

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

March 24, 2005

In Reply Refer To:
Saracen Energy LP
Saracen Energy Power Advisors LP
Saracen Merchant Energy LP and
K2 Development LLC
Docket Nos. ER05-493-000
ER05-494-000
ER05-495-000 and
ER05-496-000
(Not Consolidated)

Sutherland Asbill & Brennan LLP
Attn: Daniel E. Frank, Esq.
Attorney for Saracen Energy LP Saracen Energy LP
Saracen Energy Power Advisors LP
Saracen Merchant Energy LP and
K2 Development LLC
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004-2415

Dear Mr. Frank:

1. On January 26, 2005, Saracen Energy LP (Saracen Energy), Saracen Energy Power Advisors LP (Saracen Energy Power Advisors), and Saracen Merchant Energy LP (Saracen Merchant) (collectively Applicants) each filed an application for market-based rate authority, with accompanying tariffs. The proposed market-based rate tariffs provide for the sale of capacity, energy, and ancillary services at market-based rates, reassignment of transmission capacity, and the resale of firm transmission rights or their equivalents.¹ The tariffs also include the Commission's market behavior rules.²

¹ Applicants plan to sell certain ancillary services in the markets administered by PJM Interconnection L.L.C. (PJM), California Independent System Operator (CAISO), New York Independent System Operator, Inc. (NYISO) and ISO New England, Inc. (ISO-NE).

Applicants' submittals, as discussed below, satisfy the Commission's standards for market-based rate authority, and are accepted for filing, effective March 25, 2005.

2. Saracen Energy, Saracen Energy Power Advisors, and Saracen Merchant are newly-formed Texas limited partnerships with the principal place of business in Houston, Texas. Saracen Energy is a Cayman Islands limited partnership owned by Saracen Energy Onshore LP, Saracen Energy Offshore Ltd and Saracen Energy Advisors LP.³ Saracen Energy Power Advisors is owned by Saracen LLC, which is the general partner of Saracen Power Advisors, and Saracen Energy Partner LP. Saracen Merchant Energy, LP is owned by Saracen Onshore and Saracen Energy Advisors LP. Two limited partnerships, Saracen LLC and Saracen Energy Partners, LP, are the holding companies for all of these entities. Saracen LLC is owned by Neil Kelley and by MK Energy Corp., the latter a subchapter S corporation which is wholly-owned by Michael R. Kutsch. Saracen Energy Partners, LP is owned by Saracen LLC, K2 Development, LLC, and NEK Investco, LLC, which are owned by Neil Kelley.

3. Applicants state that they intend to engage in the trading of physical and financial energy products, including the wholesale sale of electricity and related products and services as specified in their proposed rate schedules. Applicants state that they also may engage in other, non-jurisdictional activities.

4. K2 Development LLC (K2 Development), which has an upstream ownership interest in Saracen Energy Partners and thus an indirect interest in Saracen Merchant, is a power marketer authorized by the Commission to engage in the wholesale sale of electricity at market-based rates. K2 Development states that it has not actively engaged in trading electricity products for some time, and filed a notice of cancellation in Docket No. ER05-496-000 requesting to cancel its Rate Schedule FERC No. 1. K2 Development's notice of cancellation, along with the proposed designation, is accepted for filing, effective on March 28, 2005, as requested.

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 Saracen Energy Onshore LP is a Texas limited partnership. Saracen Energy Offshore Ltd. is a Cayman Islands exempted company. Saracen Energy Advisors LP is a Texas limited partnership.

Notice of Filings and Responsive Pleadings

5. Notice of Applicants' filings were published in the *Federal Register*, 70 Fed. Reg. 6,435 (2005), with comments and protests due on or before February 16, 2005. The California Electricity Oversight Board (CEOB) filed a motion to intervene, protest, request for summary denial or, in the alternative, evidentiary hearing, and motion to consolidate. No other parties filed motions to intervene or protests.
6. Notice of K2 Development's January 26, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 6,435 (2005), with interventions or protests due on or before February 16, 2005. None was filed.
7. Applicants filed an answer to CEOB's protest on February 24, 2005. Applicants argue that none of CEOB's arguments change the fact that Applicants' filing meets the Commission's current requirements for market-based rate authorization.

