

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

November 3, 2004

In Reply Refer To:
Peoples Energy Services Corporation
Docket No. ER01-2306-001

McGuireWoods LLP
Attn: Janice R. Moore, Esq.
1050 Connecticut Avenue, N.W.
Suite 1200
Washington D.C. 20036

Dear Mrs. Moore:

1. On August 9, 2004 Peoples Energy Services Corporation (PE Services) filed an updated market power analysis pursuant to the requirements of the Commission's order granting PE Services authority to sell capacity and energy at market-based rates.¹ It also submitted a revised rate schedule incorporating the Commission's market behavior rules.² PE Services' submittal is accepted for filing.³ As discussed below, the Commission concludes that PE Services satisfies the Commission's standards for market-based rate authority.

2. PE Services is a power marketer that does not own any generation, and purchases electricity in the wholesale market. PE Services states that it is principally engaged in the business of providing energy to retail customers as an alternative retail electric supplier. PE Services is a subsidiary of Peoples Energy Corporation (Peoples Energy). PE Services is affiliated with Peoples Energy Resources Company (PERC), LLC, through Peoples Energy, its parent company. PERC, through several of its subsidiaries, is involved in the generation of electricity.

¹ *Peoples Energy Services Corporation*, Docket No. ER01-2306-000 (August 8, 2001) (unpublished letter order).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).

³ Rate Schedule FERC No. 1, Original Sheets Nos. 2-3.

3. The affiliates of PE Services own and operate merchant power plants in Elwood, Illinois, and Chicago, Illinois, constructed after July 9, 1996, that are currently sized at 1,350 MW and 350 MW (respectively Facilities). PE Services states that the entire generating capacity of each of these facilities is one hundred percent committed under long-term Purchase Service Agreements to entities who are not affiliated with PE Services.

Procedural Matters

4. PE Services' filing was noticed in the *Federal Register*, 69 Fed. Reg. 51,658 (2004) with motions to intervene, protests and comments to be filed by August 30, 2004. None was filed.

Discussion

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.⁴ As discussed below, the Commission concludes that PE Services satisfies the Commission's standards for market-based rate authority.

7. PE Services cites section 35.27 of the Commission's regulations, which provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.⁵ If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.⁶

8. PE Services contends that construction of its affiliate's Facilities commenced after July 9, 1996. PE Services further states that all of the capacity from the Elwood Facility is sold to Exelon Generation Company, LLC (Exelon), Engage Energy America LLC and

⁴ 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).

⁵ 18 C.F.R. § 35.27(a) (2004).

⁶ *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

Aquila Energy Marketing Corporation under long-term Purchase Service Agreements and all of the capacity from the SCEP Facility is also sold to Exelon. Moreover, PE Services notes that both of these generation facilities are located in the Commonwealth Edison Company control area, where neither PE Services nor its affiliates, directly or indirectly, control any sales of electricity. Accordingly, PE Services concludes that it continues to satisfy the generation market power standard for approval of market-based rates. The Commission finds that PE Services satisfies the Commission's generation market power standard for the grant of market-based rate authority.

9. PE Services states that neither PE Services nor its affiliates owns, operates, or controls any facilities for the transmission of electricity in interstate commerce other than the interconnection facilities necessary for interconnection to the transmission grid. The Commission finds that PE Services satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

10. PE Services states that neither it nor any of its affiliates owns or controls resources that could be used to restrict the market entry of competing suppliers. PE Services concedes that although three of its gas affiliates, specifically, Peoples Gas, PEWM and PNLG sell natural gas, they do so in competitive markets and they have no ability to control generation or otherwise restrict market entry. PE Services concludes therefore, that its ownership of these gas facilities does not function as a potential barrier to entry. PE Services asserts further that, collectively, the assets of PE Services and its affiliates and their plans for future developments are *de minimus* in relation to the total market in which PE Services operates, and do not represent enough market share to restrict potential competitors from entering the market. PE Services concludes, therefore, that neither PE Services nor its owner or affiliates are able to erect or control any barriers to market entry. Based on this representation, the Commission is satisfied that neither PE Services nor any of its affiliates can erect barriers to entry. However, should PE Services or any of its affiliates deny, delay or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in the suspension of PE Services' authority to sell power at market-based rates.⁷

11. PE Services states that neither it nor any of its affiliates has a franchised service area for the sale of electricity. Based on this representation, the Commission finds that PE Services satisfies the Commission's concerns with regard to affiliate abuse.

12. 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

⁷ See, e.g., *Louisville Gas & Electric Co.*, 61 FERC ¶ 61,016 (1993).

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.⁸ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁹

13. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, in a Notice of Proposed Rulemaking in Docket No. RM04-14-000, 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.¹⁰ Accordingly, the change in status reporting obligation for PE Services is subject to the outcome of the rulemaking.

14. PE Services 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. Commissioner Kelly not participating.

Magalie R. Salas,
Secretary.

⁸ *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>.

⁹ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10(b) (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.

¹⁰ *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).