

111 FERC ¶ 61,264
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

TransCanada Power (Castleton) LLC

Docket Nos. EL05-79-000
ER05-723-000
ER05-723-001

ORDER DENYING PETITION FOR DECLARATORY ORDER AND
ACCEPTING MARKET-BASED RATE TARIFF

(Issued May 26, 2005)

1. In this order, the Commission denies a petition for declaratory order filed by TransCanada Power (Castleton) LLC (TCP Castleton) and accepts for filing, without suspension or hearing, TCP Castleton's proposed market-based rate tariff to become effective on May 23, 2005. This order benefits customers by enforcing the filing requirements of the Federal Power Act (FPA) and the Commission's policies thereunder.

Background

2. On March 23, 2005, TCP Castleton filed a petition for declaratory order asking the Commission to find that TCP Castleton is not a public utility engaged in the sale of energy from its Castleton Facility, and that TCP Castleton is not subject to Commission regulation under the FPA solely as a result of TCP Castleton's status as an exempt wholesale generator.¹ TCP Castleton concurrently filed, as amended on May 9, 2005,

¹ TCP Castleton is a direct, wholly-owned subsidiary of TC Power (Castleton) Ltd. (TC Power), a Canadian corporation incorporated under the laws of Alberta. TC Power is a direct, wholly-owned subsidiary of TransCanada Power, L.P., (TC Power LP) a Canadian limited partnership formed pursuant to Ontario law. TC Power LP is owned 30.6 percent indirectly by TransCanada PipeLines Limited, a Canadian corporation; the remaining 69.4 percent ownership interest in TC Power LP is held by individual unit holders who are passive investors. TCP Castleton is also an affiliate of TransCanada Power Marketing Ltd. (TCPM), which is an indirect, wholly-owned subsidiary of TransCanada PipeLines Limited. TransCanada PipeLines Limited is an indirect owner of TransCanada Hydro Northeast Inc., whose market-based rate authority the Commission

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under section 205 of the FPA,² an application requesting blanket authorization to sell power at market-based rates. TCP Castleton requests that the Commission hold the section 205 filing in abeyance pending its ruling on the petition for declaratory order, and that the Commission address the market-based rate application only in the event the Commission denies TCP Castleton's petition for declaratory order. TCP Castleton further requests that, if necessary, the Commission waive the prior notice requirement³ and any potential liabilities associated with failure to seek market-based rate authority. TCP Castleton requests an effective date of February 22, 2002.

3. TCP Castleton states that it purchased a 64 MW combined-cycle cogeneration facility (the Castleton Facility) in 1999 and immediately entered into a Unit Entitlement Purchase and Sale Agreement (Purchase and Sale Agreement) and an Operations Agreement with an affiliate, TransCanada Power Marketing Ltd. (TCPM). TCP Castleton describes the Purchase and Sale Agreement as entitling TCPM to all of the Castleton Facility's capacity in exchange for a fixed annual payment. Under the Purchase and Sale Agreement, TCP Castleton explains that

TCPM (as the Buyer) is responsible for "any costs or charges imposed on or associated with accessing the Unit, including control area services, inadvertent energy flows, transmission losses and loss charges" TCPM as the Buyer also is deemed to be in exclusive control . . . of the Services associated with the facility. TCPM also has the sole right to control dispatch and scheduling of the facility, including, but not limited to, start times, stop times, output levels and auxiliary boiler use.⁴

recently accepted in *TransCanada Hydro Northeast Inc.*, 110 FERC ¶ 61,103 (2005). The indirect parent of both TCP Castleton and TCPM, TransCanada Corporation (the parent of, *inter alia*, TransCanada Pipelines Limited), also manages, operates and owns the 59 MW Curtis Palmer hydroelectric plant, located in the area managed by the New York Independent System Operator, Inc. (NYISO).

² 16 U.S.C. § 824d (2000).

³ *See* 18 C.F.R. § 35.3 (2004).

⁴ Pet. for Declaratory Order at 3-4 (citations omitted).

