

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

March 3, 2005

In Reply Refer To:
Trimont Wind I LLC
Docket No. ER05-481-000

Chadbourne & Parke, LLP
Attn: Mr. Adam Wenner
Attorney for Trimont Wind I LLC
1200 New Hampshire Avenue, N.W.

Dear Ms. Wenner:

1. On January 21, 2005, Trimont Wind I LLC (Trimont) filed an application for market-based rate authority, with an accompanying tariff and code of conduct. The proposed market-based rate tariff provides for the sale of capacity, energy, and ancillary services at market-based rates, reassignment of transmission capacity, and the resale of firm transmission rights or their equivalents.¹ The tariff also includes the Commission's market behavior rules.² Trimont's submittal, as modified below, satisfies the Commission's standards for market-based rate authority. Trimont's submittal is conditionally accepted for filing, effective January 22, 2005.³

¹ Trimont plans to sell certain ancillary services in the markets administered by PJM Interconnection L.L.C. (PJM), California Independent System Operator (CAISO), New York Independent System Operator, Inc. (NYISO) and ISO New England, Inc. (ISO-NE).

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 FERC Electric Tariff, Original Volume No. 3, Original Sheet Nos. 1-7. 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.

2. Trimont is a limited liability company organized and existing under the laws of the State of Oregon, with its principal place of business in Portland, Oregon. Trimont is an affiliate of PPM Energy, Inc., which is an affiliate of PacifiCorp and Scottish Power plc. Trimont states that it is engaged exclusively in the business of owning and operating the Project and selling electric energy produced by the Project at wholesale.⁴

3. Trimont states that the Project is an approximately 101 MW wind power electric generation facility under development in Martin and Jackson Counties, Minnesota. Trimont states that it began constructing the Project in mid-December 2004 and expects the Project to be placed in service by September 2005. Trimont states that the Project will consist of approximately 67 three-bladed 1.5 MW General Electric wind turbines and supporting equipment, underground transmission collector system cables, step-up transformers, circuit breakers, communications systems, and protective and associated equipment, structural improvements, interconnection facilities, and other tangible and intangible assets including property, access lights, and contract rights necessary for the construction, operation, maintenance, and delivery of power from the Project.

4. Trimont states that the entire output of the Project is committed for sale to Great River Energy (Great River), a generation and transmission cooperative that provides wholesale service to 28 distribution cooperatives, under a long-term power purchase agreement (the PPA). The PPA provides that Trimont will sell and Great River will purchase, upon completion of the Project, all of the energy and environmental attributes generated or produced by the Project for a term of 15 years. Trimont states that the Project will be interconnected with Northern States Power's (d/b/a Xcel Energy) transmission system. Trimont states that other than step-up transformer facilities and interconnection facilities to connect the Project to the NSP Lakefield Generation substation, Trimont will not own any transmission facilities.

Procedural Matters

5. Notice of Trimont's filing was published in the *Federal Register*, 70 Fed. Reg. 5993 (2005), with interventions and protests due on or before February 11, 2005. None was filed.

⁴ Trimont states that it is submitting an application requesting determination of exempt wholesale generator status.

Discussion

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.⁵ As discussed below, we conclude that Trimont satisfies the Commission's standards for market-based rate authority.

7. 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 new interim screens for assessing generation market power. 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, 1996.⁶ 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.⁷

8. Trimont states that construction on the Project commenced after July 9, 1996, thus it meets the section 35.27(a) exemption. Trimont also states that while two affiliates of Trimont own generation in the area, both of their generation projects were constructed after July 9, 1996.⁸ Therefore, as provided in section 35.27 of the Commission's

⁵ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); 79 FERC ¶ 61,149 (1997); *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).

⁶ 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 of its regulations.

⁷ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 at P 69, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

⁸ Flying Cloud Power Partners LLC owns a 44 MW windfarm in Dickinson County, Iowa (the Flying Cloud Project) with the energy output sold to Interstate Power and Light under a long-term power purchase agreement. The Flying Cloud Project started commercial operation in December 2003. Moraine Wind LLC owns a 51 MW windfarm in Pinestone and Muffay Counties, Minnesota (the Moraine Project) with the energy output sold to Northern States Power under a long-term power purchase agreement. The Moraine Project started commercial operation in December 2003.

regulations, Trimont asserts that no interim generation market power analysis is required. Based on these representations, the Commission finds that Trimont satisfies the Commission's generation market power standard for the grant of market-based rate authority.

