

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

December 16, 2004

In Reply Refer To:
PEI Power Corporation
Docket Nos. ER98-2270-003,
ER98-2270-004 and
ER98-2270-005

PEI Power Corporation
Attn: Frank Rainey
One PEI Center
Wilkes-Barre, Pennsylvania 18711-0601

Dear Mr. Rainey:

1. On August 27, 2004, as amended on October 1, 2004 and November 22, 2004, PEI Power Corporation (PEI) filed an updated market power analysis pursuant to the requirements of the Commission's order granting PEI 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 PEI's submittal is accepted for filing.³ As discussed below, the Commission concludes that PEI satisfies the Commission's standards for market-based rate authority.

2. PEI is an exempt wholesale generator whose principal place of business is Archbald, Pennsylvania. PEI owns 100 percent of a 20-megawatt (MW) cogeneration facility, as well as 49.9 percent of PEI Power II, LLC, a 44-MW gas-fired generating facility. PEI is a wholly-owned subsidiary of Southern Union Company. PEI, through its parent company, is affiliated with various natural gas distribution companies, as well as Panhandle Energy, which is engaged in the interstate transportation and storage of natural gas.

¹ *PEI Power Corporation*, Docket No. ER98-2270-000 (May 8, 1998) (unpublished letter order).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 FERC Electric Tariff, Original Volume No. 1, First Revised Sheet Nos. 1-2, Second Revised Sheet Nos. 3-4, Original Sheet Nos. 5-6.

3. Notice of PEI's August 27, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 63,382 (2004) with motions to intervene and protest to be filed by September 27, 2004. None was filed. Notice of PEI's October 1, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 64,042 (2004) with motions to intervene and protest to be filed by October 22, 2004. None was filed. Notice of PEI's November 22, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 70,437 (2004) with motions to intervene and protests to be filed by December 6, 2004. None was filed.

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

5. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. PEI has prepared both the pivotal supplier and the wholesale market share screen analyses for the PJM Interconnection, L.L.C. (PJM) market. The Commission has reviewed PEI's generation market power screen analyses for the PJM market, which indicate that PEI passes the screens in that market. Accordingly, the Commission finds that PEI satisfies the Commission's generation market power standard for the grant of market-based rate authority.

6. PEI states that neither PEI nor its affiliates own, operate, or control any facilities for the transmission of electricity in interstate commerce. Based on PEI's representation, the Commission finds that PEI satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

7. PEI 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. PEI states that PG Energy, Inc. (PG Energy) is the only affiliate of PEI that is located in PJM. PEI states that PG Energy has an obligation to extend natural gas distribution service to new customers. PEI states that PEI's affiliates have no ability to control generation inputs or otherwise restrict market entry. Based on this representation, the Commission is satisfied that neither PEI nor any of its affiliates can erect barriers to entry. However, should PEI or any of its affiliates deny, delay, or require unreasonable terms, conditions, or rates for

⁴ 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).

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 PEI's authority to sell power at market-based rates.⁵

8. PEI 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 PEI satisfies the Commission's concerns with regard to affiliate abuse.

9. 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.⁶ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁷

10. 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.⁸ Accordingly, the change in status reporting obligation for PEI is subject to the outcome of the rulemaking.

⁵ See, e.g., *Louisville Gas & Electric Co.*, 61 FERC ¶ 61,016 (1993).

⁶ *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>.

⁷ 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.

⁸ Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority, 69 Fed. Reg. 61,180 (2004), FERC Stats. & Regs. ¶ 32,576 (2004).

11. PEI 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.

(S E A L)

Magalie R. Salas,
Secretary.