

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

Portland General Electric Company

Docket Nos. ER98-1643-006  
ER98-1643-007

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

( )

1. In this order, the Commission accepts an updated market power analysis filed by Portland General Electric Company (PGE). As discussed below, we conclude that PGE satisfies the Commission's standards for market-based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. PGE's next updated market power analysis is due three years from the date of this order.

**I. Background**

2. On January 30, 2004, in Docket No. ER98-1643-006, PGE filed an updated market power analysis including a supply margin assessment of generation market power pursuant to the Commission's order granting PGE authority to sell electric energy and capacity at market-based rates.<sup>1</sup> In that filing, PGE stated that it satisfies the Commission's standards for generation market power, transmission market power, barriers to entry, and affiliate abuse or reciprocal dealing. In addition, PGE submitted revised tariff sheets incorporating the Commission's market behavior rules.<sup>2</sup>

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<sup>1</sup> *Portland General Electric Company*, Docket No. ER98-1643-000 (April 17, 1998) (Unpublished Letter Order).

<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). *Portland General Electric Company*, FERC Electric Tariff, Fifth Revised Vol. No. 11, Second Revised Sheet No. 1 (supersedes First Revised Sheet No. 1), Original Sheet Nos. 4.01-4.03.

3. On February 7, 2005, PGE submitted for filing a revised updated market power analysis, pursuant to the Commission's order issued on May 13, 2004.<sup>3</sup> The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.<sup>4</sup>

## II. Notice of Filing and Responsive Pleadings

4. Notice of PGE's January 30, 2004 filing was published in the Federal Register, 69 Fed. Reg. 6,961 (2004), with interventions or protests due on or before February 20, 2004. None was filed.

5. Notice of PGE's February 7, 2005 filing was published in the Federal Register, 70 Fed. Reg. 8,357 (2005), with interventions or protests due on or before February 28, 2005. None was filed.

## III. Discussion

### A. 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>5</sup> As discussed below, the Commission concludes that PGE satisfies the Commission's standards for market-based rate authority.

### B. Generation Market Power

7. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.<sup>6</sup> PGE has prepared both screens for the PGE control area and each of its

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<sup>3</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

<sup>4</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>5</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>6</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,108, *order on reh'g*, 108 FERC ¶

interconnected first-tier control areas, including Bonneville Power Administration and PacifiCorp West control areas. The Commission has reviewed PGE's generation market power screens and has determined that PGE passes the screens in both its home control area and its interconnected first-tier control areas. Accordingly, the Commission finds that PGE satisfies the Commission's generation market power standard for the grant of market-based rate authority.

### **C. Transmission Market Power**

8. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. PGE states that it has an OATT on file with the Commission.<sup>7</sup> Further, no intervenor has raised transmission market power concerns. Based on PGE's representation, the Commission finds that PGE satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

### **D. Barriers to Entry**

9. PGE states that it does not have the ability to limit entry by competing suppliers due to its control over fuels or fuel delivery systems. PGE asserts that its only pipeline interests are related to the 20-mile Kelso-Beaver pipeline, which directly connects PGE's Beaver generating facility to the Northwest Pipeline. PGE states that its portion of the pipeline is a dedicated facility used to supply Beaver and operates under the Commission's open access provisions. Further, no intervenor has raised concerns regarding barriers to entry. Based on PGE's representations, the Commission is satisfied that PGE cannot erect barriers to entry.

### **E. Affiliate Abuse**

10. PGE states that it has filed with the Commission and operates under a code of conduct that is consistent with the Commission's requirements and has been determined to be sufficient to prevent affiliate abuse and reciprocal dealing. Furthermore, PGE asserts that the Commission's Order No. 2004 strengthens the standards of conduct governing the relationship between PGE's transmission function employees and PGE's energy/marketing employees and affiliates.<sup>8</sup> In addition, no intervenor has raised affiliate

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61,026 (2004).

<sup>7</sup> Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures, 80 FERC ¶ 61,143 (1997).

<sup>8</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats.

abuse concerns. Based on PGE's representations, we find that PGE satisfies the Commission's concerns with regard to affiliate abuse.

## F. Reporting Requirements

11. 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>9</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>10</sup>

12. PGE 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>11</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, PGE 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:

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& Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh'g*, Order No. 2004-B, III FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *order on reh'g*, Order No. 2004-C, 109 FERC ¶ 61,325 (2004).

<sup>9</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/docs-filing/eqr.asp>.

<sup>10</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (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.

<sup>11</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).

[insert 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.

13. PGE 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.

The Commission orders:

(A) PGE's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) PGE's next updated market power analysis is due within three years of the date of this order.

(C) PGE is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariffs to include the change in status reporting requirement adopted in Order No. 652.

By the Commission.

Secretary