

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

October 29, 2004

In Reply Refer To:
Choice Energy Services
Docket Nos. ER04-1022-000 and
ER04-1022-001

Choice Energy Services, L.P.
Attn: Mr. Sean Cyprian Wright
Vice President - Operations
5718 Westheimer Rd.
Suite 1310
Houston, Texas 77057-5732

Dear Mr. Wright:

1. On July 15, 2004 as amended on September 8, 2004, Choice Energy Services, L.P. (Choice Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of capacity and energy at market-based rates. The submittal also includes the Commission's market behavior rules.¹ Choice Energy's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective September 14, 2004.²

2. Choice Energy is a limited partnership with its principal place of business in Houston, Texas. Choice Energy states that it intends to market electricity to wholesale customers as a power marketer.

Procedural Matters

3. Notice of Choice Energy's July 15, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 44,525 (2004), with comments, protests, and interventions due on or before August 5, 2004. Notice of Choice Energy's September 8, 2004 filing was

¹ *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).

² FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1 – 4.

published in the *Federal Register*, 69 Fed. Reg. 56,214 (2004), with comments, protests, and interventions due on or before September 29, 2004. None was filed.

Discussion

Market-Based Rate Authorization

4. 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.³ As discussed below, we conclude that Choice Energy satisfies the Commission's standards for market-based rate authority.

5. In its order issued in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. Choice Energy states that neither it nor any of its affiliates owns or controls generation facilities. Accordingly, the Commission finds that Choice Energy satisfies the Commission's generation market power standard for the grant of market-based rate authority.

6. Choice Energy states that neither it nor any of its affiliates owns, operates or controls any transmission facilities. Based on Choice Energy's representation, the Commission finds that Choice Energy satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

7. Choice Energy states that neither it nor any of its affiliates owns or controls any sites for the construction of new generating capacity, interstate or intrastate natural gas transmission lines, or other essential resources or inputs that could be used to restrict market entry by competing power suppliers. Based on this representation, we are satisfied that neither Choice Energy nor any of its affiliates can erect barriers to entry.

8. Choice Energy states that it does not have a franchised service territory, nor is it affiliated with an electric utility that has a franchised service territory. Based on this representation, we find that Choice Energy satisfies the Commission's concerns with regard to affiliate abuse.

³ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996), *Letter Order Approving Settlement*, 79 FERC ¶ 61,149 (1997); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc., et al.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

Waivers, Authorizations and Reporting Requirements

9. Choice Energy 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 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.

10. We will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.⁴ Notwithstanding the waiver of the accounting and reporting requirements here, we expect Choice Energy to keep its accounting records in accordance with generally accepted accounting principles.

11. 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 Choice Energy 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 (2004).

12. Absent a request to be heard within the period set forth above, Choice Energy 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 Choice Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

13. 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

⁴ 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, 67 Fed. Reg. 67,691 at P 23 and P 24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

involving Choice Energy. Any such person instead shall file a sworn application providing the following information:

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

14. 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 Choice Energy's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

15. 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.⁵ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁶ Accordingly, Choice Energy must file its first Electric Quarterly Report no later than 30 days after the first quarter Choice Energy's market-based rate tariff is in effect.⁷

16. Choice Energy is directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These characteristics include, but are not

⁵ *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/Electric/eqr/eqr.htm>.

⁶ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

⁷ 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.

limited to: (1) ownership of generating or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.⁸

17. Choice Energy 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.

Linda Mitry,
Acting Secretary.

⁸ The Commission issued a Notice of Proposed Rulemaking in Docket No. RM04-14-000 in which the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates. *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004). The change of status requirements outlined herein are subject to the outcome of the rulemaking.