TCP Castleton further states that “TCPM is entitled to all of the Castleton Facility’s capacity in exchange for fixed annual payment” and that “the Contract Price that TCPM pays to TCP Castleton under the [Purchase and Sale] Agreement does not vary based upon the amount of energy produced from the facility.”⁵

4. Under the terms of the Operating Agreement, TCP Castleton states that “TCPM is obligated to provide and perform all operations and management services required to operate the Facility” and that the Operations Agreement sets forth 31 paragraphs detailing such duties.⁶ TCP Castleton explains that TCPM, which is authorized to sell energy in wholesale transactions at market-based rates,⁷ has been the exclusive operator of the Castleton Facility since TCP Castleton acquired the Castleton Facility in 1999, and TCPM has sold all energy produced from the Castleton Facility since that time.

5. TCP Castleton states that the Castleton Facility, located exclusively in the NYISO, is currently an exempt wholesale generator pursuant to a Commission order and was a Qualifying Facility (QF) pursuant to the Public Utility Regulatory Policies Act of 1978 until 2002. On February 22, 2002, the Castleton Facility terminated its steam host agreement with Fort Orange Paper; as a result, the Castleton Facility is no longer a QF.

6. TCP Castleton states that in April, 2004, it realized that the Castleton Facility continued to be listed as a QF. TCP Castleton states that it filed a letter notifying the Commission of the change in QF status on May 3, 2004.

7. TCP Castleton states that in early 2005 it reviewed the May 3, 2004, letter and “became concerned that an issue might exist concerning whether appropriate authorizations were in place to make sales of energy from the [Castleton] Facility.” TCP Castleton thus filed the instant petition for declaratory order and conditional application for authorization to make sales at market-based rates. For the conditional application, TCP Castleton requests a February 22, 2002, effective date or, alternatively, an effective date sixty days from its initial filing. TCP Castleton also requests that the Commission waive any potential liabilities associated with its failure to seek market-based rates.

⁵ *Id.* at 3-4.

⁶ *Id.* at 4.

⁷ See *TransCanada Power Marketing Ltd.*, Docket No. ER98-564-000 (Mar. 2, 1998) (unpublished letter order).

8. In its petition for declaratory order, TCP Castleton argues that the Commission would be acting inconsistently with the FPA were it to exercise jurisdiction over entities that are passive owners or lessors of generation and/or related transmission interconnection facilities. TCP Castleton cites numerous cases in which, it argues, the Commission has disclaimed jurisdiction over such entities, provided they do not exercise control over the operation of the facilities.

Notice of Filings and Responsive Pleadings

9. Notice of TCP Castleton's conditional application for market-based rate authority was published in the *Federal Register*, 70 Fed. Reg. 17,245 (2005), with comments, protests, and interventions due on or before April 13, 2005. None was filed. Notice of TCP Castleton's amendment was published in the *Federal Register*, 70 Fed. Reg. 28,932 (2005), with comments, protests, and interventions due on or before May 19, 2005. None was filed.

10. Notice of TCP Castleton's petition for declaratory order was published in the *Federal Register*, 70 Fed. Reg. 19,072 (2005), with comments, protests, and interventions due on or before April 13, 2005. None was filed.

Discussion

Petition for Declaratory Order

11. TCP Castleton requests a declaratory order finding that (i) TCP Castleton is not a public utility, within the meaning of section 201(e) of the FPA, engaged in the sale of energy from the Castleton Facility, and (ii) TCP Castleton is not subject to Commission regulation under any provision of the FPA solely as a result of TCP Castleton's status as an exempt wholesale generator, or specifically, by operation of section 32(a)(2)(B) of the Public Utility Holding Company Act of 1935⁸ (PUHCA), as amended by the Energy Policy Act of 1992.⁹

⁸ 15 U.S.C. § 79z-5a(a)(2)(B) (2000).

⁹ Pub. L. No. 102-486, §§ 711-715, 106 Stat. 2905-15 (1992).

12. Section 201(e) of the FPA¹⁰ defines “public utility” as “any person who *owns or operates* facilities subject to the jurisdiction of the Commission” (emphasis added).

13. The applicability of section 201 to entities which claim a passive interest in jurisdictional facilities has been addressed by the Commission on numerous occasions.¹¹ In those cases, the Commission employed a two-step analysis for determining whether holding a financial interest in jurisdictional facilities constitutes ownership resulting in public utility status under the FPA. First, the Commission determines whether those holding financial interests will operate the facilities. The Commission then determines whether the participant is otherwise in the business of producing or selling electric power or whether the participant has a principal business other than that of a public utility. The Commission has concluded that it would be inconsistent with the FPA to label passive participants in certain financing arrangements as public utilities and subject them to the Commission's jurisdiction where the participants hold only equitable or legal title to the electric facilities and are removed from the operation of the facilities and the sale of power.¹²

14. As discussed above, TCP Castleton submits that it does not have any control over the operation of the Castleton Facility and is not engaged in the business of producing or selling electric power. For the reasons described below, the Commission concludes that TCP Castleton does not satisfy the longstanding test for whether an owner has merely a passive interest in a jurisdictional facility.

