

130 FERC ¶ 61,107
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Google Energy LLC

Docket Nos. ER10-468-000
ER10-468-001

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION

(Issued February 18, 2010)

1. In this order, the Commission grants market-based rate authorization to Google Energy LLC (Google Energy), effective February 23, 2010, as requested.¹ Additionally, we find that Google Energy meets the criteria for a Category 1 seller in all regions and is so designated.²

I. Background

2. On December 23, 2009, as amended on January 19, 2010, pursuant to section 205 of the Federal Power Act,³ Google Energy filed an initial application for market-based rate authority with an accompanying tariff providing for the sale of energy, capacity, and

¹ FERC Electric Tariff, Original Volume No. 1, Substitute Original Sheet Nos. 1-2.

² *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 848-50, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009).

³ 16 U.S.C. § 824d (2006).

ancillary services at market-based rates.⁴ Google Energy requests waivers commonly granted to market-based rate applicants.

3. Google Energy is a wholly-owned subsidiary of Google, Inc. (Google), a technology company focused on web-based services. Google Energy states that it was formed to identify and develop opportunities to contain and manage the cost of energy for Google. Google Energy states that it intends to act as a power marketer, purchasing electricity and reselling it to wholesale customers.

4. Google Energy represents that neither it nor its affiliates own or control wholesale electric generation or transmission facilities, nor do they have a franchised service area for the sale of electricity to captive customers.

II. Notice of Filing and Responsive Pleadings

5. Notice of Google Energy's December 23, 2009 request for market-based rate authority was published in the *Federal Register*, 75 Fed. Reg. 357 (2010), with interventions or protests due on or before January 13, 2010. On January 14, 2010, the California Public Utilities Commission (California Commission) filed a motion to intervene out-of-time.

6. Notice of Google Energy's request for blanket authorization under Part 34 was separately published in the *Federal Register*, 75 Fed. Reg. 359 (2010), with interventions or protests due on or before January 19, 2010. None was filed.⁵

7. Notice of Google Energy's January 19, 2010 filing was published in the *Federal Register*, 75 Fed. Reg. 5311 (2010), with interventions or protests due on or before January 29, 2010. None was filed.

⁴ Google Energy requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C., New York Independent System Operator, Inc., ISO New England Inc., California Independent System Operator Corp., and the Midwest Independent Transmission System Operator, Inc. Google Energy also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁵ In a January 13, 2010 letter, Mabuhay Alliance expressed concerns about the impact of the filing on Asian American and other minority communities. However, Mabuhay Alliance offers no facts or evidence that Google Energy has market power in Commission-regulated markets and thus should be denied market-based rate authority.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant the California Commission's late-filed intervention given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Analysis

1. Market-Based Rate Authorization

9. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.⁶ As discussed below, we find that Google Energy satisfies the Commission's standards for market-based rate authority.

a. Horizontal Market Power

10. Google Energy states that none of Google Energy, Google, nor any affiliate own or control any wholesale electric generation facilities. Accordingly, we find that Google Energy satisfies the Commission's requirements for market-based rates regarding horizontal market power.

b. Vertical Market Power

11. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff on file before granting a seller market-based rate authorization.⁷

12. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.⁸ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, intrastate natural gas storage or distribution

⁶ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

⁷ *Id.* P 408.

⁸ *Id.* P 440.

facilities; sites for generation capacity development; physical coal supply sources and ownership of or control over who many access transportation of coal supplies (collectively, inputs to electric power production).⁹ The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.¹⁰

13. Google Energy states that neither it nor its affiliates own or control any transmission facilities.

14. Regarding other barriers to entry, Google Energy states that neither it nor any of its affiliates own or control intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; any sites for the construction of generation capacity; sources of coal supplies and the transportation of coal supplies; or other essential resources or inputs that could be used to restrict market entry by competing power suppliers.

15. Consistent with Order No. 697, Google Energy affirmatively states that it has not erected any barriers to entry into any relevant market and will not erect barriers to entry into any relevant market.

16. Based on Google Energy's representations, we find that Google Energy satisfies the Commission's requirements for market-based rates regarding vertical market power.

2. Waiver Requests

17. Google 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; and (3) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

⁹ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

¹⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

18. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.¹¹ Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects Google Energy to keep its accounting records in accordance with generally accepted accounting principles.

3. Reporting Requirements

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 (EQR) 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 longer) market-based power sales during the most recent calendar quarter.¹² Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.¹³

¹¹ It should be noted that the Commission has examined and approved the continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141), as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities (18 C.F.R. Part 34). See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 984-85 (regarding waiver of Parts 41, 101, and 141), and P 999-1000 (regarding blanket approval under Part 34).

¹² *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹³ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2009). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, 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.

20. Additionally, Google Energy must timely report to the Commission any change in status that would reflect a departure from the circumstances the Commission relied upon in granting market-based rate authority.¹⁴

21. In Order No. 697, the Commission created two categories of sellers.¹⁵ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888¹⁶); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.¹⁷ Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analysis.¹⁸

22. Google Energy represents that neither Google Energy nor its affiliates own or control any generation or transmission, nor do they have a franchised service area for the sale of electricity to captive customers. Based on Google Energy's representations, we find that it meets the criteria for a Category 1 seller in all regions and is so designated. The Commission reserves the right to require an updated market power analysis from any

¹⁴ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42(a) (2009).

¹⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

¹⁶ *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, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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 v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁷ 18 C.F.R. § 35.36(a)(2) (2009).

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

market-based rate seller at any time, including for those sellers that fall within Category 1.¹⁹ We direct Google Energy to submit a compliance filing, within 30 days of the date of this order, revising the limitations and exemptions and seller category sections of its market-based rate tariff to include a citation to this order.²⁰

The Commission orders:

(A) Google Energy's market-based rate tariff is hereby accepted for filing, effective February 23, 2010, as discussed in the body of this order.

(B) Google Energy is directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

(C) Waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, with the exception of sections 35.12(a), 35.13(b), 35.15 and 35.16, is hereby granted.

(D) Waiver of Parts 41, 101, and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

(E) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is granted. Google 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 Google Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) 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 Google Energy's issuances of securities or assumptions of liabilities.

(G) Google Energy is required to file EQRs in compliance with Order No. 2001. If the effective date of Google Energy's market-based rate tariff falls within a

¹⁹ *Id.* P 853.

²⁰ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 385 n.517; Order No. 697, FERC Stats. & Regs. ¶ 31,252 at Appendix C.

quarter of the year that has already expired, Google Energy's EQRs for the expired quarter are due within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.