Energy Cape, LLC		ER00-3068-002 ER00-3068-003 ER00-3068-004

FPL Energy Hancock County Wind, LLC	ER03-34-001 ER03-34-002 ER03-34-003
FPL Energy Maine Hydro, Inc.	ER98-3511-006 ER98-3511-007 ER98-3511-008
FPL Energy Marcus Hook, L.P.	ER02-1903-001 ER02-1903-003
FPL Energy Mason, LLC	ER98-3562-006 ER98-3562-007
FPL Energy MH 50, LP	ER99-2917-003 ER99-2917-004 ER99-2917-005
FPL Energy New Mexico Wind, LLC	ER03-179-002 ER03-179-004
FPL Energy Pennsylvania Wind, LLC	ER02-2166-001 ER02-2166-003
FPL Energy Power Marketing, Inc.	ER98-3566-009 ER98-3566-010 ER98-3566-011
FPL Energy Rhode Island State Energy, L.P	ER02-2120-001
FPL Energy Seabrook, LLC	ER02-1838-001 ER02-1838-003
FPL Energy Vansycle, LLC	ER01-838-002 ER01-838-003 ER01-838-004
FPL Energy Wyman, LLC	ER98-3563-006 ER98-3563-007 ER9 8-3563-008

FPL Energy Wyman IV, LLC	ER98-3564-006 ER98-3564-007 ER98-3564-008
Gray County Wind Energy, LLC	ER01-1972-002 ER01-1972-003 ER01-1972-004
Hawkeye Power Partners, LLC	ER98-2076-005 ER98-2076-006 ER98-2076-007
High Winds, LLC	ER03-155-001 ER03-155-003
Jamaica Bay Peaking Facility, LLC	ER03-623-002 ER03-623-003 ER03-623-004
Lake Benton Power Partners II, LLC	ER98-4222-001 ER98-4222-002
Mill Run Windpower, LLC	ER01-1710-002 ER01-1710-003
Somerset Windpower, LLC	ER01-2139-003 ER01-2139-004
West Texas Wind Energy Partners, LP	ER98-1965-002 ER98-1965-003

ORDER CONDITIONALLY ACCEPTING UPDATED MARKET POWER  
ANALYSIS

(Issued May 25, 2005)

1. In this order the Commission conditionally accepts an updated market power analysis filed by Backbone Mountain Windpower, LLC; Badger Windpower, LLC; Bayswater Peaking Facility, LLC; Blythe Energy, LLC; Calhoun Power Company I, LLC; Doswell Limited Partnership; ESI Vansycle Partners, L.P.; FPL Energy Cape, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Maine Hydro, Inc.; FPL

Energy Marcus Hook, L.P.; FPL Energy Mason, LLC; FPL Energy MH 50, LP; FPL Energy New Mexico Wind, LLC; FPL Energy Pennsylvania Wind, LLC; FPL Energy Power Marketing, Inc.; FPL Energy Rhode Island State Energy, L.P.; FPL Energy Seabrook, LLC; FPL Energy Vansycle, LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; Gray County Wind Energy, LLC; Hawkeye Power Partners, LLC; High Winds, LLC; Jamaica Bay Peaking Facility, LLC; Lake Benton Power Partners II, LLC; Mill Run Windpower, LLC; Somerset Windpower, LLC; and West Texas Wind Energy Partners, LP (collectively the FPLE Affiliates),<sup>1</sup> and Florida Power & Light Company (FPL) (the FPLE Affiliates and FPL collectively are referred to herein as “Applicants”). As discussed below, the Commission concludes that, with the tariff modifications and Commission’s acceptance of the compliance filing directed herein, Applicants satisfy the Commission’s standards for market-based rate authority.

2. The Commission also accepts revisions to the market-based rate tariffs of Backbone Mountain Windpower, LLC; Badger Windpower, LLC; Calhoun Power Company I, LLC;<sup>2</sup> Doswell Limited Partnership; ESI Vansycle Partners, L.P.; Florida Power & Light Co.; FPL Energy Cape, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Maine Hydro, Inc.; FPL Energy MH 50, LP; FPL Energy Power Marketing, Inc.; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; FPL Energy Vansycle, LLC; Gray County Wind Energy, LLC; Hawkeye Power Partners, LLC; Jamaica Bay Peaking Facility, LLC and Lake Benton Power Partners II, LLC to include the Commission’s market behavior rules.<sup>3</sup> Tariffs incorporating the Commission’s market behavior rules for the remaining Applicants were previously accepted by the Commission.<sup>4</sup> In addition, the Commission accepts revisions to the market-based rate tariffs of Doswell Limited Partnership; Florida Power & Light Co.; FPL Energy Cape, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Maine Hydro, Inc.; FPL

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<sup>1</sup> In *FPL Energy Mason, LLC*, Docket No. ER04-732-000, Letter Order (May 27, 2004), the Commission accepted FPL Energy Mason’s notice of cancellation of its market-based rate authority. In *West Texas Wind Energy Partners, LP*, Docket No. ER05-486-000, Letter Order (March 8, 2005), the Commission accepted West Texas Wind Energy Partner’s notice of cancellation of its market-based rate authority.