Discussion

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion to intervene of the CEOB serves to make it a party to these proceedings. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer filed herein because it has provided information that assisted us in our decision-making process.
9. CEOB protests Applicants' filing on the basis that Applicants have not adequately demonstrated their creditworthiness to act as a market participant. CEOB claims that Applicants, as newly created entities, do not have any fiscal history that demonstrates that they will be able to meet the financial obligations attendant with trading power.
10. In response to CEOB's argument that Applicants have not demonstrated their creditworthiness, Applicants state that the Commission has never required a showing of creditworthiness in granting market-based rate authorization. Furthermore, Applicants argue that they will have to satisfy all applicable tariff creditworthiness requirements, including those in the California Independent System Operator Corporation's tariff, and that Applicants' trading counterparties will be able to request a showing of creditworthiness before they enter into a trading relationship with Applicants.
11. We agree with Applicants that demonstration of creditworthiness is outside the scope of the requirements that the Commission evaluates in granting market-based rate authority. The Commission requires that four standards for market-based rate authority

be addressed (generation market power, transmission market power, other barriers to entry, and affiliate abuse), none of which involve demonstrating creditworthiness.

12. CEOB also states that the fact that Applicants are a Cayman Islands limited partnership raises some concerns since they would be shielded by offshore bank secrecy laws and any assets held offshore would be beyond the jurisdiction of United States Courts, and thus, beyond attachment should anyone obtain a judgment against Applicants.

13. Applicants answer CEOB's concern that Applicants are a Cayman Island limited partnership by arguing that not only have Applicants provided a business address in Houston, Texas, but that the Commission has previously granted market-based rate authority to other foreign-based corporations doing business in the United States. Applicants also argue that they will be subject to the Commission's jurisdiction, including the Commission's market behavior rules.

14. We agree with the Applicants. The fact that Applicants are a Cayman Islands Limited Partnership has no bearing on whether they should receive the requested waivers. In fact, the Commission has previously granted market-based rate authority and waivers of certain Commission regulations to foreign-based companies, including companies based in the Cayman Islands.⁴

15. CEOB also protests Applicants' request for an effective date 30 days after filing with the Commission, arguing that the requested effective date does not provide for adequate time to investigate all the issues that arise from Applicants' filing. CEOB requests that the Commission summarily deny Applicants' petition for authority to sell at market-based rates or, in the alternative, set the issues raised in Applicants' petition for hearing. Finally, CEOB filed a motion to consolidate the Applicants' individual petitions into one docket for the purposes of summary denial or establishing hearing procedures.

16. Applicants assert that CEOB has stated no basis for its request to deny Applicants' requested effective date. Applicants further assert that there is no basis to summarily deny Applicants' petition or, in the alternative, establish an evidentiary hearing to address the issues raised by CEOB. Finally, Applicants oppose CEOB's motion to consolidate the proceedings arguing that CEOB provided no compelling reason to support the request.

⁴ See *Styrka Energy Fund Ltd. and Styrka Energy Fund LLC*, Docket Nos. ER04-577-000 and ER04-578-000, Letter Order, April 7, 2004, unpublished.

17. Because we conclude, as discussed below, that Applicants satisfy the Commission's requirements for market-based rate authority, we will deny CEOB's request that we summarily deny the applications or establish an evidentiary hearing. The Commission will also deny CEOB's motion to consolidate. We find that the issues pertaining to the Applicants' petitions for market-based rate authority are resolved in this order.

18. The Commission will deny Applicants' request for a waiver of the 60 day prior-notice requirement. Applicants have not demonstrated adequate support for such a requested waiver. Therefore, Applicants are subject to the full 60 day prior notice requirement and their filing will be effective on March 25, 2005.

Market-Based Rate Authorization

19. 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 Applicants satisfy the Commission's standards for market-based rate authority.

20. 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 new interim screens for assessing generation market power. Applicants state that neither they nor any of their affiliates own or control generation facilities in North America. Based on these representations, the Commission finds that Applicants satisfy the Commission's generation market power standard for the grant of market-based rate authority.

21. Applicants state that neither they nor any of their affiliates own or control transmission facilities in North America. Accordingly, the Commission finds that Applicants satisfy the Commission's transmission market power standard for market-based rates.

22. Applicants state that neither they nor any of their affiliates own or control any sites for the construction of new generation capacity, interstate or intrastate natural gas transmission lines, construction or engineering firms, or other essential resources or inputs (other than fuel supplies, such as natural gas, in which the wholesale markets are

⁵ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

competitive) that could be used to restrict market entry by competing power suppliers in North America. Based on Applicants' representations, the Commission is satisfied that Applicants cannot erect barriers to entry.