9. Trimont states that neither it nor any of its affiliates owns or controls transmission assets in the area. Trimont states that PacifiCorp owns transmission assets in the western United States. However, PacifiCorp operates its transmission assets under an approved open-access transmission tariff on file with the Commission.⁹ Accordingly, the Commission finds that Trimont satisfies the Commission's transmission market power standard for market-based rates.

10. Trimont states that it does not control, and is not affiliated with, any entity that controls potential barriers to the electric power generation business. In addition, Trimont states that neither it nor its affiliates has the ability to site new generation plants or to block others from siting new plants. Furthermore, Trimont states that neither it nor its affiliates owns or controls any resources that could impede potential competition from accessing alternative generation suppliers. Based on Trimont's representations, the Commission is satisfied that neither Trimont nor its affiliates can erect barriers to entry.

11. Trimont states that there is no basis for concern about affiliate abuse or reciprocal dealing. Trimont states that it is affiliated with PacifiCorp, which has a franchised service territory. Trimont states that its tariff prohibits it from selling power to, or purchasing power from PacifiCorp (or any other affiliated entity that has a franchised service territory), and that it will only engage in such sales pursuant to a separate filing approved by the Commission under section 205 of the FPA. However, Trimont's proposed tariff does not state that Trimont will not make any sales to affiliates "without first receiving" Commission authorization of the transaction under section 205 of the FPA. Therefore, consistent with Commission precedent, Trimont is directed to make a compliance filing within 30 days of the date of this order, to revise its market-based rate tariff to include such language.¹⁰

⁹ See *PacifiCorp*, 98 FERC ¶ 61,224 (2002); *order on reh'g*, 99 FERC ¶ 61,259 (2002).

¹⁰ See *Aquila, Inc.*, 101 FERC ¶ 61,331, at P 7-9, 12 (2002).

12. Trimont requests authority to engage in the sale of certain ancillary services (listed in the proposed tariff) at market-based rates into the markets administered by the ISO-NE, PJM, CAISO and NYISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant Trimont's request.¹¹

13. Trimont proposes to offer additional ancillary services in the geographic markets identified above, as the Commission may specify and authorize from time to time in orders that extend such authority to all sellers authorized to sell energy and capacity at market-based rates. The Commission will grant Trimont's request in this regard; however, the Commission's grant does not relieve Trimont of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).¹²

14. Trimont's market-based rate tariff also provides for the reassignment of transmission capacity and the resale of firm transmission rights, or their equivalents. We find that these provisions are consistent with the Commission's requirements.¹³ Accordingly, we grant this request.

Other Waivers, Authorizations and Reporting Requirements

15. Trimont requests the following waivers and authorizations: (1) waiver of the 60-day prior notice requirement set forth in 18 C.F.R. §35.3(a); (2) 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; (3) waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting requirements; (4) abbreviated filings with respect to interlocking directorates under Part 45 of the Commission's regulations; and (5) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability; (6) such other waivers and authorizations that are appropriate and granted to others seeking market-based rate authority, which will further facilitate competition.

¹¹ See, e.g., *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,074 (2001); *Atlantic City Electric Company*, 86 FERC ¶ 61,248, *clarified*, 86 FERC ¶ 61,310 (1999); *Central Hudson Gas & Electric Corporation*, 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).

¹² See *Calhoun Power Co.*, 96 FERC ¶ 61,056 (2001).

¹³ See *Southwestern Public Service Co.*, 80 FERC ¶ 61,245 (1997); *Calif. Indep. Sys. Operator, Inc.*, 89 FERC ¶ 61,153 (1999).

16. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁴ Notwithstanding the waiver of the accounting and reporting requirements here, we expect Trimont to keep its accounting records in accordance with generally accepted accounting principles.

17. 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 Trimont 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).

18. Absent a request to be heard within the period set forth above, Trimont is 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 Trimont, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

19. 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 Trimont. Any such person instead shall file a sworn application providing the following information:

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

¹⁴ 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, 67 Fed. Reg. 67,691 (Oct. 10, 2002), FERC Stats. & Regs. ¶ 32,558, at P 23 & 24 (2002).

20. 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 Trimont's issuances and securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

21. 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.¹⁵ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁶ Accordingly, Trimont must file its first Electric Quarterly Report no later than 30 days after the first quarter Trimont's market-based rate tariff is in effect.¹⁷

22. Trimont 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.¹⁸

¹⁵ *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>.

¹⁶ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

¹⁷ 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.

¹⁸ *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Order No. 652).

23. 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, Trimont is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the change in status reporting requirement adopted in Order No. 652.

24. In addition, Trimont 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.