

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

July 5, 2005

In Reply Refer To:  
MxEnergy Electric Inc. and  
Total Gas & Electricity (PA), Inc.  
Docket No. ER04-170-005

MxEnergy Electric Inc. and  
MxEnergy Electric (PA), Inc.  
Docket Nos. ER04-170-006  
ER05-1027-000

Van Ness Feldman, P.C.  
Attn: Margaret A. Moore, Esq.  
Counsel for MxEnergy Electric Inc. and  
MxEnergy Electric (PA)  
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Dear Ms. Moore:

1. On March 16, 2005, as amended on May 26, 2005, MxEnergy Electric Inc. (MxEnergy Electric) filed an updated market power analysis, pursuant to the Commission's order granting MxEnergy Electric authority to sell electric energy and capacity at market-based rates (March 1, 2002 Order)<sup>1</sup> and in compliance with the Commission's orders issued on April 14, 2004, May 13, 2004 and July 8, 2004.<sup>2</sup>

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<sup>1</sup> *MxEnergy Electric Inc.*, Docket No. ER02-737-000 (March 1, 2002) (unpublished letter order).

<sup>2</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order), *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

MxEnergy Electric also requested limited waiver of the requirement to file an updated market analysis within three years of the March 1, 2002 Order to the extent necessary to allow MxEnergy Electric to file its updated market analysis out of time.<sup>3</sup> MxEnergy Electric's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective the date of this order.

2. The Commission also accepts the notice of change in status filed on May 26, 2005 regarding the completion of the corporate reorganization of MxEnergy Electric previously approved by the Commission,<sup>4</sup> the notice of succession<sup>5</sup> and revised tariff sheets.<sup>6</sup> The Commission also accepts MxEnergy Electric's revised market-based rate tariffs incorporating the change in status reporting requirement adopted in Order No. 652.<sup>7</sup> MxEnergy Electric's tariffs incorporating the Commission's market behavior rules were previously accepted by the Commission.<sup>8</sup> As discussed below, we conclude that

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<sup>3</sup> MxEnergy Electric should have filed its updated market analysis by March 1, 2005, which is three years from the date the Commission granted it authority to sell electric energy and capacity at market-based rates outside of its control area. MxEnergy did not file that analysis until March 16, 2005. MxEnergy Electric's next updated market power analysis is due within three years of the date of this order and we expect that filing to be made in a timely fashion.

<sup>4</sup> See *MxEnergy Electric Inc.*, 111 FERC ¶ 62,067 (2005) (April 19 Order).

<sup>5</sup> In the notice of succession, MxEnergy Electric's affiliate, Total Gas & Electricity (PA), Inc. notified the Commission that it was now MxEnergy Electric (PA), Inc.

<sup>6</sup> The Commission granted MxEnergy Electric's then affiliate, Total Gas & Electricity (PA), Inc. market-based rate authority in *Total Gas & Electricity (PA)*, Docket Nos. ER05-687-000 and ER05-687-001, (April 14, 2005) (unpublished letter order). Total Gas & Electricity (PA), Inc. filed revised tariff sheets reflecting its new corporate name, MxEnergy Electric (PA), Inc.

<sup>7</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) (Order No. 652).

<sup>8</sup> See *AES Creative Resources, L.P.*, Docket No. ER99-1773-003 (March 29, 2004) (unpublished letter order) and *Total Gas & Electricity (PA)*, Docket Nos. ER05-687-000 and ER05-687-001, (April 14, 2005) (unpublished letter order).

MxEnergy Electric satisfies the Commission's standards for market-based rate authority.<sup>9</sup> 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. As discussed below, MxEnergy Electric's and its affiliates' next updated market power analysis is due three years from the date of this order.

### **Background**

3. MxEnergy Electric is a Delaware corporation and a wholly-owned, direct subsidiary of MxEnergy Inc. with its principal place of business in Connecticut. MxEnergy Electric is a power marketer. MxEnergy Electric states that neither it nor any of its affiliates own or control generation, transmission or distribution facilities in the United States. MxEnergy Electric also states that it is not affiliated with any public utility that has a franchised electric service territory.