15. As an initial matter, the claim that TCP Castleton is not engaged in the sale of electric power is belied by the very terminology used in the documents establishing the arrangement between TCP Castleton and TCPM. Rather than entering a more conventional sale/leaseback transaction, in which the owner leases the facility to the

¹⁰ 16 U.S.C. § 824(e) (2000).

¹¹ *See, e.g., Green Country Energy, LLC*, 97 FERC ¶ 61,374 at P 16-24 (2001); *Potomac Elec. Power Co.*, 93 FERC ¶ 61,240 at 61,781 (2000); *Western Farmers Elec. Coop.*, 93 FERC ¶ 61,194 at 61,639 (2000); *Oglethorpe Power Corp.*, 77 FERC ¶ 61,334 at 62,491 (1996); *TIFD VIII-H Inc.*, 69 FERC ¶ 61,042 at 61,174 (1994); *Pacific Power & Light Co.*, 3 FERC ¶ 61,119 at 61,337 (1978).

¹² *Id.*

operator, the parties in the instant case entered into a “Unit Entitlement Purchase and Sale Agreement” in which TCP Castleton is called the “Seller”. As discussed below, what TCP Castleton sells is electric energy at wholesale in interstate commerce.

16. In an effort to persuade the Commission that TCP Castleton is a passive owner, not engaged in sales, TCP Castleton claims in its petition that under the Purchase and Sale Agreement, “TCPM is entitled to *all of the Castleton Facility’s capacity* in exchange for fixed annual payment”¹³ (emphasis added) and that “the Contract Price that TCPM pays to TCP Castleton under the [Purchase and Sale] Agreement *does not vary* based upon the amount of energy produced from the facility”¹⁴ (emphasis added). These statements, however, are not consistent with the Agreement. In section 2.1, the Agreement provides that “Seller shall sell and make available, or cause to be made available, and Buyer shall purchase the Unit Entitlement, and Buyer shall pay Seller the Contract Price.” The term “Unit Entitlement” is defined in Appendix “1” to the Agreement as “an exclusive entitlement to all of the capacity of Unit, *subject to any and all claims* by [Niagara Mohawk Power Corp.] to the capacity of the Unit under the Material Contracts” (emphasis added). In the event of an expansion or efficiency enhancement project, section 2.1 of the Agreement provides that “Should Seller and Buyer be unable to agree to mutually acceptable terms regarding the purchase and sale of such expansion capacity, then Seller shall be entitled to offer such expansion capacity for sale to third parties”. Thus, due to potential claims by Niagara Mohawk and the potential for sales to third parties in the event of an expansion, TCPM is not entitled to the entire output of the facility. In fact, the Purchase and Sale Agreement clearly anticipates that TCP Castleton itself may be called upon to make a sale of the unit’s capacity.

17. In addition, TCP Castleton’s description of its relationship with TCPM as including a “fixed annual payment”¹⁵ is not consistent with the Agreement. Section 2.1, of the Purchase and Sale Agreement refers to the “Contract Price”, which is defined in Appendix “1” as “the price to be paid by Buyer for Unit Entitlement in each calendar month, the calculation of which is set out in Exhibit “B” hereto. In Exhibit “B”, the “Contract Price” is equal to total annual revenue divided by the number of months in the contract year. Although annual revenue is established for future years, Exhibit “B” qualifies these seemingly fixed amounts by providing that “Monthly payment are subject

¹³ Pet. for Declaratory Order at 3.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 3.

