

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

June 16, 2005

In Reply Refer To:  
Redbud Energy LP,  
Docket Nos. ER01-1011-002  
ER01-1011-003  
ER01-1011-004  
ER01-1011-005

Dickstein Shapiro Morin & Oshinsky LLP  
Attn: Mr. Michael J. Rustum, Esq.  
Attorney for Redbud Energy LP  
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Washington, DC 20037-1526

Dear Mr. Rustum:

1. On March 24, 2005, Redbud Energy LP (Redbud), filed a revised updated market power analysis pursuant to the Commission's order issued on May 13, 2004.<sup>1</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>2</sup> As required, Redbud's submittal also includes revisions to the tariff to reflect the change in status reporting requirement recently adopted by the Commission in Order No. 652.<sup>3</sup> Redbud's

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<sup>1</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order). The Commission granted Redbud market-based rate authority in *Redbud Energy LP*, Docket No. ER01-1011-000 (March 29, 2001) (unpublished letter order). On March 29, 2004, Redbud submitted in Docket No. ER01-1011-002 an updated market power analysis and revised market-based rate tariff sheets incorporating the Commission's market behavior rules and affiliate sales language prohibition, which is addressed in this order.

<sup>2</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (2004) (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>3</sup> *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).

submittal is accepted for filing.<sup>4</sup> As discussed below, the Commission concludes that, with the tariff modifications directed herein, Redbud satisfies the Commission's standards for market-based rate authority.

2. Redbud states that it is an exempt wholesale generator that owns a 1,160 MW combined cycle generation facility located in Luther, Oklahoma that is interconnected with Oklahoma Gas & Electric Company (OG&E) at OG&E's 345 kV Arcadia-Riverside 345 kV transmission line (Facility). Redbud states that the Facility is operated by Redbud Operating Company, LLC. Redbud is a Delaware limited partnership with its principle place of business located at Luther, Oklahoma. Redbud is owned by Redbud Energy I LLC, Redbud Energy II LLC and Redbud Energy III, LLC, who in turn are wholly-owned subsidiaries of Redbud Development LLC, which is wholly-owned by Mayflower Limited Partnership (MLP). MLP is owned by Mayflower Holdings, LLC and InterGen (North America), Inc. (InterGen NA). InterGen NA is directly owned by InterGen N.V. Bechtel Enterprises Holdings, Inc. (Bechtel Enterprises) and Shell Generating (Holding) B.V., a division of Royal Dutch/Shell Group of Companies, hold interests in InterGen N.V.<sup>5</sup>

### **Procedural Matters**

3. Notice of the March 29, 2004 updated market power analysis filed by Redbud was published in the *Federal Register*<sup>6</sup> with motions to intervene and protests due on or before April 19, 2004. OG&E filed a timely motion to intervene and protest concerning Redbud's statement that "other than necessary interconnections, neither Redbud nor its affiliates own or control any transmission facilities." OG&E argues that if the Commission approves the rate schedule to recover network upgrade costs filed by Redbud in Docket No. ER04-622-000 that order would constitute a finding that Redbud owns jurisdictional transmission facilities, and would therefore need to operate under the standards of the Commission's Open Access Transmission Tariff (OATT). On May 4, 2004, Redbud filed an answer to OG&E.

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<sup>4</sup> Redbud Energy LP, FERC Electric Tariff, Original Volume No. 1, Revised Sheet Nos. 1-3 (Supersedes Original Sheet No. 1).

<sup>5</sup> Pending before the Commission in Docket No. EC05-77-000 is Redbud's May 2, 2005 application for authorization of a corporate reorganization under section 203 of the Federal Power Act (FPA) and notice of change in upstream ownership. Redbud states that the reorganization is an internal reorganization only and will not result in any change in ultimate ownership or control of the applicants.

<sup>6</sup> 69 Fed. Reg. 18,894 (2004).

