

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

March 23, 2005

In Reply Refer To:  
FPL Energy Cowboy Wind, LLC  
Docket No. ER05-487-000

FPL Energy, LLC  
Attn: Joel D. Newton, Esq.  
Counsel for FPL Energy Cowboy Wind, LLC  
801 Pennsylvania Ave., N.W.  
Suite 220  
Washington, D.C. 20004

Dear Mr. Newton:

1. On January 24, 2005, FPL Energy Cowboy Wind, LLC (Applicant), 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,<sup>1</sup> and the reassignment of transmission capacity. It also includes the Commission's market behavior rules.<sup>2</sup> The Applicant's 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.<sup>3</sup>

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<sup>1</sup> Applicant plans to sell certain ancillary services in the markets administered by the New York Independent System Operator, Inc. (NYISO), the PJM Interconnection LLC (PJM), California Independent System Operator, Inc. (California ISO), and ISO New England, Inc. (ISO-NE). Applicant 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) (*Avista*).

<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> FERC Electric Tariff, Volume No. 1, Original Sheet Nos. 1-4.

2. Applicant is a Delaware limited liability company. Applicant states that it owns and will operate a wind-powered electric generation facility with a nameplate capacity of up to 106.5 MW (the Facility). The Facility, which consists of 71 generator turbines on tubular steel towers, is located near Weatherford, Oklahoma. Applicant states that each turbine would have a nameplate capacity of approximately 1500 kW.

3. Applicant states that it has entered into a power purchase agreement (PPA) with Public Service Company of Oklahoma (PSC Oklahoma), an American Electric Power (AEP) company, for a term of the earlier of twenty years from the date the Facility begins generating energy or December 31, 2025. Under terms of the PPA, Applicant is obligated to deliver, and PSC Oklahoma is obligated to purchase, all of the energy and associated capacity generated by the Facility.

4. Applicant is a direct wholly-owned subsidiary of ESI Energy, LLC, a Delaware limited liability company, which in turn is a wholly-owned direct subsidiary of FPL Energy, LLC (FPL Energy), a Delaware limited liability company. FPL Energy is a direct wholly-owned subsidiary of FPL Group Capital Inc. FPL Group Capital, Inc. is a wholly-owned subsidiary of FPL Group, Inc. (FPL Group), a Florida corporation and a public holding company. Applicant states that FPL Group's subsidiaries do not own or control any transmission facilities outside peninsular Florida and New Hampshire other than the interconnection facilities necessary to safely and reliably connect their generating assets to the transmission grid.

### **Procedural Matters**

5. Notice of Applicant's filing was published in the *Federal Register*, 70 Fed. Reg. 5,993 (2005), with interventions and protests due on or before February 14, 2005. None was filed.

### **Discussion**

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

6. 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 concludes that Applicant satisfies the Commission's standards for market-based rate authority.

7. Applicant cites section 35.27(a) of the Commission's regulations, which provides that applicants shall not be required to demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.<sup>5</sup> If an applicant sites generation in an area where it or its affiliates own or control other generation assets, the applicant must study whether its new capacity, when added to existing capacity, raises generation market power concerns.<sup>6</sup> Applicant states that it commenced construction of the Facility in 2004. While Applicant's affiliates do own other generation in the Southwest Power Pool (SPP), Applicant states that construction of all such generation commenced after July 9, 1996 and also is fully committed to non-affiliated purchasers. Based on Applicant's representations, the Commission finds that Applicant satisfies the Commission's generation market power standard for the grant of market-based rate authority.

8. Applicant states that it does not own, operate, or control any jurisdictional transmission facilities, therefore it does not have transmission market power. However, Applicant's affiliate, FPL, owns and operates jurisdictional transmission facilities entirely in the State of Florida. Applicant states that FPL's transmission facilities are administered under its open access transmission tariff on file at the Commission.<sup>7</sup> Based on Applicant's representation, the Commission finds that Applicant satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

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<sup>4</sup> 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).

<sup>5</sup> 18 C.F.R. §35.27 (2004). The Commission notes that it intends to address as part of the generic rulemaking proceeding in Docket No. RM04-7-000 whether to retain or modify section 35.27 of its regulations.

<sup>6</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

<sup>7</sup> *Pacific Gas & Electric Company*, 77 FERC ¶ 61,025 (1996).

9. Applicant states that neither it nor its affiliates own or control key resources or factor inputs, such as plant sites, fuel supply or transportation facilities, that could allow Applicant or its affiliates to impose barriers to market entry by other wholesale power suppliers in the relevant markets. Based on this representation, the Commission is satisfied that neither Applicant nor any of its affiliates can erect barriers to entry.

10. Applicant states that its tariff and code of conduct meet the Commission's standards for prevention of affiliate abuse. Applicant's tariff provides that it will not make sales to, or purchases from, affiliates with franchised service territories without first receiving advance approval from the Commission pursuant to a separate filing under section 205 of the Federal Power Act.<sup>8</sup> Further, Applicant commits not to make sales to any purchaser located in peninsular Florida, the region that includes the control area of FPL, Applicant's franchised public utility affiliate. Based on this representation, the Commission finds that Applicant satisfies the Commission's concerns with regard to affiliate abuse.

11. Applicant 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 the NYISO, ISO-NE, PJM, and the California ISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant Applicant's request.<sup>9</sup> Applicant also intends to engage in the sale of certain ancillary services to third party suppliers in other markets consistent with *Avista*. The Commission will grant this request.<sup>10</sup>

12. Applicant also requests authority to reassign transmission capacity. The Commission finds this provision consistent with the Commission's requirements. Accordingly, we grant this request.<sup>11</sup>

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<sup>8</sup> 16 U.S.C. § 824d (2000).

<sup>9</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).

<sup>10</sup> See *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

<sup>11</sup> See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997) and *California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

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

13. Applicant 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.

14. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.<sup>12</sup> Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Applicant 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 Applicant 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.

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

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<sup>12</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 and P 24 (November 6, 2002), FERC Stats. & Regs. ¶ 31,134 (2002).

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

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>13</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>14</sup> Accordingly, Applicant must file its first Electric Quarterly Report no later than 30 days after the first quarter Applicant's rate schedule is in effect.<sup>15</sup>

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<sup>13</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>14</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10(b).

<sup>15</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 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.

20. Applicant 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.<sup>16</sup> Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, Applicant is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

FPL Energy Cowboy Wind, LLC 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.

22. Applicant 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.

Linda Mitry,  
Deputy Secretary.

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<sup>16</sup> *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).