<sup>2</sup> The transmittal letters for the Badger Windpower, LLC and Calhoun Power Company I, LLC filings stated that the filings also included tariff sheets complying with Commission Order No. 652, Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority. However, no corresponding tariff sheets were included with the filings.

<sup>3</sup> *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).

<sup>4</sup> *Acadia Power Partners, LLC*, Docket No. ER03-295-001, Letter Order (March 29, 2004).

Energy MH 50, LP; FPL Energy Power Marketing, Inc.; FPL Energy Vansycle, LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; Gray County Wind Energy, LLC; Hawkeye Power Partners, LLC; Jamaica Bay Peaking Facility, LLC; and Lake Benton Power Partners II, LLC to include the change in status reporting requirement in Order No. 652.<sup>5</sup>

3. Finally, in this order, the Commission accepts the notice of change in status filing by FPL Energy Seabrook, LLC.

4. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. The Applicants' next updated market power analysis is due three years from the date of this order.

### **Background**

5. On October 30, 2000, Applicants filed an updated market power analysis based on the Commission's hub-and-spoke methodology and pursuant to the Commission's order granting them the authority to sell electric energy and capacity at market-based rates.<sup>6</sup> On June 30, 2003, Applicants filed an updated market power analysis based on the Commission's Supply Margin Assessment (SMA) adopted in an order issued on November 20, 2001.<sup>7</sup> On December 22, 2004, Applicants filed a revised market power analysis pursuant to the Commission's order issued on May 13, 2004.<sup>8</sup> The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.<sup>9</sup>

6. On February 8, 2005, compliance filings (February 8 compliance filings) incorporating the Commission's market behavior rules were submitted by ESI Vansycle Partners, L.P. and Backbone Mountain Windpower, LLC.

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<sup>5</sup> *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).

<sup>6</sup> *Florida Power & Light Company*, 81 FERC ¶ 61,107 (1997)

<sup>7</sup> *AEP Power Marketing, Inc.*, 97 FERC ¶ 61,219 (2001).

<sup>8</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

<sup>9</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

7. On February 25, 2005, FPL Energy Seabrook, LLC (FPLE Seabrook) filed a change in status reflecting a 71 MW increase in FPLE Seabrook's ownership share in the Seabrook Nuclear Generating Station.
8. On February 28, 2005, compliance filings (February 28 compliance filings) incorporating the Commission's market behavior rules and/or change in status reporting requirement were submitted by Badger Windpower, LLC; Calhoun Power Company I, LLC; FPL Energy Vansycle, L.L.C., L.L.C.; Gray County Wind Energy LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Cape, LLC; FPL Energy Power Marketing, Inc; FPL Energy Wyman, LLC; Jamaica Bay Peaking Facility, LLC; FPL Energy Wyman IV, LLC; FPL Energy Maine Hydro LLC; and Doswell Limited Partnership.
9. On March 2, 2005, FPL submitted a compliance filing incorporating the Commission's market behavior rules and change in status reporting requirement.
10. On March 7, 2005, FPL Energy MH50, L.P. submitted a compliance filing incorporating the Commission's market behavior rules and change in status reporting requirement.
11. On March 10, 2005, Lake Benton Power Partners II, LLC filed amendments to its market-based rate tariff incorporating the Commission's market behavior rules, the change in status reporting requirement contained in Order No. 652, and modifications to its code of conduct.
12. On March 17, 2005, Hawkeye Power Partners, LLC submitted a compliance filing incorporating the Commission's market behavior rules and change in status reporting requirement.
13. On April 7, 2005, Applicants filed an amended market power analysis correcting several errors in their December 22, 2004 filing.
14. On April 12, 2005, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a deficiency letter seeking additional information relating to Applicants' submittal. On May 6, 2005, Applicants filed their response to the deficiency letter.
15. Applicants state that FPL and the FPLE Affiliates are affiliates of FPL Group, Inc., a public utility holding company. Applicants also state that the FPL Group's principal subsidiary, FPL, is engaged in the generation, transmission, distribution, and sale of electric energy principally in Peninsular Florida. Further, Applicants state that in their application in Docket No. ER97-3359-000, where FPL requested authorization to sell electric capacity and energy at wholesale at market-based rates, FPL restricted its request to sales to customers located outside Peninsular Florida, in order to avoid

litigation on its application addressing impacts of transmission constraints into Peninsular Florida. Applicants state that, in similar fashion, each of the FPLE Affiliates has restricted its sales at market-based rates to customers located outside of Peninsular Florida.