4. Notices of Redbud's March 24, 2005 updated market power analysis and compliance filing to include the reporting requirement for change in status adopted in Order No. 652 were published in the *Federal Register*<sup>7</sup> with motions to intervene and protests due on or before April 14, 2005. None was filed.

### **Discussion**

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>8</sup> the timely, unopposed motion to intervene of OG&E serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>9</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept in this proceeding the answer of Redbud and will, therefore, reject it. With regard to the protest of OG&E, we note that the Commission rejected Redbud's proposed rate schedule under Docket No. ER04-622-001 and thus has fully addressed OG&E's concern.<sup>10</sup>

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>11</sup> As discussed below, the Commission concludes that, with the tariff modifications directed herein, Redbud satisfies the Commission's standards for market-based rate authority.

7. In its April 14 Order, 107 FERC ¶ 61,018, *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

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<sup>7</sup> 70 Fed. Reg. 17,442 (2005).

<sup>8</sup> 18 C.F.R. § 385.214 (2004).

<sup>9</sup> 18 C.F.R. § 385.213(a)(2) (2004).

<sup>10</sup> *Redbud Energy LP*, 109 FERC ¶ 61,119 (2004).

<sup>11</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).

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.<sup>12</sup>

8. Redbud states that the facility owned by Redbud commenced construction after July 9, 1996 and consequently did not perform a market power analysis for the OG&E relevant control area. In its March 29, 2004 filing, Redbud stated that it began selling test power from the facility on April 8, 2003, and that it expected to commence commercial operations at the facility on June 1, 2004. Accordingly, the Commission finds that Redbud satisfies the Commission's generation market power standard for the grant of market-based rate authority.

9. Redbud states that other than necessary interconnections, neither it nor any of its affiliates owns, controls, or operates any transmission facilities. Based on Redbud's representation, the Commission finds that Redbud satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

10. Redbud states that neither it nor any of its affiliates are able to erect or control any barriers to market entry. Redbud states that although Destin Pipeline Company, L.L.C., its affiliate, owns an interstate natural gas pipeline, it is subject to the Commission's open access transportation requirements set forth in Order No. 636. Redbud states that any resulting ability to erect barriers to entry is effectively mitigated. Redbud states that it and its affiliates continue to lack the ability to erect barriers to generation market entry. Based on this representation, the Commission is satisfied that Redbud cannot erect barriers to entry.

11. Redbud states that there is no danger of affiliate abuse, self-dealing, or reciprocal dealing. Redbud states that its March 29, 2004 filing includes a revised tariff sheet that prohibits power sales and purchases to or from any affiliate which has a franchised service territory for the sale of electricity in the absence of Commission approval of a separate rate filing under section 205 of the Federal Power Act (FPA). We note that, consistent with the Commission's precedent as identified in *FirstEnergy Operating Companies*, 111 FERC ¶ 61,032 (2005), this proposed tariff sheet was rejected at the time of filing as outside the scope of the compliance filing. In any event, the tariff language as proposed by Redbud does not prohibit sales to Redbud affiliates "without first receiving" Commission authorization of the transaction under section 205 of the FPA. Therefore, consistent with Commission precedent, Redbud is directed to make a compliance filing within 30 days of the date of issuance of this order to revise its market-based rate tariff, to

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<sup>12</sup> 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.

include such language.<sup>13</sup> Based on Redbud's representations and subject to the tariff revision we direct herein, we find that Redbud satisfies the Commission's concerns with regard to affiliate abuse.

12. 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>14</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>15</sup>

13. Redbud 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. Redbud states that it has revised its tariff to include the required language. However, the tariff language proposed by Redbud does not comply with the requirements of Order No. 652. Accordingly, Redbud 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, without variation, consistent with Order No. 652:

[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

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<sup>13</sup> *Aquila, Inc.*, 101 FERC ¶ 61,331 at P 12 (2002).

<sup>14</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 <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>15</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10(b) (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>16</sup> *See supra* note 3.

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.

14. Redbud 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.