

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

December 20, 2004

In Reply Refer To:  
MeadWestvaco Energy Services, L.L.C.  
Docket Nos. ER04-1137-000  
ER04-1137-001  
ER04-1137-002

Preti Flaherty Beliveau Pachios & Haley LLC  
Attn: Mr. Donald J. Sipe, Esq.  
Counsel for MeadWestvaco Energy Services, L.L.C.  
800 Cross Pointe Road, Suite D  
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Dear Mr. Sipe:

1. On August 18, 2004, as amended on October 6, 2004 and November 5, 2004, MeadWestvaco Energy Services, L.L.C. (MWES) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity, energy, and ancillary services at market-based rates, the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs).<sup>1</sup> It also includes the Commission's market behavior rules.<sup>2</sup> MWES' 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, as requested.<sup>3</sup>

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<sup>1</sup> MWES plans to sell certain ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), ISO New England, Inc. (ISO-NE), and California Independent System Operator Corporation (CAISO). MWES also intends to engage in the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999).

<sup>2</sup> *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).

<sup>3</sup> Rate Schedule FERC No. 1, Original Sheet Nos. 1-5.

2. MWES states that it is a Delaware corporation which was formed specifically to act as a purchaser of energy at wholesale for provision to affiliate and subsidiary companies of MeadWestvaco Corporation. MeadWestvaco Corporation is a leading global producer of packaging, coated and specialty papers, consumer and office products and specialty chemicals. MWES states that it owns no generation, transmission, or distribution assets nor does it own any entitlement to capacity or energy from any unit or system under any long-term or short-term contract. MWES intends to purchase and take title to capacity and energy under long-term and short-term contracts or in the real-time market to serve the retail loads of affiliates. MWES states that it may, from time to time, seek to resell at wholesale a portion of the capacity and energy it purchases in order to balance its affiliates' loads in real time or take advantage of less expensive supply options as such supply becomes available. MWES itself has no ownership interest in any other entity.

3. While MWES does not own generation itself, MWES' affiliates own 75 MW of generation in the ISO-NE market and 70 MW of generation in the Dominion Virginia Power control area. It is this generation for which MWES performs the indicative generation market power screens.

### **Procedural Matters**

4. Notice of MWES' August 18, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 53,057 (2004), with motions to intervene and protest to be filed by September 8, 2004. None was filed. Notice of MWES' October 6, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 61,822 (2004), with motions to intervene and protest to be filed by October 29, 2004. None was filed. Notice of MWES' November 5, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 67,568 (2004), with motions to intervene and protest to be filed by November 26, 2004. None was filed.

### **Discussion**

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

5. 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>4</sup> As discussed below, the Commission finds that MWES satisfies the Commission's standards for market-based rate authority.

6. 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 Commission has reviewed MWES' generation market power screens for the ISO-NE market and Dominion Virginia Power control area. MWES passes both the pivotal supplier and wholesale market share screens in those markets. Accordingly, the Commission finds that MWES satisfies the Commission's generation market power standard for the grant of market-based rate authority.

7. MWES states that neither MWES nor any of its affiliates own, operate or control any transmission or distribution facilities. Based on these representations, the Commission finds that MWES satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. MWES states that neither MWES nor any of its affiliates have an ownership or interest in intrastate natural gas pipelines, local gas distribution systems, or other competitive services which would allow MWES or any of its affiliates to erect barriers to entry into the power markets. Based on these representations, the Commission is satisfied that neither MWES nor any of its affiliates can erect barriers to entry.

9. MWES states that it is not affiliated with a public utility with a franchised service territory. In addition, neither MWES nor any of its affiliates have captive ratepayers. Based on this representation, the Commission finds that MWES satisfies the Commission's concerns with regard to affiliate abuse.

10. MWES requests authority to engage in the sale of certain ancillary services (listed in the proposed tariff) at market-based rates into the markets administered by ISO-NE, PJM, NYISO, and CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant

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<sup>4</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,921-22 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899-900 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

MWES' request.<sup>5</sup> MWES also intends to engage in the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista Corp.*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999). The Commission will grant this request.

11. In addition, MWES proposes to sell additional ancillary services in additional geographic markets as the Commission may specify and authorize from time-to-time in orders that extend such authority to all sellers previously authorized to sell energy and/or capacity at market-based rates. The Commission will grant MWES' request in this regard; however, this grant does not relieve MWES of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).<sup>6</sup>

12. MWES also requests authority to reassign transmission capacity and to resell FTRs or their equivalent. The Commission finds these provisions consistent with the Commission's requirements.<sup>7</sup> Accordingly, the Commission will grant this request.

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

13. MWES 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.

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<sup>5</sup> See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *Atlantic City Electric Company*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (1999); *Central Hudson Gas & Electric Corporation*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 (1999); *AES Redondo Beach, L.L.C.*, 85 FERC ¶ 61,123 (1998), *order on reh'g*, 87 FERC ¶ 61,208 (1999), *order on reh'g and clarification*, 90 FERC ¶ 61,036 (2000). Because ISO-New England has the responsibility of administering the regional market, including ancillary services, MWES' tariff should refer to ISO-New England (ISO-NE), rather than NEPOOL. Thus, MWES should make this revision (i.e., change "NEPOOL" to "ISO-NE") at such time as it files an amendment to its market-based tariff.

<sup>6</sup> See *Calhoun Power Company*, 96 FERC ¶ 61,056 (2001).

<sup>7</sup> See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997); *California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

14. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>8</sup> Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects MWES to keep its accounting records in accordance with generally accepted accounting principles.

15. 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 MWES 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).

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

17. 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 MWES. 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

18. 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 MWES' issuances and securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

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<sup>8</sup> 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 23-24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

19. 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>9</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>10</sup> Accordingly, MWES must file its first Electric Quarterly Report no later than 30 days after the first quarter MWES' rate schedule is in effect.<sup>11</sup>

20. MWES 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 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.<sup>12</sup>

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<sup>9</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/Electric/eqr/eqr.htm>.

<sup>10</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

<sup>11</sup> 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>12</sup> 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.

21. MWES 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