

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

March 3, 2005

In Reply Refer To:
Westbank Energy Capital, LLC
Docket Nos. ER05-294-000 and
ER05-294-001

Westbank Energy Capital, LLC
Attn: Mr. David W. Nodine, President
6430 Woodcrest Lane
Dallas, Texas 75214

Dear Mr. Nodine:

1. On December 6, 2004, as amended on January 13, 2005, Westbank Energy Capital, LLC (Westbank) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the purchase and sale of capacity and energy at market-based rates. It also includes the Commission's market behavior rules.¹ Westbank's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective the date of this order, as requested.²

2. Westbank is a Texas limited liability company with its principal place of business in Dallas, Texas and an office in Jackson, Wyoming. Westbank is a proprietary trading firm which primarily trades financial energy products. Westbank is wholly owned by David Walter Nodine. Westbank states neither Westbank nor any of its affiliates or managers is associated with any utilities, investor-owned or otherwise. Westbank proposes to act as a power marketer purchasing electricity and reselling it to wholesale customers. Westbank does not own or control any generation or transmission facilities, and does not have a franchised service territory for the sale of electricity to captive customers.

¹ *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).

² Rate Schedule FERC No. 1, Original Sheet Nos. 1-3.

Procedural Matters

3. Notice of Westbank's December 6, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 75,944 (2004), with motions to intervene and protests to be filed on or before December 27, 2004. None was filed. Notice of Westbank's January 13, 2005, filing was published in the *Federal Register*, 70 Fed. Reg. 4,116 (2005), with motions to intervene and protests to be filed on or before February 3, 2005. None was filed.

Discussion

Market-Based Rate Authorization

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.³ As discussed below, the Commission concludes that Westbank 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. Westbank states that neither it nor any of its affiliates own or control generation facilities. Accordingly, based on this representation, the Commission finds that Westbank satisfies the Commission's generation market power standard for the grant of market-based rate authority.

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

7. Westbank states that neither it nor any of its affiliates owns or controls any sites for the construction of new generating capacity, interstate or intrastate natural gas transmission lines, or other essential resources or inputs that could be used to restrict

³ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996), *Letter Order Approving Settlement*, 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).

market entry by competing power suppliers. Based on this representation, the Commission is satisfied that neither Westbank nor any of its affiliates can erect barriers to entry.

8. Westbank states that neither it nor any of its affiliates are affiliated with a public utility with a franchised service territory. Based on this representation, the Commission finds that Westbank satisfies the Commission's concerns with regard to affiliate abuse.

Other Waivers, Authorizations and Reporting Requirements

9. Westbank requests 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.

10. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.⁴ Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Westbank to keep its accounting records in accordance with generally accepted accounting principles.

11. 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 Westbank 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).

12. Absent a request to be heard within the period set forth above, Westbank 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

⁴ 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 at P 23 and P 24 (October 10, 2002), FERC Stats. & Regs. ¶ 32,558 (2002).

or assumption is for some lawful object within the corporate purposes of Westbank, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

13. 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 Westbank. 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. 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 Westbank's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

15. 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.⁵ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁶ Accordingly, Westbank must file its first Electronic Quarterly Report no later than 30 days after the first quarter Westbank's rate schedule is in effect.⁷

⁵ *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>.

⁶ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

⁷ 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.

16. Westbank 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.⁸ 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. Any change in status must be filed no later than 30 days after the change in status occurs.

17. 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, Westbank 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.

18. Westbank 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.

⁸ *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).