16. Applicants state that they own approximately 13,000 MW of generation throughout the United States outside Peninsular Florida. Applicants state that this generation is located in the following geographic areas: Southern Companies' control area (SOCO), ISO-New England, Inc. (ISO-NE), the New York Independent System Operator (NYISO), the PJM Interconnection, L.L.C. (PJM), the California Independent System Operator Corporation (CAISO), and the Electric Reliability Council of Texas (ERCOT). In addition, Applicants state that they own or control a number of additional plants in other regions of the country, but that all generating capacity from these plants is committed under long-term contracts.

### **Notice and Responsive Pleadings**

17. Notice of Applicants' October 30, 2000 filing was published in the *Federal Register*, 65 Fed. Reg. 67,736 (2000), with interventions or protests due on or before November 20, 2000. The Seminole Electric Cooperative, Inc. (Seminole) and the Florida Municipal Power Agency (FMPA) filed timely motions to intervene and protest.

18. Seminole protested the October 30, 2000 filing stating that FPL should be directed to file a revised market power analysis if the then-proposed merger with Entergy Corporation was consummated. Further, Seminole stated that the Commission should update its market power analysis requirements based on the hub-and-spoke methodology and then impose the updated requirements on FPL.

19. FMPA protested the October 30, 2000 filing stating that FPL's market power analysis gave no consideration to the then-proposed merger with Entergy Corporation and was otherwise flawed. FMPA stated that the Commission should defer consideration of FPL's market power analysis until the filing of the FPL – Entergy Corporation merger application.

20. Notice of Applicants' June 30, 2003 filing was published in the *Federal Register*, Fed. Reg. 68 44,074 (2003), with interventions or protests due on or before August 1, 2003. None was filed.

21. Notice of Applicants' December 22, 2004 filing was published in the *Federal Register*, 70 Fed. Reg. 1884 (2005), with interventions or protests due on or before January 12, 2005. None was filed.

22. Notice of the February 8 compliance filings was published in the *Federal Register*, 70 Fed. Reg. 9064 and 9066 (2005), with interventions or protests due on or before March 1, 2005. None was filed.
23. Notice of FPLE Seabrook's February 25, 2005 was published in the *Federal Register*, 70 Fed. Reg. 12,863 (2005), with interventions or protests due on or before March 18, 2005. None was filed.
24. Notice of the February 28 compliance filings was published in the *Federal Register*, 70 Fed. Reg. 12,671 (2005), with interventions or protests due on or before March 15, 2005. None was filed.
25. Notice of FPL's March 2, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 12,671 (2005), with interventions or protests due on or before March 18, 2005. None was filed.
26. Notice of FPL Energy MH50, L.P.'s March 7, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 13,022 (2005), with interventions or protests due on or before March 28, 2005. None was filed.
27. Notice of Lake Benton Power Partners II, LLC's March 10, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 13,494 (2005), with interventions or protests due on or before March 31, 2005. None was filed.
28. Notice of Hawkeye Power Partners, LLC's March 17, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 16,814 (2005), with interventions or protests due on or before April 7, 2005. None was filed.
29. Notice of Applicants' April 7, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 20,891 (2005), with interventions or protests due on or before April 28, 2005. None was filed.
30. Notice of Applicants' May 6, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 28,932 (2005), with interventions or protests due on or before May 18, 2005. None was filed.

## **Discussion**

### **Market-Based Rate Authorization**

31. 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.<sup>10</sup>

32. As discussed below, the Commission concludes that, with the tariff modifications directed herein, Applicants satisfy the Commission's standards for market-based rate authority.

### **Generation Market Power**

33. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. Applicants have prepared both the pivotal supplier and the wholesale market share screens for the PJM, CAISO, NYISO, and ISO-NE markets. In addition, Applicants have prepared market share screens for SOCO, the only control area outside Florida which is a first-tier market to FPL's home control area in Florida. Since Applicants do not request market-based rate authorization for geographic markets within the state of Florida, they have not developed generation market power analyses for any control areas within Florida. Applicants presented streamlined analyses for other regions where the generating capacity they own or control is committed under long-term contracts. Analyses for generation in ERCOT were not submitted.

