

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 25, 2005

In Reply Refer To:  
GWF Energy LLC  
Docket Nos. ER01-2233-002 and  
ER01-2233-003

Preston Gates Ellis & Rouvelas Meeds LLP  
Attn: Sandra E. Rizzo, Esq.  
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Dear Ms. Rizzo:

1. On July 19, 2004, as amended on October 4, 2004, GWF Energy LLC (GWF) filed an updated market power analysis pursuant to the requirements of the Commission's order granting GWF authority to sell electric energy and capacity at market-based rates.<sup>1</sup> As discussed below, the Commission concludes that GWF satisfies the Commission's standards for market-based rate authority.<sup>2</sup>

2. GWF states that it is an exempt wholesale generator that owns and operates three natural gas-fired facilities located in California, with a net capacity of 363 MW. GWF further states that it is majority-owned by PSEG Global L.L.C., an indirectly wholly-owned subsidiary of Public Service Energy Group Incorporated, the parent company of Public Service Electric and Gas Company (PSE&G), a public utility with a franchised electric service territory located in New Jersey. GWF states that its minority owner is Harbinger GWF LLC, a subsidiary of Harbinger Independent Power Fund II, L.L.C., a private fund.

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<sup>1</sup> *GWF Energy LLC*, Docket No. ER01-2233-000 (July 18, 2001) (unpublished letter order).

<sup>2</sup> GWF concurrently filed market-based rate tariff revisions, including the Commission's market behavior rules, which were accepted in an unpublished letter order on November 24, 2004, in Docket No. ER05-45-000.

### **Procedural Matters**

3. Notice of GWF's filing was published in the *Federal Register*, 69 Fed. Reg. 45,700 (2004), with protests and interventions due on or before August 9, 2004. Notice of GWF's amendment was published in the *Federal Register*, 69 Fed. Reg. 61,367 (2004), with protests and interventions due on or before October 25, 2004. None was filed.

### **Discussion**

4. 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>3</sup> As discussed below, the Commission concludes that GWF satisfies the Commission's standards for market-based rate authority.

5. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. GWF has prepared both the pivotal supplier and the wholesale market share screen analyses for the market administered by the California Independent System Operator, Inc. (CAISO). We note that PSE&G and Exelon Corporation (Exelon) recently announced plans to merge.<sup>4</sup> Consistent with our practice, we have analyzed GWF's generation market power in this proceeding on a stand-alone basis.<sup>5</sup> We further note that Exelon does not currently own generation in the CAISO market. The Commission has reviewed GWF's generation market power screen analyses for the CAISO market and has determined that GWF passes the screens in that market. Accordingly, the Commission finds that GWF satisfies the Commission's generation market power standard for the grant of market-based rate authority.

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<sup>3</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>4</sup> On February 4, 2005, Exelon filed a request for Commission authorization to merge with PSE&G under section 203 of the Federal Power Act, 16 U.S.C. § 824b (2000), in Docket No. EC05-43-000. The application is pending.

<sup>5</sup> See *Delmarva Power and Light Co.*, 76 FERC ¶ 61,331 at 62,582 (1996); *Consolidated Edison Energy, Inc.*, 83 FERC ¶ 61,236 at 62,033 (1998); *Central and South West Services, Inc.*, 82 FERC ¶ 61,001 at 61,002 (1998).

6. GWF states that neither it nor any of its affiliates currently owns, controls, or operates any transmission or distribution facilities in the CAISO market other than the limited facilities needed to interconnect to the transmission grid. GWF states that the transmission facilities of its transmission-owning affiliate, PSE&G, are under the operational control of the PJM Interconnection, L.L.C (PJM), and administered under PJM's open access transmission tariff on file with the Commission.<sup>6</sup> Based on GWF's representation, the Commission finds that GWF satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

7. GWF states that neither it nor any of its affiliates owns or controls sites for potential construction of new generation or any other key inputs that could be used to impose barriers to entry on competing power suppliers. GWF's affiliate, PSE&G, is a local natural gas distribution utility in PJM that operates under a tariff administered by the New Jersey Board of Public Utilities, which provides for open access service. Based on this representation, the Commission is satisfied that neither GWF nor any of its affiliates can erect barriers to entry. However, should GWF or any of its affiliates deny, delay, or require unreasonable terms, conditions, or rates for natural gas service to a potential electric competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in the suspension of GWF's authority to sell power at market-based rates.<sup>7</sup>

8. GWF states that it will not make sales or purchases of energy or capacity to any affiliate with a franchised electric service territory without first receiving approval from the Commission pursuant to a separate filing under section 205 of the Federal Power Act, 16 U.S.C. § 824d (2000). Further, GWF states that it continues to abide by its code of conduct which governs its inter-affiliate relationships. Based on these representations, the Commission finds that GWF satisfies the Commission's concerns with regard to affiliate abuse.

9. Commission policy requires merging utilities to treat one another as affiliates pending the consummation of a merger.<sup>8</sup> Accordingly, GWF should treat Exelon as an

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<sup>6</sup> *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997), *order on reh'g*, 92 FERC ¶ 61,282 (2000).

<sup>7</sup> *See, e.g., Louisville Gas & Electric Co.*, 61 FERC ¶ 61,016 (1993).

<sup>8</sup> *Consolidated Edison Energy, Inc.*, 83 FERC ¶ 61,236 at 62,034 (1998), *Central and South West Services, Inc.*, 82 FERC ¶ 61,101 at 61,103 (1998); *Delmarva Power & Light Company*, 76 FERC ¶ 61,331 at 62,582 (1996) ("[T]he self-interest of two merger partners converge sufficiently, even before they complete the merger, to compromise the market discipline inherent in arm's-length bargaining that serves as the primary protection against reciprocal dealing.")

affiliate for purposes of the code of conduct. Further, we note that the Commission's precedent also applies to market-based rate sales of power to affiliates. Therefore, given the announced merger, the prohibition on affiliate sales included in GWF's tariff applies to Exelon and its affiliates.

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.<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>

11. GWF 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, GWF 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:

GWF 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

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

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

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.

12. GWF 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.