to reduction for Availability Failure, as described in section 2.4”. Section 2.4, in turn, provides that “Unless excused by Force Majeure, or periods of Scheduled Maintenance, if Seller fails to make available upon Buyer’s request under section 2.5 all or part of the Unit Entitlement Buyer shall reduce its Contract Price for that month by the Availability Failure Penalty.”¹⁶ According to Appendix “1”, “‘Availability Failure Penalty’ means that levied against Seller by Buyer for shortfalls in the Unit’s energy production relative to the Contract Capacity. The Availability Failure Penalty is equal to the product of the Equivalent Contract price per MW-h at 100% Load Factor and the Cumulative MW-h Shortfall.” “Contract Capacity,” in turn, is defined as “a minimum of 98% of the guaranteed energy production capability of the Unit in a given month, expressed in MW, and set forth in Exhibit ‘C’ to the Agreement.” Thus, the Commission concludes that, under the Purchase and Sale Agreement, TCP Castleton is not compensated with a “fixed annual payment” as TCP Castleton represents in its Petition but is compensated based on the output of the Castleton Facility. Based on these findings, we conclude that TCP Castleton is not a passive owner of the facility, but is engaged in sales of electric energy and is thus subject to section 201 of the FPA.

18. TCP Castleton also argues that its status as an EWG alone does not subject it to Commission regulation under the FPA. Our conclusion that TCP Castleton is a public utility does not rest on its status as a EWG. Rather, as discussed above, we have found that TCP Castleton’s interest in the admittedly jurisdictional facilities is not merely a passive interest; and that it is a public utility engaged in sales from the Castleton Facility.

19. Because we have denied TCP Castleton’s petition to declare that its interest in jurisdictional facilities is merely a passive one that does not subject it to the requirements of the FPA, we will turn to its conditional application for market-based rate authority.

Conditional Application for Market-Based Rate Authority

20. 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

¹⁶ To implement this, section 5 of the Agreement, “Invoicing and Payment”, provides that monthly statements shall detail the Contract Price, less any amount deducted for Availability Failure.

whether there is evidence of affiliate abuse or reciprocal dealing.¹⁷ As discussed below, we find that TCP Castleton satisfies the Commission standards for market-based rate authority.

Generation Market Power

21. 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), the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. TCP Castleton has prepared both the pivotal supplier and the wholesale market share screens for the NYISO market. The Commission has determined that the TCP Castleton passes the generation market power screens in the NYISO market. Accordingly, we find that TCP Castleton satisfies the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

22. TCP Castleton states that it does not own or control any transmission facilities other than certain limited facilities specifically used to interconnect its facilities to the regional transmission grid. Based on this representation, the Commission finds that TCP Castleton satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

23. TCP Castleton states that it neither it nor any of its affiliates can erect barriers to entry. Specifically, TCP Castleton states that neither it nor its affiliates have the ability to block others from siting new plants and do not control any resources that could impede potential competition from accessing alternative generation suppliers. Based on TCP Castleton's representations, we are satisfied that TCP Castleton cannot erect barriers to entry.

¹⁷ 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 Servs, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

Affiliate Abuse

24. TCP Castleton states that neither it nor its affiliates has a franchised service area for the sale of electricity. Based on TCP Castleton's representations, we find that TCP Castleton satisfies the Commission's concerns with regard to affiliate abuse.

Waiver of Prior Notice Requirement

25. TCP Castleton requests waiver of the Commission's prior notice requirement¹⁸ and any potential liabilities associated with failure to file its rate schedule pursuant to that requirement. TCP Castleton states that it lost QF status on February 22, 2002 and, therefore, requests an effective date of February 22, 2002.

26. TCP Castleton argues that the circumstances of this case warrant waiver of the prior notice requirement, or alternatively, of any potential liabilities associated with TCP Castleton's inadvertent failure to seek authorization to make sales at market-based rates when it lost its QF status. In support of this argument, TCP Castleton states that it has never attempted to conceal any information from the Commission and that its failure to apply for market-based rate authorization has not resulted in any harm to consumers. TCP Castleton states that no consumers were harmed because its sales were to its power marketer affiliate who then resold TCP Castleton's power exclusively into the NYISO markets.

27. Section 205 of the FPA explicitly requires that rates be timely filed with the Commission.¹⁹ In this regard, the Commission has explained that it cannot "ignore its statutory duty to determine whether rates are just and reasonable by permitting utilities to submit filings whenever convenient," and that it "must have the opportunity to examine proposed rates, terms, and conditions of jurisdictional service before that service commences."²⁰ Thus, a regulated entity must timely file its rates to allow the Commission to fulfill its statutory mandate, namely, determining whether the rates being charged are just and reasonable. The Commission has further made clear that it "does not allow market-based rates to go into effect before a filing has been tendered with the Commission."²¹ In *Central Maine Power Co.*²² and *Prior Notice and Filing*

¹⁸ See 18 C.F.R. § 35.3 (2004).

