

114 FERC ¶ 61,281
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Aquila, Inc.	Docket Nos. ER03-1079-006
Aquila Long Term, Inc.	ER02-47-006
Aquila Merchant Services, Inc.	ER95-216-026
Aquila Piatt County L.L.C.	ER03-725-006
MEP Clarksdale Power, LLC	ER02-309-006
MEP Flora Power, LLC	ER02-1016-004
Aquila, Inc., Aquila Long Term, Inc., Aquila Merchant Services, Inc., Aquila Piatt County L.L.C., MEP Clarksdale Power, LLC, and MEP Flora Power, LLC	EL05-83-000 EL05-83-001

ORDER ACCEPTING COMPLIANCE FILINGS AND TERMINATING SECTION 206
PROCEEDING

(Issued March 17, 2006)

1. In this order, the Commission accepts a cost-based rate tariff and market-based rate tariff revisions filed by Aquila, Inc.¹ in reference to Aquila's proposal to mitigate the presumption of generation market power in the Missouri Public Service (Missouri) and West Plains Energy Kansas (Kansas) control areas, which were filed in compliance with

¹ Aquila, Inc. submitted these filings on behalf of itself and its affiliates, which include the following: Aquila Long Term, Inc.; Aquila Merchant Services, Inc.; Aquila Piatt County L.L.C.; MEP Clarksdale Power, LLC; and MEP Flora Power, LLC (collectively, Aquila).

the Commission's September 19, 2005 Order,² as discussed below. Accordingly, the Commission terminates the proceeding instituted in Docket No. EL05-83-000³ pursuant to section 206 of the Federal Power Act (FPA)⁴ that was instituted to investigate generation market power in the Missouri and Kansas control areas.

Background

2. On April 14, 2005, the Commission issued an order on Aquila's updated market power analysis.⁵ Aquila's generation market power analysis indicated that it failed the wholesale market share screen in the Missouri and Kansas control areas. Therefore, the Commission instituted a section 206 proceeding to investigate generation market power in these two control areas. The Commission also established a refund effective date pursuant to the provisions of section 206. Accordingly, for the Missouri and Kansas control areas, Aquila was directed, within 60 days from the date of issuance of the April Order, to: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.⁶

3. Consequently, Aquila filed a mitigation proposal providing for cost-based rates applicable to sales of electric power at wholesale to be delivered within the Missouri and Kansas control areas, in order to mitigate the presumption of market power in these two control areas. Aquila proposed to cap its rates in the Missouri and Kansas control areas at a level equal to the incremental costs of making such sales plus 10 percent and to apply this rate to sales less than one year. Aquila committed to separately file with the Commission any long-term, cost-based sales arrangement with a customer seeking capacity and energy within the Missouri and Kansas control areas.

4. On September 19, 2005, the Commission issued an order conditionally accepting Aquila's mitigation proposal. The Commission directed Aquila to file the cost-based rate provisions for sales into the Missouri and Kansas control areas as tariffs separate from

² *Aquila, Inc.*, 112 FERC ¶ 61,307 (2005) (September Order).

³ We note that the Commission accepted the notices of cancellation filed by MEP Investments, LLC, MEP Pleasant Hill Operating, LLC, and Pleasant Hill Marketing, LLC and further terminated the 206 proceeding in Docket No. EL05-83-000 with respect to these three entities in *MEP Investments, LLC*, 114 FERC ¶ 61,012 (2006).

⁴ 16 U.S.C. § 824e (2000).

⁵ *Aquila, Inc.*, 111 FERC ¶ 61,030 (2005) (April Order).

⁶ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,018, at P 201, 207-09 (2004) (April 14 Order).

their market-based rate tariffs, rather than including cost-based rates in their market-based rate tariffs. Additionally, the Commission directed Aquila to provide the formulas and methodology according to which it intends to calculate incremental costs. Also, the Commission directed Aquila to revise their market-based rate tariffs to prohibit sales at market-based rates in the Missouri and Kansas control areas. Additionally, the Commission accepted Aquila's commitment to file any long-term agreements for power sales in either the Missouri or Kansas control area with the Commission for review and approval prior to the commencement of service. Lastly, the Commission directed Aquila, Inc. to file market-based rate tariff sheets to incorporate the change in status reporting requirement adopted in Order No. 652.⁷

5. On October 19, 2005, Aquila, Inc. submitted a compliance filing which included a cost-based rate tariff providing for the cost-based rates that were conditionally accepted by the Commission in the September Order. The filing included cost support on how it intends to calculate incremental costs. Aquila, Inc. also filed revisions to its market-based rate tariff to prohibit sales at market-based rates in the Missouri and Kansas control areas. However, Aquila, Inc. did not file appropriate market-based rate tariff revisions for its affiliates, as directed by the Commission in the September Order.⁸ Aquila Inc.'s filing included corrected market-based rate tariffs sheets to incorporate the change in status reporting requirement in Order No. 652.

