

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Conectiv Energy Supply, Inc.

Docket No. ER06-674-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued April 20, 2006)

1. In this order, we grant an application by Conectiv Energy Supply, Inc. (Conectiv) requesting Commission authorization for Conectiv to make sales to its affiliate, Delmarva Power & Light Company (Delmarva) as the result of a request for proposal (RFP) process issued by Delmarva and approved by the Delaware Public Service Commission (Delaware Commission). This order concludes that this competitive solicitation, as described below, satisfies the Commission's concerns regarding affiliate abuse and will result in rates that are just and reasonable.

Background

2. On February 24, 2006, Conectiv filed the instant application under section 205 of the Federal Power Act¹ requesting authorization to make sales to its affiliate, Delmarva. Conectiv has been selected as a result of Delmarva's RFP to supply full requirements service to portions of Delmarva's standard offer service load in the state of Delaware. Through its RFP Delmarva sought supplies to serve four customer classes: (1) Residential and Small Commercial & Industrial, (2) Medium General Service-Secondary, (3) Large General Service-Secondary, and (4) General Service-Primary. Conectiv states that service under its Full Requirement Service Agreement with Delmarva will commence on May 1, 2006.

3. Conectiv and Delmarva are subsidiaries of Pepco Holdings, Inc. Delmarva is a franchised public utility company serving retail customers in Delaware, Maryland, and Virginia. Delmarva does not own any generation facilities and has transferred control of

¹ 16 U.S.C. § 824d (2000).

its transmission facilities to PJM Interconnection, L.L.C. Conectiv is a power marketer that does not own generation, transmission, or distribution facilities but has authority to sell wholesale power at market-based rates.²

4. Conectiv states that the Delaware Commission opened a proceeding to explore issues regarding the selection of a standard offer service supplier for Delmarva. The Delaware Commission approved a settlement that included a competitive solicitation process that Delmarva would be required to conduct, as well as an RFP Delmarva would issue to prospective bidders and the form of the Full Requirements Supply Agreements winning bidders would be required to execute.

5. The competitive solicitation began with Delmarva publicizing the RFP by sending notice to more than 60 potential bidders and issuing trade press releases. Conectiv states that the solicitation consisted of three rounds of bidding in which load was divided into bid blocks of approximately 50 MW each. Bidders were prequalified so that non-price factors were not a part of the bid evaluation process. Bids were evaluated on price alone and were binding. Further, no negotiation was allowed after winning bidders were selected. Conectiv states that an independent consultant hired by the Delaware Commission monitored and supervised the solicitation and bid evaluation process. Also, Conectiv states that the Delaware Public Advocate's consultant oversaw the three rounds of bidding. Conectiv states that the Delaware Commission affirmatively approved the winning bidders, including Conectiv.³

Notice and Pleadings

6. Notice of Applicants' filing was published in the *Federal Register*, 71 Fed. Reg. 12,351 (2005), with motions to intervene and protests due on or before March 17, 2006. None was filed.

Discussion

7. As noted above, Conectiv seeks Commission authorization to make sales to its affiliate with a franchised service territory, Delmarva, pursuant to contracts entered into as a result of a competitive solicitation process. In order to meet the Commission's

² *Conectiv Energy Supply, Inc.*, 91 FERC ¶ 61,076 (2000), *order on reh'g*, 94 FERC ¶ 61,068 (2001); *Atlantic City Electric Co.*, 111 FERC ¶ 61,256 (2005).

³ We note that Conectiv was not the sole supplier selected to supply service to Delmarva's standard offer service load and that Conectiv won bids to provide standard offer service supplies for only two of four customer classes.

requirements for sales between affiliates, Conectiv offers evidence that Delmarva's RFP is consistent with the Commission's guidelines for determining when a competitive bidding process satisfies the Commission's concerns regarding affiliate abuse.⁴

8. The Commission has stated that, in cases where affiliates are entering into market-based rate sales agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted.⁵ The Commission has approved affiliate sales resulting from competitive bidding processes after the Commission has determined that, based on the evidence, the proposed sale was a result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.⁶ When an entity presents this kind of evidence, the Commission has required assurance that: (1) a competitive solicitation process was designed and implemented without undue preference for an affiliate; (2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and (3) the affiliate was selected based on some reasonable combination of price and non-price factors.⁷

9. In *Allegheny*, the Commission provided guidance as to the factors the Commission will consider in determining whether a competitive solicitation process such as Delmarva's RFP meets the *Edgar* criteria. As the Commission stated, the underlying principle when evaluating a competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process. The Commission indicated that the following four guidelines will help the Commission determine if a competitive solicitation process satisfies that underlying principle:

- a. Transparency: the competitive solicitation process should be open and fair;
- b. Definition: the product or products sought through the competitive solicitation should be precisely defined;
- c. Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders;
- d. Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection.

As discussed below, the Commission finds that the bidding process used here is an example of a process that meets these guidelines.

⁴ *Allegheny Energy Supply, Inc.*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

⁵ *See Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 at 62,167 (1991) (*Edgar*).

⁶ *See Connecticut Light & Power Co. and Western Massachusetts Electric Co.*, 90 FERC ¶ 61,195 at 61,633-34 (2000); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217 at 61,857-58 (1999); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027 at 61,059-60 (1999); *Edgar*, 55 FERC ¶ 61,382 at 62,167-69; *Allegheny*, 108 FERC ¶ 61,082.

⁷ *Edgar*, 55 FERC ¶ 61,382 at 62,168.