34. For each of the SOCO, PJM, CAISO, NYISO, and ISONE markets, Applicants state that they pass both the pivotal supplier and wholesale market share screens.

35. The Commission has reviewed FPLE Seabrook's change of status filing. FPLE Seabrook submitted this filing because the Seabrook Nuclear Generating Station is scheduled to undergo a power uprate during the next scheduled outage, resulting in an increase in FPLE Seabrook's ownership share in the facility of 71 MW. The Commission notes that this increase in FPLE Seabrook's ownership share in the Seabrook Nuclear Generating Station has been accounted for in Applicants' amended market power analysis filed on April 7, 2005.

36. The Commission has reviewed Applicants' generation market power screens and has determined that Applicants pass the screens in the SOCO, PJM, CAISO, NYISO, and ISO-NE relevant markets. However, as noted above, Applicants provided no generation market power analyses for ERCOT, that would indicate whether or not Applicants make market-based rate sales in markets first-tier to ERCOT from generation located in ERCOT. Accordingly, the Commission directs Applicants to make a compliance filing, within 30 days of the date of this order, indicating that Applicants will not make any

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<sup>10</sup> 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).

market-based rate sales in ERCOT first-tier markets, or, in the case that Applicants do plan to make market-based rate sales in ERCOT first-tier markets, then the Commission directs Applicants to submit generation market power screen analyses for the ERCOT first-tier markets, along with relevant work papers and documentation.

37. With regard to the protests filed in response to FPL's October 30, 2000 filing by Seminole and FMPA, we note that the Commission has now abandoned the hub-and-spoke analysis, as discussed in the April 14, May 13, and July 8 Orders. In addition, we have reviewed Applicants' potential to exercise market power in generation under the two new indicative screens, the pivotal supplier screen and the wholesale market share screen, and as discussed above, the Commission finds that Applicants satisfy the Commission's generation market power standard for market-based rate authority. Finally, we note that the then-proposed merger between FPL and the Entergy Corporation was terminated. Therefore, we believe the concerns of Seminole and FMPA have been addressed.

### **Transmission Market Power**

38. Applicants state that, with one exception, FPL owns and operates jurisdictional transmission facilities entirely in the state of Florida, and that service over such transmission facilities is administered pursuant to the FPL OATT, on file with the Commission. Applicants state that outside of Florida, Florida Power & Light Company, New England Division (FPL-NED) owns a substation associated with the Seabrook Nuclear Generating Station. Applicants state that ISO-NE has operational control over the Pool Transmission Facility-designated facilities at the Seabrook Substation, and that such facilities are subject to tariff terms and conditions contained in the ISO-NE Tariff under which all transmission customers are provided transmission service under terms that ensure customers receive comparable, non-discriminatory service. Applicants state that FPL-NED has control only over facilities associated with interconnection and station service power. In addition, no intervenor has raised transmission market power concerns. Based on Applicants' representation, the Commission finds that Applicants satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

### **Other Barriers to Entry**

39. Applicants state that they do not hold interests in fuel supply resources and do not own or control any manufacturer of electric generating equipment. Applicants state that they do own or control a limited number of unused generation sites, but that such sites do not involve new generation scheduled to come on-line in any adjacent first-tier markets. Applicants state that they own an interest in FPLE Forney Pipeline, L.P., a Hinshaw pipeline located wholly within the state of Texas, which does not serve any power plants in relevant markets. No intervenor has raised barrier to entry concerns. Based on

Applicants' representations, the Commission is satisfied that Applicants cannot erect barriers to entry.

### **Affiliate Abuse**

40. Applicants state that they have codes of conduct currently on file with the Commission and that their market-based rate tariffs include provisions that prohibit sales to, or purchases from, affiliates with franchised service territories absent a separate filing under section 205 of the Federal Power Act (FPA). In addition, no intervenor has raised affiliate abuse concerns. However, we note that the market-based rate tariffs of certain FPLE affiliates<sup>11</sup> do not state that these FPLE affiliates will not make sales to affiliates "without first receiving" Commission authorization of the transaction under section 205 of the FPA.<sup>12</sup> Therefore, consistent with Commission precedent, the FPLE affiliates identified herein are directed to make compliance filings within 30 days of the date of this order, to revise their market-based rate tariffs to include such language.<sup>13</sup> Based on Applicants' representation and subject to the tariff revision we direct herein, the Commission finds that Applicants satisfy the Commission's concerns with regard to affiliate abuse.

### **Market Behavior Rules**

41. In the Market Behavior Rules Order, the Commission directed market-based rate sellers to include as an amendment to their market-based rate tariff the market behavior rules at such time as they seek continued authorization to sell at market-based rates. As discussed herein, certain FPLE affiliates submitted revised tariff sheets to amend their tariffs to include the market behavior rules set forth in Appendix A to the Market Behavior Rules Order. The Commission accepts the revised tariff sheets for filing.

