

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

May 26, 2005

In Reply Refer To:
CES Marketing VI, LLC,
CES Marketing VII, LLC,
CES Marketing VIII, LLC,
CES Marketing IX, LLC,
CES Marketing X, LLC,
Docket Nos. ER05-816-000,
ER05-817-000,
ER05-818-000,
ER05-819-000,
ER05-820-000;
Mobile Energy, LLC,
Docket Nos. ER01-480-003,
ER01-480-004;
CPN Pleasant Hill, LLC,
Docket Nos. ER01-915-003,
ER01-915-002

Davis Wright Tremaine LLP
Attn: James B. Vasile, Esq.
Counsel for CES Marketing VI, LLC, CES Marketing VII, LLC, CES Marketing VIII,
LLC, CES Marketing IX, LLC, CES Marketing X, LLC, Mobile Energy, LLC and CPN
Pleasant Hill, LLC
1500 K Street NW, Suite 450
Washington D.C. 20005-1262

Dear Mr. Vasile:

1. On April 13, 2005, CES Marketing VI, LLC, CES Marketing VII, LLC, CES Marketing VIII, LLC, CES Marketing IX, LLC and CES Marketing X, LLC (collectively CESH VI-X) filed applications for market-based rate authority, with accompanying tariffs. The proposed market-based rate tariffs provide for the sale of capacity, energy, replacement reserves and ancillary services at market-based rates, the reassignment of

transmission capacity, and the resale of firm transmission rights and their equivalents.¹ CESM VI-X's filing also includes the Commission's market behavior rules² and the change in status reporting requirement recently adopted by the Commission in Order No. 652.³ As discussed below, CESM VI-X's submittal satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective April 14, 2005, as requested.⁴

2. On March 24, 2005, Mobile Energy, LLC (Mobile Energy) and CPN Pleasant Hill, LLC (CPN), filed a combined updated market power analysis pursuant to the requirements of the Commission's order issued on May 13, 2004.⁵ The May 13 Order addressed the procedures for implementing the generation market power analysis the Commission announced on April 14, 2004 and clarified on July 8, 2004.⁶ Mobile

¹ CESM VI-X's market-based rate tariffs provide for the sale of certain ancillary services in the markets administered by the New York Independent System Operator, Inc. (NYISO), ISO New England, Inc. (ISO-NE), California Independent System Operator (CAISO), and PJM Independent System Operator (PJM).

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 *See 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).

⁴ CES Marketing VI, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-5. CES Marketing VII, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-5. CES Marketing VIII, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-5. CES Marketing IX, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-5. CES Marketing X, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-5. Waiver of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2004), is granted to allow for the effective date noted above.

⁵ *Acadia Power Partners, LLC.*, 107 FERC ¶ 61,168 (2004) (May 13 Order). The Commission granted Mobile Energy market-based rate authority in *Mobile Energy, LLC.*, Docket Nos. ER01-480-000 and ER01-480-001 (Jan. 1, 2001) (unpublished letter order). *CPN Pleasant Hill, LLC.*, Docket No. ER01-915-000 (Feb. 20, 2001) (unpublished letter order). Mobile Energy on January 12, 2004 and CPN on February 20, 2004, submitted updated market power analyses in Docket No. ER01-480-003 and Docket No. ER01-915-002, which are addressed in this order.

⁶ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004) (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

Energy's and CPN's submittal also includes the change in status reporting requirement recently adopted by the Commission in Order No. 652.⁷ Mobile Energy's and CPN's submittal is accepted for filing.⁸ As discussed below, the Commission concludes that Mobile Energy and CPN satisfy the Commission's standards for market-based rate authority.

3. CESM VI-X state that they are Delaware limited liability companies and indirect wholly-owned subsidiaries of Calpine Corporation (Calpine). CESM VI-X state that none of the CESM VI-X companies own or control any electric power generation and transmission facilities, have a franchised electric power service area, or have power sales contracts. Calpine is a Delaware corporation engaged through subsidiaries in the development, financing, acquisition, ownership and operation of independent power production facilities and the wholesale marketing of electricity in the United States and abroad.

4. Mobile Energy and CPN state that they are indirect wholly-owned subsidiaries of Calpine. Mobile Energy a Delaware limited liability and exempt wholesale generator, states that it owns and operates the Hog Bayou Energy Center (Mobile Facility) a 246-MW generating facility located in Mobile, Alabama. Mobile Energy states that the Mobile Facility is interconnected to the Alabama Power Company's transmission system in the Southern Company's control area and the full output of the facility is committed to Calpine Energy Services L.P., (CES). CPN, a Delaware limited liability company, states that its subsidiary MEP Pleasant Hill, LLC (MEPPH) operates the Aries Power Plant, an approximately 585-MW generating facility located near Pleasant Hill in Cass County, Missouri. CPN also states that MEPPH sells the output of the facility to CES and Missouri Public Service, a subsidiary of Aquila, Inc. and an affiliate of MEP Investment, LLC.