### **Procedural Matters**

4. Notice of MxEnergy Electric's March 16, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 16,263 (2005), with interventions and protests due on or before April 6, 2005. None was filed.

5. Notice of MxEnergy Electric's May 26, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 33,142 (2005), with interventions and protests due on or before June 16, 2005. None was filed.

### **Discussion**

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

6. 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> As discussed below, the Commission concludes that MxEnergy Electric satisfies the Commission's standards for market-based rate authority.

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<sup>9</sup> *Supra* note 6.

<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).

### **Generation Market Power**

7. 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. MxEnergy Electric states that it and its affiliates do not own or control any generation. Based on MxEnergy Electric's representation, MxEnergy Electric satisfies the Commission's generation market power standard for the grant of market-based rate authority.

### **Transmission Market Power**

8. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. MxEnergy Electric states that neither MxEnergy Electric nor its affiliates own or control transmission facilities. Based on MxEnergy Electric's representation, the Commission finds that MxEnergy Electric satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

### **Other Barriers to Entry**

9. MxEnergy Electric states that neither it nor any of its affiliates owns or controls fuel supplies, unique land sites, or other inputs to electric power generation that could be used to prevent other competitors from entering United States markets. Based on MxEnergy Electric's representation, the Commission is satisfied that MxEnergy Electric cannot erect barriers to entry.

### **Affiliate Abuse**

10. MxEnergy Electric states that MxEnergy Electric is not affiliated with any franchised public utilities. Based on MxEnergy Electric's representation, we find that MxEnergy Electric satisfies the Commission's concerns with regard to affiliate abuse.

### **Change in Status, Notice of Succession and Revised Tariff Sheets**

11. On March 16, 2005, MxEnergy Electric and its affiliate at that time, Total Gas & Electricity (PA), Inc. filed an application for authorization to dispose of jurisdictional facilities in connection with an internal corporate reorganization that subsequently was authorized by the Commission, and a notice of change in status.<sup>11</sup> In that filing,

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<sup>11</sup> See *MxEnergy Electric Inc.*, 111 FERC ¶ 62,067 (2005).

MxEnergy Electric stated that once the transactions in that application were accepted by the Commission, Total Gas & Electricity (PA), Inc. intended to do business as MxEnergy Electric (PA), Inc. On May 26, 2005, MxEnergy Electric filed a notice of succession notifying the Commission that Total Gas & Electricity (PA), Inc. was now MxEnergy Electric (PA), Inc. along with revised tariff sheets incorporating the new corporate name in MxEnergy Electric (PA), Inc.'s market-based rate tariff.<sup>12</sup> MxEnergy Electric also filed revised tariff sheets to incorporate the appropriate change in status language consistent with Order No. 652.<sup>13</sup> The Commission accepts the notice of change in status, the notice of succession and the revised tariff sheets.

### **Other Waivers, Authorizations and Reporting Requirements**

12. MxEnergy Electric requests the Commission to establish a single date, three years from the date of this Commission order accepting the triennial market analysis, for the next market analysis to be filed by MxEnergy Electric and its affiliates, including MxEnergy Electric (PA), Inc. The Commission will grant this request.

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.<sup>14</sup> Electric

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<sup>12</sup> MxEnergy Electric (PA) Rate Schedule FERC No. 2, First Revised Sheet Nos. 1-5 (Supersedes Total Gas & Electricity (PA), Inc. Rate Schedule FERC No. 2).

<sup>13</sup> MxEnergy Electric Inc. Rate Schedule FERC No. 1, Substitute Second Revised Sheet No. 3.

<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>.

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

14. MxEnergy Electric 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. As noted above, MxEnergy Electric has revised its tariff to include the change in status reporting requirement.

15. MxEnergy Electric and its affiliates 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) MxEnergy Electric's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) MxEnergy Electric's and its affiliates' next updated market analysis is due within three years of the date of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<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, *order on reh'g*, 111 FERC ¶ 61,143 (2005).