### **Market-Based Rate Tariff Revisions**

42. Lake Benton Power Partners II, LLC, in its March 10, 2005 compliance filing, also provided changes to its market-based rate tariff modifying its code of conduct. Consistent with the Commission's precedent as identified in *FirstEnergy Operating Companies*, 111 FERC ¶ 61,032 (2005), the proposed code of conduct revisions to the

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<sup>11</sup> Backbone Mountain Windpower, LLC; Blythe Energy, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Marcus Hook, L.P.; FPL Energy New Mexico Wind, LLC; FPL Energy Pennsylvania Wind, LLC; FPL Energy Seabrook, LLC; High Winds, LLC; Jamaica Bay Peaking Facility, LLC

<sup>12</sup> Instead, the tariffs state that no sales or purchases will be made to an affiliate absent a separate filing under section 205 of the FPA.

<sup>13</sup> *See Aquila, Inc.*, 101 FERC ¶ 61,331, at P 7-9, 12 (2002)

tariff of Lake Benton Power Partners II, LLC have been rejected at the time of filing as outside the scope of that compliance filing without prejudice to Lake Benton Power Partners II, LLC making a separate filing pursuant to section 205 of the Federal Power Act.

### **Reporting Requirements**

43. 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.<sup>14</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>15</sup>

44. Applicants 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.<sup>16</sup> 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, Applicants, other than those whose tariff revisions to include the change in status reporting requirement are accepted in this order, 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:

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<sup>14</sup> *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>.

<sup>15</sup> 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.

<sup>16</sup> *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).

[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 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.

45. Applicants 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.

The Commission orders:

(A) Applicants' updated market power analysis is hereby conditionally accepted for filing, subject to Commission acceptance of the compliance filing directed in Ordering Paragraph (I), as discussed in the body of this order.

(B) Applicants' next updated market power analysis is due within three years of the date of this order.

(C) Applicants, other than those included in Ordering Paragraph (E), are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include the change in status reporting requirement adopted in Order No. 652.

(D) The revised tariff sheets incorporating the market behavior rules for Backbone Mountain Windpower, LLC; Badger Windpower, LLC; Calhoun Power Company I, LLC; Doswell Limited Partnership; ESI Vansycle Partners, L.P.; Florida Power & Light Co.; FPL Energy Cape, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Maine Hydro, Inc.; FPL Energy MH 50, LP; FPL Energy Power Marketing, Inc.; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; FPL Energy Vansycle, LLC; Gray County Wind Energy, LLC; Hawkeye Power Partners, LLC; Jamaica Bay Peaking Facility, LLC; and Lake Benton Power Partners II, LLC are hereby accepted for filing, effective December 17, 2003.

(E) The revised tariff sheets incorporating the change in status reporting requirement for Doswell Limited Partnership; Florida Power & Light Co.; FPL Energy Cape, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Maine Hydro, Inc.;

FPL Energy MH 50, LP; FPL Energy Power Marketing, Inc.; FPL Energy Vansycle, LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; Gray County Wind Energy, LLC; Hawkeye Power Partners, LLC; Jamaica Bay Peaking Facility, LLC; and Lake Benton Power Partners II, LLC are hereby accepted for filing, effective March 21, 2005.

(F) The change in status filing by FPL Energy Seabrook, LLC is hereby accepted for filing, as discussed in the body of this order.

(G) Backbone Mountain Windpower, LLC; Blythe Energy, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Marcus Hook, L.P.; FPL Energy New Mexico Wind, LLC; FPL Energy Pennsylvania Wind, LLC; FPL Energy Seabrook, LLC; High Winds, LLC; Jamaica Bay Peaking Facility, LLC are directed, within 30 days of the date of issuance of this order, to revise the affiliate sales prohibition language in their market-based rate tariffs, as discussed in the body of this order.

(H) The revised tariff sheets of Lake Benton Power Partners II, LLC modifying its code of conduct are hereby rejected, as discussed in the body of this order.

(I) Applicants are directed, within 30 days of the issuance of this order, to make a compliance filing indicating that Applicants will not make any market-based rate sales in ERCOT first-tier markets, *or, in the case that Applicants do plan to make market-based rate sales in ERCOT first-tier markets, then the Commission directs Applicants to submit generation market power screen analyses for the ERCOT first-tier markets, along with relevant work papers and documentation.*

By the Commission. Commission Kelly not participating.

( S E A L )

Linda Mitry,  
Deputy Secretary.