⁷ See *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).

⁸ Mobile Energy, LLC, FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 2A. CPN Pleasant Hill, LLC FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 2A.. CPN's and Mobile Energy's tariffs incorporating the Commission's market behavior rules were accepted in *Acadia Power Partners, LLC*, Docket Nos. ER01-915-001 and ER01-480-002 (March 29, 2004) (unpublished letter order).

Procedural Matters

5. Notice of CESM VI-X's April 13, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 22,024 (2005), with protests and motions to intervene due on or before May 4, 2005. None was filed.
6. Notice of Mobile Energy's January 12, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 3,574 (2004), with protests and motions to intervene due on or before February 2, 2004. None was filed. Notice of CPN's February 20, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 10,022 (2004), with protests and motions to intervene due on or before March 12, 2004. None was filed. Notice of Mobile Energy's and CPN's March 24, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 17,442 (2005), with protests and motions to intervene due on or before April 6, 2005. None was filed.

Discussion

Market-Based Rate Authorization

7. 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.⁹ As discussed below, the Commission concludes that CESM VI-X, Mobile Energy and CPN satisfy the Commission's standards for market-based rate authority.
8. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. Section 35.27(a) of the Commission's regulations 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, 1996.¹⁰

⁹ 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).

¹⁰ 18 C.F.R. § 35.27(a) (2004). We note that the Commission intends to address as part of the generic rulemaking proceeding in Docket No. RM04-7-000 whether to retain or modify section 35.27(a) of its regulations.

9. 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.¹¹ The Commission clarified that in circumstances where construction on all of an applicant's generation commenced after July 9, 1996, no generation market power analysis need be performed.¹² CESM VI-X cite to the above exemption, and consequently did not perform a market power analysis for those relevant control areas.

10. CESM VI-X have prepared both the pivotal supplier and the wholesale market share screen analyses only for the markets in which CESM VI-X or their affiliates own or control generation for which construction commenced prior to July 9, 1996.¹³ CESM VI-X state that they pass both the pivotal supplier screen and the wholesale market share screen for the CAISO, NYISO, and PJM markets as well as in the Central and Southwest Services and Tampa Electric Company control areas.

11. The Commission has reviewed CESM VI-X's generation market power analyses for the relevant geographic markets and has determined that CESM VI-X pass both the pivotal supplier and wholesale market share screens in those markets. Accordingly, the Commission finds that CESM VI-X satisfy the Commission's generation market power standard for the grant of market-based rate authority.

12. Mobile Energy and CPN state that they are exempt from the generation market power analysis because construction of their facilities and of their affiliates' facilities located in the same respective control areas began after July 9, 1996, and neither Mobile Energy nor CPN are affiliated with the transmission owner with which the generation facilities interconnect. Based on these representations, Mobile Energy and CPN satisfy the Commission's generation market power standard for its continuation of market-based rate authority.

13. CESM VI-X, Mobile Energy and CPN state that neither they nor their affiliates own, operate, or control any transmission facilities other than interconnection facilities. Based on these representations, the Commission finds that CESM VI-X, Mobile Energy and CPN satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

¹¹ See April 14 Order, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

¹² See July 8 Order, 108 FERC ¶ 61,026 at P 110.

¹³ The relevant markets and control areas are: CAISO, NYISO, PJM, Central and Southwest Services, and Tampa Electric Company.

14. CESM VI-X, Mobile Energy and CPN state that neither they nor their affiliates have control over scarce sites for capacity development. CESM VI-X, Mobile Energy and CPN also state that neither they nor their affiliates control any interstate fuel transportation systems that could be used to impede downstream generators from gaining access to low-cost gas supplies in the relevant geographic markets. Further, CESM VI-X, Mobile Energy and CPN state that to the extent that they and their affiliates have firm, interstate or intrastate gas transportation to serve their generating plants, the amount of transportation capacity they control is small relative to capacity on the relevant pipelines. CESM VI-X, Mobile Energy and CPN also state that neither they nor their affiliates have undue control over equipment supplies such as gas turbines. Based on these representations, the Commission is satisfied that CESM VI-X, Mobile Energy and CPN cannot erect barriers to entry.