23. Applicants state that neither they nor any of their affiliates has a franchised service area for the sale of electricity. Based on this representation, we find that Applicants satisfy our concerns with regard to affiliate abuse.

24. Applicants request authority to engage in the sale of certain ancillary services (listed in the proposed tariff) at market-based rates into the markets administered by the ISO-NE, PJM, CAISO and NYISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant Applicants' request.⁶

25. Applicants propose to offer additional ancillary services in the geographic markets identified above, as the Commission may specify and authorize from time to time in orders that extend such authority to all sellers authorized to sell energy and capacity at market-based rates. The Commission will grant Applicants' request in this regard; however, the Commission's grant does not relieve Applicants of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).⁷

26. Applicants' market-based rate tariffs also provide for the reassignment of transmission capacity and the resale of firm transmission rights, or their equivalents. We find that these provisions are consistent with the Commission's requirements.⁸ Accordingly, we grant this request.

⁶ See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *Central Hudson Gas & Elec. Corp.*, 86 FERC ¶ 61,062, *order on reh'g*, 88 FERC ¶ 61,138 (1999); *Atlantic City Electric Company*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (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).

⁷ See *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

⁸ See *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997); *Calif. Indep. Sys. Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

Other Waivers, Authorizations and Reporting Requirements

27. Applicants request 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; (5) request for a waiver of the ongoing reporting requirements associated with changes in status.⁹

28. CEOB also objects to Applicants' request for waivers of Parts 34, 35, 41, 45, 101, and 141 of the Commission's regulations. They argue that by granting Applicants' request for these waivers, the Commission would remove Applicants' business transactions and market-based energy trades from public scrutiny and any effective accountability to regulators. CEOB asserts that, due to the fact that Applicants are a Cayman Island limited partnership and that one of the two individuals with control over Applicants was previously involved with a natural gas company that was the subject of a Commission investigation, the need for regulatory oversight and public scrutiny of Applicants' dealings is paramount. Furthermore, CEOB argues that Applicants have not shown good cause why these waivers should be granted.

29. In response to CEOB's claim that one of the individuals with control over Applicants was involved with a company investigated by the Commission, Applicants explain that that individual was only involved with the company for a few months and did not have any involvement with the natural gas company during the time for which the Commission was investigating it. Applicants state that the individual upstream owners of Applicants have twenty years of experience in the natural gas and power trading industries and have never been accused of, much less involved in, any wrongdoing.

⁹ CEOB opposes Applicants' request for waiver of the ongoing reporting requirements associated with changes in status. However, in their answer, Applicants acknowledge that they will be obligated to comply with the Commission's new rule concerning reporting changes in status. Applicants further explain that, in their original applications, each applicant stated that they "understand that its reporting obligation may be subject to the final rule adopted in *Reporting Requirements for Changes in Status for Public Utilities with Market Based-Rate Authority*, Docket No. RM04-14-000." Therefore, the Commission finds CEOB's protest regarding this request moot.

30. The Commission routinely grants waivers of certain Commission regulations in orders granting market-based rate authority. CEOB has not adequately demonstrated why the Commission should depart from its precedent in granting the requested waivers.

31. Accordingly, the Commission will grant the above requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁰ Notwithstanding the waiver of the accounting and reporting requirements here, we expect Applicants to keep its accounting records in accordance with generally accepted accounting principles.

32. 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 Applicants 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).

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

34. 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 Applicants. Any such person instead shall file a sworn application providing the following information:

- (1) full name and business address; and

¹⁰ 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 (Nov. 6, 2002), FERC Stats. & Regs. ¶ 31,175, at P 23 & 24 (2002).

- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

35. 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 Applicants' issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

36. 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.¹¹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹² Accordingly, Applicants must each file their first Electric Quarterly Report no later than 30 days after the first quarter the Applicants' market-based rate tariffs are in effect.¹³

37. Applicants must each timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹⁴ Order No. 652 requires that the change in status reporting

¹¹ *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>.

¹² The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

¹³ 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.

¹⁴ *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 (2005).

requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, Applicants are each directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the following provision:

[Market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

38. In addition, Applicants are 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.

Linda Mitry,
Deputy Secretary.