

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

February 10, 2005

In Reply Refer To:
Intercom Energy, Inc.
Docket No. ER02-267-002

Paul, Hastings, Janofsky & Walker LLP
Attn: Mr. William P. Scharfenberg, Esq.
Counsel for Intercom Energy, Inc.
1299 Pennsylvania Avenue, N.W.
Tenth Floor
Washington, D.C. 20004

Dear Mr. Scharfenberg:

1. On December 17, 2004, Intercom Energy, Inc. (Intercom) filed an updated market analysis pursuant to the requirements of the Commission's order granting Intercom authority to sell electric energy and capacity at market-based rates.¹ Intercom already has on file the Commission's market behavior rules.² As discussed below, the Commission concludes that Intercom satisfies the Commission's standards for market-based rate authority.

2. Intercom acts as a power marketer that purchases and resells electricity to its wholesale customers. Intercom is a wholly-owned subsidiary of Intercom Energy USA, Inc. (Intercom USA). Intercom USA is primarily engaged in identifying and developing potential business opportunities in the United States. Intercom states that, currently, Intercom USA has not identified any such business opportunities and has no other holdings besides Intercom.

¹ *Intercom Energy, Inc.*, Docket No. ER02-267-000 (December 20, 2001) (unpublished letter order).

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). Intercom's market behavior rules were previously accepted by the Commission. *Acadia Power Partners, LLC*, Docket No. ER03-1372-001 (March 29, 2004) (unpublished letter order).

3. Intercom states that it received authorization from the U.S. Department of Energy on May 19, 2004 under Order No. EA-289 to export electric energy to Mexico over certain existing transmission lines in California, New Mexico, and Texas. Intercom's authorization will expire on May 19, 2006. Intercom states that it has not exported any electricity under this authorization.

Procedural Matters

4. Notice of Intercom's December 17, 2004 filing was published in the *Federal Register*, 70 Fed. Reg. 803 (2005), with motions to intervene, comments, and protests to be filed by January 7, 2005. None was filed.

Discussion

5. 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.³ As discussed below, the Commission concludes that Intercom satisfies the Commission's standards for market-based rate authority.

6. Intercom states that it does not own or control any generation, nor is it affiliated with any generation-owning entity. Accordingly, the Commission finds that Intercom satisfies the Commission's generation market power standard for the grant of market-based rate authority.

7. Intercom states that it does not own or control any transmission, nor is it affiliated with any entities owning transmission assets. Based on this representation, the Commission finds that Intercom satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. Intercom states that because it does not own or control any generation or transmission assets, and is not affiliated with any entities that own generation or transmission assets, it cannot erect barriers to market entry. Based on this representation, the Commission is satisfied that neither Intercom nor any of its affiliates can erect barriers to entry.

³ 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).

9. Intercom states that it does not have franchised service territories, nor does it have affiliates with franchised service territories. Based on this representation, the Commission finds that Intercom satisfies the Commission's concerns with regard to affiliate abuse.

10. 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.⁴ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁵

11. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, the Commission instituted a rulemaking proceeding in Docket No. RM04-14-000.⁶ The Commission proposed to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status. Accordingly, the change in status reporting obligation for Intercom is subject to the provisions of the Change in Status Final Rule.

⁴ *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>.

⁵ 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.

⁶ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Change in Status Final Rule).

12. Intercom 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.

(S E A L)

Linda Mitry,
Deputy Secretary.