6. Because Aquila, Inc.'s October 19, 2005 filing did not comply in part with the Commission's September Order, on December 13, 2005, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a deficiency letter to Aquila, Inc. directing Aquila, Inc. to file revised market-based rate tariffs for its affiliates to prohibit sales at market-based rates in the Missouri and Kansas control areas.⁹

7. On January 12, 2006, Aquila filed tariff revisions for all of Aquila, Inc.'s affiliates with market-based rate authority in compliance with the September and December Orders.

⁷ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

⁸ September Order, 112 FERC ¶ 61,307 at Ordering Paragraph D.

⁹ *Aquila, Inc.*, Docket No. ER03-1079-006 (December 13, 2005) (unpublished letter order) (December Order).

Notice

8. Notice of Aquila, Inc.'s October 19, 2005 compliance filing was published in the *Federal Register*, 70 Fed. Reg. 66,830 (2005), with comments, interventions, and protests due on or before November 9, 2005. None was filed.

9. Notice of Aquila's January 12, 2006 compliance filing was published in the *Federal Register*, 71 Fed. Reg. 5,308 (2006), with comments, interventions, and protests due on or before February 2, 2006. None was filed.

Discussion

10. The Commission concludes that, with the October 19, 2005 and January 12, 2006 filings, Aquila has complied with the Commission's September Order on Aquila's proposed mitigation measures. We accept Aquila, Inc.'s cost-based rate tariff, in which Aquila, Inc. adopts the default rates of incremental costs plus 10 percent for both short-term and intermediate sales transactions. In response to the Commission's directive in the September Order, Aquila, Inc. has provided cost support on how it intends to calculate such incremental costs and included in its cost-based rate tariff the formulas and methodology for calculating incremental costs.

11. We also find that Aquila's market-based rate tariff revisions prohibiting sales in the Missouri and Kansas control areas comply with the Commission's directives, with the modification directed below. Aquila Merchant Services, Inc. included a prohibition on sales and purchases in its tariff with respect to "[s]ales to be delivered within the *local* control area of either Aquila Networks-WPK or Aquila Networks-MPS" (*emphasis added*). This differs from the remaining Aquila, Inc. affiliates in that the remaining affiliates' restriction includes a reference to the control area without any reference to the locality. We direct Aquila Merchant Services, Inc. to revise its tariff within 30 days of the date of this order to reflect the prohibition on sales in the Missouri and Kansas control areas in the same manner as the rest of the Aquila affiliates' market-based rate tariffs. Specifically, we direct Aquila Merchant Services, Inc. to remove "local" from this tariff provision. Thus, we accept Aquila Merchant Services, Inc.'s market-based tariff subject to this modification.

12. Accordingly, the Commission accepts Aquila, Inc.'s cost-based rate tariff as well as Aquila's market-based rate tariff revisions, both of which are effective

June 27, 2005.¹⁰ We also accept Aquila, Inc.'s tariff revisions incorporating the change in status reporting requirement, effective March 21, 2005. We note that Aquila Merchant Services, Inc., Aquila Piatt County L.L.C., MEP Clarksdale Power, LLC, and MEP Flora Power, LLC filed their market-based rate tariff revisions with an effective date of July 27, 2005 despite the transmittal letter reflecting a requested effective date of June 27, 2005, the refund effective date of this proceeding. The tariff sheets accepted herein have been corrected to reflect the requested effective date of June 27, 2005.

13. The Commission terminates the section 206 proceeding instituted in Docket No. EL05-83-000. Given the Commission's acceptance of Aquila's mitigation proposal, cost-based rate tariff, and revised market-based rate tariffs, the Commission finds that there is no further need for this section 206 proceeding.