15. CESM VI-X, Mobile Energy and CPN state that because neither they nor any of their affiliates have a franchised service area for the sale of electricity to captive customers, there is no concern that CESM VI-X, Mobile Energy and CPN can engage in affiliate abuse or reciprocal dealing. CESM VI-X, therefore request waiver of the Commission's code of conduct requirement. In addition, CESM VI-X's proposed market-based rate tariffs restrict sales of electricity to any affiliates with franchised service territories without first receiving Commission approval of the transaction under section 205 of the Federal Power Act.¹⁴ Mobile Energy and CPN state that the Commission granted waiver of the code of conduct requirements in the January 10, 2001 order and February 20, 2001 Order, respectively. Based on these representations, CESM VI-X, Mobile Energy and CPN satisfy the Commission's concerns with regard to affiliate abuse.

16. Because CESM VI-X have no affiliates with a franchised service territory, CESM VI-X are not required to file a code of conduct.¹⁵ However, should CESM VI-X become affiliated with an entity with a franchised service territory or obtain captive customers in the future, CESM VI-X are directed to notify the Commission and we reserve the right to impose the code of conduct requirement.

17. CESM VI-X 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 ISO-NE, NYISO, CAISO and PJM. Consistent with Commission precedent granting authority to sellers to engage in such transactions, the Commission will grant CESM VI-X's requests in those markets.¹⁶ CESM VI-X also propose to sell any other ancillary services in additional geographic markets as the Commission may specify and authorize

¹⁴ 16 U.S.C. § 824d (2004).

¹⁵ See *Gleason Power I, L.L.C.*, 90 FERC ¶ 61,252 at n. 3 (2000) and *Calpine Fox, LLC*, 109 FERC ¶ 61,058 (2004).

¹⁶ See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95

from time-to-time in orders that extend such authority to all sellers previously authorized to sell energy and/or capacity at market-based rates. The Commission grants this requests; however, this grant does not relieve CESM VI-X of the requirements to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).¹⁷

18. CESM VI-X also request authority to resell firm transmission rights and to reassign transmission capacity. We find these provisions consistent with the Commission's requirements.¹⁸ Accordingly, the Commission will grant these requests.

Other Waivers, Authorizations, and Reporting Requirements

19. CESM VI-X 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.

20. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁹ Notwithstanding the waiver of the accounting and reporting requirements here, we expect CESM VI-X to

FERC ¶ 61,074 (2001); *Atlantic City Electric Co.*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (1999); *Central Hudson Gas & Electric Corp.*, 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).

¹⁷ *Calhoun Power Company*, 96 FERC ¶ 61,056 (2001).

¹⁸ See *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997), and *California Independent System Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

¹⁹ 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, at P 23 and P 24, 67 Fed. Reg. 67,691 (Nov. 6, 2002), FERC Stats. & Regs. ¶ 31,134 (2002).

keep their accounting records in accordance with generally accepted accounting principles.

21. 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 CESM VI-X 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).

22. Absent a request to be heard within the period set forth above, CESM VI-X 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 CESM VI-X, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

23. 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 CESM VI-X. Any such person instead shall timely file a sworn application providing the following information:²⁰

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

24. 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 CESM VI-X's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

²⁰ For current interlocks, applications should be filed within 30 days of the date of this order. We note that the Commission has issued a proposed rulemaking, *Commission Authorization to Hold Interlocking Directorates*, 110 FERC ¶ 61,343 (2005), which is considering modifications to 18 C.F.R. Part 45. The Commission is considering changing its requirements as to timing and also is examining the possibility of no longer granting a waiver of the full requirements of Part 45 in its orders granting market-based rate authority.

25. CES VI-X, Mobile Energy and CPN are reminded that 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.²¹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.²² Accordingly, CESM VI-X must file its first Electric Quarterly Report no later than 30 days after the first quarter CESM VI-X's rate schedules are in effect.

26. CES VI-X, Mobile Energy and CPN 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. 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. As noted above, Mobile Energy and CPN have revised their tariff to include the change in status reporting requirement and CES VI-X have included the requirement in their tariffs.²³

27. Mobile Energy and CPN propose to consolidate their triennial updates to make the process more efficient. The Commission grants the request, and also notes that Mobile Energy, CPN and CESM VI-X are subsidiaries of Calpine. CESM VI-X, Mobile Energy

²¹ *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>.

²² The exact filing 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 a 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.

²³ The change in status reporting requirements are effective March 21, 2005.

and CPN are directed to file a combined 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 analyses at any intervening time.

By direction of the Commission.

Magalie R. Salas,
Secretary.