Transparency Principle

10. Conectiv contends that the RFP satisfies the Commission's guidelines regarding the transparency principle. Conectiv states that this competitive solicitation process was open to all interested parties. Conectiv also states that it was widely advertised through a large, direct mailing program. Conectiv states that Delmarva notified more than 60 potential bidders, sent press releases to trade publications and set up a website which made information about the competitive solicitation available for bidders. It further states that Delmarva posted answers to questions submitted by potential bidders on this website so that all potential bidders could see Delmarva's responses.

11. The Commission finds that Delmarva's RFP is consistent with the transparency principle guidelines.

Definition Principle

12. Conectiv contends that the RFP satisfies the Commission's guidelines regarding the definition principle. Conectiv states that the products sought by Delmarva were well defined. Specifically, it states that Delmarva was seeking full requirements wholesale power supply including delivered energy, capacity, and ancillary services for its Delaware standard offer service load in bid blocks of approximately 50 MW each, reflecting a certain percentage of Delmarva's standard offer service load. As stated in the RFP, Delmarva is responsible for the provision of network integration transmission service necessary for the winning bids. Conectiv states that the terms of the agreement that winning bidders were required to execute were available to all bidders via Delmarva's website. Conectiv states that Delmarva did not allow negotiation of non-price terms and all winning bidders were required to execute the agreement that the Delaware Commission approved. Conectiv concludes that bidders knew the terms of the agreement and the standard offer service load requirements going into the solicitation process.

13. The Commission finds that Delmarva's RFP is consistent with the definition principle guidelines.

Evaluation Principle

14. Conectiv contends that the RFP satisfies the Commission's guidelines regarding the evaluation principle. Conectiv states that potential bidders were pre-qualified before the auction began, eliminating the need to evaluate bids based on non-price factors. Specifically, bidders were required to: (1) submit an expression of interest form containing contact information; (2) execute a confidentiality agreement; (3) certify that they meet the PJM membership and Commission authorization requirements; (4) submit a credit application and associated financial information; (5) execute a binding bid agreement; and (6) provide liquid bid assurance collateral to assure commitment of the

bidder to execute the full requirement service agreement for bid blocks it wins. The pre-qualification criteria were contained in the public document describing the RFP process and were available to all potential bidders. Conectiv states that the pre-qualification criteria were standardized and applied equally to all bidders. Conectiv states that this pre-qualification process assured bids were evaluated based on price alone.

15. In addition, an independent consulting firm retained by the Delaware Commission actively monitored, supervised, and interacted with Delmarva personnel with respect to both the pre-qualification of bidders and the price bid evaluation processes to ensure that Delmarva treated all bidders equally and otherwise followed the procedures approved by the Delaware Commission. Conectiv states that the Delaware Commission concluded that the integrity of the bidding process was assured by the presence of an outside consultant who would monitor the competitive solicitation.

16. The Commission finds that Delmarva's RFP is consistent with the evaluation principle guidelines.

Oversight Principle

17. Conectiv contends that the RFP satisfies the Commission's guidelines regarding the oversight principle. Conectiv states that the Delmarva competitive solicitation was developed through a settlement of interested parties and approved by the Delaware Commission. On this basis, Conectiv argues that there can be no assertion that Conectiv had any undue preference in the design phase of the competitive solicitation, including, but not limited to, the form of the agreement and the standards of qualifying bidders. As mentioned above, the Delaware Commission retained an independent consultant to monitor this RFP including on-site monitoring of bid evaluation. Conectiv states that, in addition, another independent consultant hired by the Delaware Division of the Public Advocate was on-site when bids were received and evaluated in the first round. It states that this second consultant monitored the second and third rounds of bidding from a remote location. Conectiv states that after the competitive solicitation, the Delaware Commission's independent consultant reported on the integrity of the bid receipt and evaluation process and upon Delmarva's compliance with the Delaware Commission-approved RFP procedures. Based upon the consultant's report and upon the Delaware Commission's own review of the bids, the Delaware Commission affirmatively approved the awards by Delmarva.

18. The Commission finds that Delmarva's RFP is consistent with the oversight principle guidelines.

19. Accordingly, the Commission concludes that the competitive solicitation process described by Conectiv satisfies the Commission's concerns regarding affiliate abuse. Therefore, the Commission grants Conectiv's request for authorization to make affiliate

sales, to the extent necessary to permit Conectiv to make sales to Delmarva pursuant to contracts entered into as a result of the RFP discussed herein, effective May 1, 2006, as requested.

20. This order satisfies the requirement that Conectiv first receive Commission authorization pursuant to section 205 of the FPA before engaging in power sales at market-based rates with an affiliate. In addition to requesting that we find that the proposed RFP is consistent with the *Allegheny* guidelines, Conectiv also specifically requests that we accept for filing the agreement under which these sales will be made. However, in light of the Commission's decision here to grant Applicants' request for authorization to make affiliate sales pursuant to the RFP, we need not put that agreement on file.⁸ Consistent with the procedures the Commission adopted in Order No. 2001, Conectiv 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.⁹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁰

⁸ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Order No. 2001, which implemented 18 C.F.R § 35.1(g) (2005), obviates the need to file with the Commission service agreements under market-based power sales tariffs, and requires, among other things, that public utilities electronically file Electric Quarterly Reports which include a summary of the contractual terms and conditions in every effective service agreement for market-based power sales.

⁹ Required data sets for contractual and transaction information to be reported in Electric Quarterly Reports 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>.

¹⁰ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2005). 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.

The Commission orders:

The application for authorization for Conectiv to make sales to its affiliate, Delmarva, is hereby granted, effective May 1, 2006, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.