¹⁹ See *El Paso Elec. Co.*, 105 FERC ¶ 61,131 at P 9-11 (2003).

²⁰ *Id.* at P 14.

²¹ *El Segundo Power, LLC*, 84 FERC ¶ 61,011 at 61,060, *order on reh'g*, 85 FERC (continued)

Requirements Under Part II of the Federal Power Act,²³ the Commission explained that it would grant waiver of prior notice for proposals to charge market-based rates only in extreme or extraordinary circumstances. Based on the information presented by TCP Castleton, the Commission finds that TCP Castleton has failed to demonstrate extraordinary circumstances warranting waiver of notice. Accordingly, the Commission denies TCP Castleton's request for waiver of the 60-day prior notice requirement. The Commission accepts the proposed tariff for filing effective May 23, 2005, following 60 days' notice from the date of the filing.

28. The Commission has noted that if a utility files a market-based rate less than 60 days prior to the proposed effective date of new service, and waiver is denied, the Commission will require the utility to refund to its customers the time value of the revenues collected, calculated pursuant to section 35.19a of the Commission's regulations,²⁴ for the entire period that the rate was collected without Commission authorization.²⁵ In this instance, however, the Commission will not order time value refunds, as such refunds would only transfer monies from one affiliated traditional public utility to another.²⁶

Other Waivers, Authorizations, and Reporting Requirements

29. TCP Castleton requests the following waivers and authorizations: (1) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except as to sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting requirements; (3) abbreviated filings with respect to interlocking directorates

¶ 61,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g*, 90 FERC ¶ 61,036 (2000).

²² 56 FERC ¶ 61,200, *order on reh'g*, 57 FERC ¶ 61,083 (1991).

²³ 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

²⁴ 18 C.F.R. § 35.19a (2004).

²⁵ *Prior Notice and Filing Requirements*, 64 FERC at 61,980.

²⁶ *See, e.g., Wisconsin Public Serv. Corp.*, 87 FERC ¶ 61,151 at 61,621 n.7 (1999).

under Part 45 of the Commission's regulations; and (4) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

30. We will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.²⁷ Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects TCP Castleton to keep its accounting records in accordance with generally accepted accounting principles.

31. Within 30 days of the date of the issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by TCP Castleton should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

32. Absent a request to be heard within the period set forth above, TCP Castleton is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of TCP Castleton, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

33. Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving TCP Castleton. Any such person, instead, shall timely file a sworn application providing the following information:²⁸

²⁷ It should be noted that the Commission is examining the issue of continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141) as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of obligations and liabilities (18 C.F.R. Part 34). *See Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities*, Order No. 627, at P 23-24, 67 Fed. Reg. 67,691 (Nov. 6, 2002), FERC Stats. & Regs. ¶ 31,134 (2002).

²⁸ For current interlocks, applications should be filed within 30 days of the date of this order. We note that the Commission has issued a proposed rulemaking, *Commission*
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- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

34. The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of TCP Castleton's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

35. 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.²⁹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.³⁰ Accordingly, TCP Castleton must file its first Electric Quarterly Report no later than 30 days after the first quarter TCP Castleton's rate schedule is in effect.³¹

Authorization to Hold Interlocking Directorates, 110 FERC ¶ 61,343 (2005), which is considering modifications to 18 C.F.R. Part 45. The Commission is considering changing its requirements as to timing and also is examining the possibility of no longer granting a waiver of the full requirements of Part 45 in its orders granting market-based rate authority.

²⁹ *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>.

³⁰ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b.

³¹ Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in a 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.

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36. TCP Castleton 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.³² 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, TCP Castleton is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

TransCanada Power (Castleton) LLC 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.

37. TCP Castleton 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.

The Commission orders:

(A) TCP Castleton's Petition for Declaratory Order is denied, as discussed in the body of this order.

(B) TCP Castleton's market-based rate schedule is hereby accepted for filing, as discussed in the body of this order, effective May 23, 2005.

(C) TCP Castleton is hereby directed to file an updated market analysis within three years of the date of this order and every three years thereafter.

³² *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).

(D) TCP Castleton is hereby directed to revise its market-based rate tariff within 30 days of the date of issuance of this order to include the change in status reporting requirement adopted in Order No. 652.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.