

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

July 22, 2005

In Reply Refer To:
Minergy Neenah, L.L.C
Docket No. ER99-3125-001

Sullivan & Worcester, LLP
Attn: Clinton A. Vince, Esq.
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Dear Mr. Vince:

1. On May 16, 2005, Minergy Neenah, L.L.C. (Minergy Neenah) filed an updated market power analysis pursuant to the requirements of the Commission's order granting Minergy Neenah authority to sell electric energy and capacity at market-based rates.¹ Minergy Neenah also submitted for filing a revised market-based rate tariff incorporating the Commission's market behavior rules² and change in status reporting requirement.³ Minergy Neenah's tariff revisions relating to market behavior rules and the change in status reporting requirement are accepted for filing.⁴ As discussed below, the Commission concludes that, with the tariff modification directed herein, Minergy Neenah satisfies the Commission's standards for market-based rate authority.⁵

¹ *Minergy Neenah, L.L.C.*, 88 FERC ¶ 61,102 (1999).

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 *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, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

⁴ FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 23-24 (effective December 17, 2003), Original Sheet No. 25 (effective March 20, 2005).

⁵ Minergy Neenah should have filed its updated market power analysis by July 28, (continued...)

2. Minergy Neenah is a wholly-owned subsidiary of Minergy Corp., which is a wholly-owned subsidiary of Wisconsin Energy Corporation. Wisconsin Energy Corporation's regulated utility operations include Wisconsin Electric Power Company (Wisconsin Electric), Edison Sault Electric Company (Edison Sault), and Wisconsin Gas LLC. Minergy Neenah states that it owns and operates a 6.5 MW cogeneration facility located in Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and that the full output of the facility is sold to a non-affiliate under a long-term contract.

Procedural Matters

3. Notice of Minergy Neenah's filing was published in the *Federal Register*, 70 Fed. Reg. 30,099 (2005), with interventions or protests due on or before June 6, 2005. 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.⁶

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.

6. Minergy Neenah has prepared both the pivotal supplier and the wholesale market share screens for the market administered by the Midwest ISO. The Commission has reviewed Minergy Neenah's generation market power analysis and has determined that Minergy Neenah passes the screens in the Midwest ISO market. Accordingly, the Commission finds that Minergy Neenah satisfies the Commission's generation market power standard for the grant of market-based rate authority.

2002, which is three years from the date the Commission granted it market-based rate authority. Minergy Neenah did not file its analysis until May 16, 2005. Minergy Neenah's next updated market power analysis is due within three years of the date of this order and we expect that filing to be made in a timely fashion.

⁶ 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).

7. Minergy Neenah states that it owns no transmission other than that required to connect its generation to the grid and that its affiliates, Wisconsin Electric and Edison Sault, have transferred their transmission assets to the American Transmission Company, LLC (ATC), a transmission owner in the Midwest ISO. Minergy Neenah notes that ATC has transferred operational control of its assets to the Midwest ISO. Hence, Wisconsin Electric and Edison Sault are now transmission customers under the Midwest ISO open access transmission tariff on file with the Commission.⁷ Further, no intervenors have raised transmission market power concerns. Based on Minergy Neenah's representations, the Commission finds that Minergy Neenah satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. Minergy Neenah states that neither it nor its affiliates exercise control over sites for generating plants that could restrict entry by other suppliers or other barriers to entry. Minergy Neenah states that its affiliate, Wisconsin Electric, is affiliated with a local distribution company delivering natural gas in Wisconsin, but that this local distribution company only delivers natural gas to one competing gas generator and there are bypass opportunities. In addition, no intervenors have raised barrier to entry concerns. Based on Minergy Neenah's representations, the Commission is satisfied that Minergy Neenah cannot erect barriers to entry. However, should Minergy Neenah 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 Minergy Neenah's authority to sell power at market-based rates.⁸

9. Minergy Neenah states that its dealings with its affiliates continue to be governed by the code of conduct incorporated in its market-based rate tariff. Further, Minergy Neenah's tariff prohibits sales to affiliates with franchised electric service territories unless the Commission authorizes the transaction in response to a filing made under section 205 of the Federal Power Act (FPA).⁹ No intervenors have raised affiliate abuse concerns. However, based on the Commission's review of Minergy Neenah's market-based rate tariff, the tariff does not prohibit sales to Minergy Neenah's affiliates "without first receiving" Commission authorization of the transaction under section 205 of the FPA. Therefore, consistent with Commission precedent, Minergy Neenah is directed to make a compliance filing within 30 days of the date of issuance of this order to revise its

⁷ *Midwest Independent System Operator, Inc.*, 84 FERC ¶ 61,231 (1998).

⁸ *See, e.g., Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

⁹ 16 U.S.C. § 824d (2000).

market-based rate tariff to include such language.¹⁰ Based on Minergy Neenah's representations and subject to the tariff revision we direct herein, the Commission finds that Minergy Neenah satisfies the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

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.¹¹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹²

11. Minergy Neenah 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.¹³ 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. As noted above, Minergy Neenah has incorporated the change in status reporting requirement in its market-based rate tariff.

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

¹¹ *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>.

¹² 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.

¹³ See note 3, *supra*.

12. Minergy Neenah 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.

Magalie R. Salas,
Secretary.