14. We note that Aquila committed to separately file with the Commission any long-term, cost-based sales arrangement with a customer seeking capacity and energy within the Missouri and Kansas control areas prior to commencement of service.¹¹ However, in the September Order on Aquila's mitigation proposal, the Commission described this commitment as applying to any long-term power sales agreements "sinking in either the

¹⁰ Aquila, Inc., FERC Electric Tariff, Original Volume No. 30, Original Sheet Nos. 1-24; Aquila Inc., FERC Electric Tariff, Third Revised Volume No. 28, Substitute First Revised Sheet No. 2, Substitute First Revised Sheet No. 6, Substitute Original Sheet No. 11A, Substitute First Revised Sheet No. 14, Substitute First Revised Sheet No. 18, Substitute Original Sheet No. 24A, Substitute First Revised Sheet No. 27, Substitute Original Sheet No. 31A, Substitute Original Sheet No. 37A, First Revised Sheet No. 40 (superseding Original Sheet No. 40), Substitute Original Sheet No. 50A; Aquila Long Term, Inc., FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 2 (superseding Original Sheet No. 2); Aquila Merchant Services, Inc., FERC Electric Tariff, First Revised Volume No. 1, First Revised Sheet No. 1 (superseding Original Sheet No. 1); Aquila Piatt County L.L.C., FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 1 (superseding Original Sheet No. 1); MEP Clarksdale Power, LLC, FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 2 (superseding Original Sheet No. 2); MEP Flora Power, LLC, FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 1 (superseding Original Sheet No. 1).

¹¹ Aquila July 20, 2005 Answer at 3.

Missouri or Kansas control area.” The Commission clarifies herein that, in accepting Aquila’s commitment in this regard, it intended that this commitment apply to any long-term agreements for power sales in either the Missouri or Kansas control area.¹²

15. To the extent that Aquila made any sales under their market-based rate tariffs since the refund effective date¹³ of this proceeding in the Missouri and Kansas control areas that were above the rate accepted herein, Aquila is directed, within 30 days of the date of issuance of this order, to make refunds, with interest. In addition, to the extent that such sales were made, we direct Aquila to file a refund report within 15 days after making refunds.

16. Where, as here, an applicant adopts cost-based rates to mitigate the presumption of market power, the Commission will not grant blanket approval for issuances of securities or assumptions of liability pursuant to Part 34 of the Commission’s regulations for the applicant and its affiliates.¹⁴ Therefore, effective as of the date of issuance of this order, the Commission revokes blanket approval for issuances of securities or assumptions of liability pursuant to Part 34 of the Commission’s regulations for Aquila.

17. In Order No. 664, the Commission stated that it no longer grants waivers of the full requirements of Part 45 in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions are required henceforth to comply with the full requirements of Part 45.¹⁵ With respect to an individual who currently is authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).¹⁶ Thus, consistent with Order No. 664, Aquila will be required to comply with the full requirements of Part 45.

¹² See *MidAmerican Energy Co.*, 114 FERC ¶ 61, 280 (2006) (proposals to limit mitigation to loads that sink within a control area where a utility has the presumption of market power would improperly limit mitigation to certain customers in the control area, namely, only to sales to buyers that serve end-use customers in the control area).

¹³ The refund effective date in this proceeding is June 27, 2005.

¹⁴ April 14 Order, 107 FERC ¶ 61,018, at P 150.

¹⁵ See *Commission Authorization to Hold Interlocking Positions*, Order No. 664, 112 FERC ¶ 61,298 at P 34, FERC Stats. & Regs. ¶ 31,194 (2005).

¹⁶ *Id.* at P 36.

The Commission orders:

(A) Aquila's revised tariff sheets prohibiting sales at market-based rates in the Missouri and Kansas control areas are hereby accepted for filing, with Aquila Merchant Services, Inc.'s tariff sheets accepted subject to modification, effective June 27, 2005, as discussed in the body of this order.

(B) Aquila, Inc.'s cost-based rate tariff for sales in the Missouri and Kansas control areas is hereby accepted for filing, effective June 27, 2005, as discussed in the body of this order.

(C) Aquila Merchant Services, Inc. is hereby directed to revise its market-based rate tariff, within 30 days of the date of this order, as discussed in the body of this order.

(D) Aquila is hereby ordered to make refunds, within 30 days of the date of this order, with interest, calculated pursuant to 18 C.F.R. § 35.19(a) (2005), and to file a refund report with the Commission within 15 days of the date refunds are made, as discussed in the body of this order.

(E) Aquila, Inc.'s revised tariff sheets incorporating the change in status reporting requirement adopted in Order No. 652 are hereby accepted for filing, effective March 21, 2005.

(F) The section 206 proceeding in Docket No. EL05-83-000 is hereby terminated, as discussed in the body of this order.

(G) As of the date of the issuance of this order, blanket approval for issuances of securities or assumptions of liability pursuant to Part 34 of the Commission regulations for Aquila is hereby revoked.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.