

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

November 19, 2004

In Reply Refer To:
NorthPoint Energy Solutions Inc.
Docket No. ER04-1244-000

Wright & Talisman, P.C.
Attn: Mr. Michael E. Small, Esq.
Counsel for NorthPoint Energy Solutions Inc.
1200 G Street, N.W.
Suite 600
Washington, DC 20005

Dear Mr. Small:

1. On September 24, 2004, NorthPoint Energy Solutions Inc. (NorthPoint) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity and energy at market-based rates, the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs). It also includes the Commission's market behavior rules.¹ NorthPoint's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective December 1, 2004.²
2. NorthPoint is a subsidiary of Saskatchewan Power Corporation (SaskPower), a vertically-integrated provincial electric utility for the Government of Saskatchewan, Canada.³ NorthPoint states that it markets surplus power produced by SaskPower to

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 Rate Schedule FERC No. 1, Original Sheet Nos. 1-4.

³ SaskPower is a subsidiary of Crown Investments Corporation of Saskatchewan, a holding company that also owns SaskEnergy Incorporated and its subsidiary TransGas Limited.

other Canadian utilities or power trading pools in Canada.⁴ NorthPoint states that it also purchases power generated in the United States and elsewhere in Canada to meet SaskPower's load requirements. NorthPoint states that it also markets power to U.S. customers with delivery at the Canada/United States border. NorthPoint states that it does not own or control any generation or transmission within the United States.

Procedural Matters

3. Notice of NorthPoint's filing was published in the *Federal Register*, 69 Fed. Reg. 59,914 (2004), with comments, protests and interventions due on or before October 15, 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.⁵ As discussed below, we conclude that NorthPoint 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. NorthPoint states that it does not own any generation assets, and that its affiliate SaskPower's generation is located in Canada. SaskPower's service territory in Canada, however, connects directly to the Western Area Power Administration-Upper Missouri East (WAUE) control area in the United States.

⁴ SaskPower does not own or control any generation and transmission assets in the United States, though it does own 152,000 kilometers of power lines and 3,056 MW of installed capacity in Saskatchewan. SaskPower's total transfer capability (TTC) to the United States is about 215 MW and TTC from the United States to SaskPower is about 165 MW.

⁵ 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).

Therefore, NorthPoint performed the generation market power screens for its affiliate's first-tier market, the WAUE. The Commission has reviewed NorthPoint's generation market power screens for the WAUE control area market, which indicate that NorthPoint passes both the pivotal supplier and wholesale market share screens in that geographic market. Accordingly, the Commission finds that NorthPoint satisfies the Commission's generation market power standard for the grant of market-based rate authority.

6. NorthPoint states that it does not own or control any transmission facilities. NorthPoint asserts that its affiliate, SaskPower, owns transmission facilities in Saskatchewan and that SaskPower operates its Canadian transmission assets pursuant to an Open Access Transmission Tariff (OATT) modeled on the Commission's *pro forma* tariff.⁶ In previous cases involving Canadian entities, the Commission has found that the marketer must be able to demonstrate that its transmission-owning utility affiliate offers non-discriminatory access to its transmission system that can be used by competitors of the power marketer to reach United States markets.⁷

7. In this case, we find that the transmission tariff under which NorthPoint's affiliate, SaskPower, will provide transmission service is consistent with or superior to the *pro forma* tariff, and thus satisfies the Commission's transmission market power standard for the grant of market-based rate authority. In fact, we find that the SaskPower OATT is almost identical to the *pro forma* tariff. The main difference is that while the *pro forma* tariff refers to the Commission as the applicable regulatory authority, the SaskPower OATT includes references to Canadian law. The SaskPower OATT provides for both point-to-point and network transmission service to be available on a non-discriminatory and comparable basis, provides for a transmission request process (including OASIS

⁶ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group, et. al. v. FERC*, 225 F.3d 667 (D.C. Cir.2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁷ *E.g., TransAlta Enterprises Corp.*, 75 FERC ¶ 61,268 at 61,875 (1996); *Energy Alliance Partnership*, 73 FERC ¶ 61,019 at 61,031 (1995).

requirements, consistent with the *pro forma* OATT), provides for transmission curtailments consistent with the *pro forma* OATT, and provides for the construction of transmission.⁸

8. NorthPoint states that neither it nor any of its affiliates has the ability to erect barriers to entry that would prevent other competitors from participating in the business of power generation. NorthPoint states that neither it nor any of its affiliates can dictate the siting of new generation facilities or prevent others from doing so. NorthPoint states that neither it nor any of its affiliates owns or operates any natural gas facilities in the United States; therefore they do not control any fuel supplies to electric power plants. Further, NorthPoint states that neither it nor its affiliates own any construction or engineering firms that would engage in the construction of generation or transmission facilities. Based on these representations, the Commission is satisfied that NorthPoint cannot erect barriers to entry.

9. NorthPoint states that neither it nor its affiliate SaskPower owns any regulated utilities in the United States, and therefore neither has a franchised service area for electricity in the United States. Accordingly, NorthPoint states that its application does not raise issues of affiliate abuse or reciprocal dealing. NorthPoint further states that because neither it nor SaskPower has a franchised service territory in the United States, it is not required to submit a market-based rate code of conduct in this proceeding.⁹ Based on these representations, the Commission finds that NorthPoint satisfies the Commission's concerns with regard to affiliate abuse.

10. NorthPoint also requests authority to reassign transmission capacity, and resell FTRs. The Commission finds this provision consistent with the Commission's requirements.¹⁰ Accordingly, we grant this request.

Other Waivers, Authorizations and Reporting Requirements

11. NorthPoint 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

⁸ See *British Columbia Power Exchange Corp.*, 80 FERC ¶ 61,343 (1997).

⁹ See *Carolina Power & Light Co.*, 97 FERC ¶ 61,063 at 61,350 (2001).

¹⁰ See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997), and *California Independent System Operator, Corp.*, 89 FERC ¶ 61,153 (1999).

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.

12. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹¹

Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects NorthPoint to keep its accounting records in accordance with generally accepted accounting principles.

13. 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 NorthPoint 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.

14. Absent a request to be heard within the period set forth above, NorthPoint is hereby authorized to issue securities and assume obligations or liabilities as guarantor, endorser, 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 NorthPoint, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

15. 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 NorthPoint. Any such person instead shall file a sworn application providing the following information:

¹¹ 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).

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

16. 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 NorthPoint's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

17. NorthPoint has also requested a determination that funds received in connection with power sales are not “facilities” within the meaning of section 203 of the Federal Power Act (FPA), and that sales of accounts receivable do not constitute disposition of jurisdictional facilities under section 203. Consistent with Commission precedent, we find that funds received in connection with power sales are not “facilities” within the meaning of section 203¹² and that sales of accounts receivable are not dispositions of jurisdictional facilities and are, therefore, not within the scope of section 203.¹³

18. 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.¹⁴ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the

¹² *Citizens Energy Corp.*, 35 FERC ¶ 61,198 at 61,453 (1986).

¹³ *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 at 62,405 (1993), *order on rehearing*, 66 FERC ¶ 61,244 (1994).

¹⁴ *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 Electric Quarterly Report Submission System Software, which may be downloaded from the Commission’s website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

reporting quarter.¹⁵ Accordingly, NorthPoint must file its first Electric Quarterly Report no later than 30 days after the first quarter NorthPoint's rate schedule is in effect.¹⁶

19. NorthPoint 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 include, but are not limited to: (a) ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (b) 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.¹⁷

20. NorthPoint 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.

¹⁵ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b. (2004).

¹⁶ 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.

¹⁷ 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.