

111 FERC ¶ 61,422
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 17, 2005

In Reply Refer To:
Astoria Energy LLC
Docket Nos. ER01-3103-007
ER01-3103-008 and
ER01-3103-009

Bingham McCutchen LLP
Attn: Mark C. Williams, Esq.
Counsel for Astoria Energy LLC
1120 Twentieth Street, NW, Suite 800
Washington, DC 20036

Dear Mr. Williams:

1. On March 1, 2005, as amended on March 21 and May 23, 2005, Astoria Energy LLC (Astoria) filed an updated market power analysis pursuant to the requirements of the Commission's order granting Astoria authority to sell capacity and energy at market-based rates.¹ Astoria already has on file the Commission's market behavior rules.² As discussed below, the Commission concludes that Astoria satisfies the Commission's standards for market-based rate authority.

2. Astoria states that it was organized solely for the purpose of developing, owning, operating and selling electricity from a 1,000 MW generating facility located in Queens, New York (Astoria facility). The Astoria facility will be located exclusively within and interconnected into the New York Independent System Operator, Inc. (NYISO) market. Astoria's construction of the facility is expected to be completed in 2006. Astoria also states that the Astoria facility is owned by Astoria Project Partners LLC (Astoria Project Partners), which owns no other generation capacity other than the Astoria facility. Astoria further states that the following eight entities have either a direct or indirect

¹ See *Astoria Energy LLC*, Docket No. ER01-3101-001 (March 6, 2002) (unpublished letter order).

² *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).

ownership interest in Astoria Project Partners: (i) Steinway Creek Electric Generating Company LLC (Steinway Creek), (ii) United States Power Fund, L.P. (USPF), (iii) SNC-Lavalin Group, Inc. (SNC), (iv) Caisse de depot et placement du Quebec (CDP), (v) SCS Energy LLC (SCS), (vi) AE Investor LLC (AEI), (vii) Bowery Bay Energy Investments LLC (Bowery Bay) and (viii) East River Energy Investments LLC (East River). Of these eight entities, Astoria states that Steinway Creek, Bowery Bay and East River own no other generation capacity other than their interests in the Astoria facility. However, the other five entities own generation capacity in the NYISO market and/or market or control areas that are first tier to the NYISO. Astoria states that USPF, SNC and AEI own a total of 158 MW in the NYISO market area, and SCS, CDP, USPF and AEI, own a total of 1,336 MW in the NYISO first-tier market/control areas.³

3. Astoria's filing also includes the change in status reporting requirement recently required by the Commission in Order No. 652.⁴ Astoria's submittal is accepted for filing.

Procedural Matters

4. Notice of Astoria's March 1, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 17,442 (2005), with protests and interventions due on or before March 22, 2005. None was filed.

5. Notice of Astoria's March 21, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 12,674 (2005), with protests and interventions due on or before April 11, 2005. None was filed.

6. Notice of Astoria's May 23, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 32,768 (2005), with protests and interventions due on or before June 13, 2005. None was filed.

Discussion

7. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers

³ Astoria's first-tier markets include: the PJM Interconnection, L.L.C. market, the ISO New England market, Hydro-Quebec, and Ontario IESO.

⁴ See *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).

whether there is evidence of affiliate abuse or reciprocal dealing.⁵ As discussed below, the Commission concludes that, Astoria satisfies the Commission's standards for market-based rate authority.

8. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. Astoria has prepared both the pivotal supplier and the wholesale market share screen analyses for the NYISO market. Astoria states that it conservatively included the entire capacity owned by Astoria and its affiliates in control areas that are first tier to the NYISO market.

9. The Commission has reviewed Astoria's generation market power screens and has determined that Astoria passes both the pivotal supplier and wholesale market share screens. Accordingly, the Commission finds that Astoria satisfies the Commission's generation market power standard for the grant of market-based rate authority.

10. Astoria states that neither it nor its affiliates own any facilities for the purpose of transmitting electricity other than those necessary to interconnect their generating assets with the transmission grid, which is operated by the NYISO. As noted, the Astoria facility has not yet been built, and no physical interconnection facilities exist presently. Astoria states that its affiliate, SNC, indirectly holds a 50 percent interest in the AltaLink transmission system. Astoria states that the interest is not an operating interest, it conveys to SNC no operational control or capacity control or assignment rights, and it is limited to facilities located in the Canadian province of Alberta. Astoria further states that AltaLink's capacity is controlled by an independent transmission entity established under Canadian law. Astoria states that the AltaLink system bears no relationship to the NYISO or any adjacent market. Based on Astoria's representations, the Commission finds that Astoria satisfies the Commission's transmission market power standard for the grant of market-based rate authority.⁶

11. Astoria states that it is not affiliated with any producer, supplier or transporter of fuel within or into the relevant market, the NYISO. Astoria further states that its sole fuel-related facilities are those which Astoria will use to receive fuel for its own

⁵ 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).

⁶ See *Great Lakes Hydro America, LLC*, 110 FERC ¶ 61,225 (2005).

consumption. Astoria states that it is not affiliated with any supplier of electrical equipment. Based on these representations, the Commission is satisfied that Astoria cannot erect barriers to entry.

12. Astoria states that it is not directly or indirectly affiliated with any public utility or transmitting utility with any franchised service territory, retail service facilities, or captive customers in any relevant market - either wholesale or retail. Based on these representations, the Commission finds that Astoria satisfies the Commission's concerns with regard to affiliate abuse.

13. 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.⁷ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁸

14. Astoria 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. Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. As noted above, Astoria has revised its tariff to include the change in status reporting requirement in their tariffs.

⁷ *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>.

⁸ 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.

15. Astoria 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.

By direction of the Commission.

Magalie R. Salas,
Secretary.