

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

January 25, 2005

In Reply Refer To:
Credit Suisse First Boston Energy, LLC
Credit Suisse First Boston International
Docket Nos. ER05-325-000
ER05-327-000
ER01-2656-002
ER01-2656-003

Cleary, Gottlieb, Steen & Hamilton
Attn: Ms. Sara D. Schotland, Esq.
Counsel for Credit Suisse First Boston Energy, LLC
and Credit Suisse First Boston International
2000 Pennsylvania Avenue N.W.
Washington, DC 20006

Dear Ms. Schotland:

1. On December 13, 2004, in Docket Nos. ER05-325-000 and ER05-327-000, Credit Suisse First Boston Energy, LLC (CSFBE) filed an application for market-based rate authority, with an accompanying rate schedule and a notice of cancellation of the market-based rate schedule for Credit Suisse First Boston International (CSFBI). In Docket Nos. ER01-2656-002 and ER01-2656-003, CSFBI filed an updated market power analysis pursuant to the requirements of the Commission's order granting CSFBI authority to sell capacity and energy at market-based rates,¹ and a revised market power analysis, respectively. The proposed market-based rate tariff for CSFBE provides for the sale of capacity, energy and ancillary services at market-based rates,² the reassignment of transmission capacity, and the resale of firm transmission rights (FTRs). It also includes

¹ *Credit Suisse First Boston International*, Docket No. ER01-2656-000 (September 18, 2001) (unpublished letter order).

² CSFBE plans to sell certain ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), ISO New England (ISO-NE), and California Independent System Operator, Inc. (CAISO).

the Commission's market behavior rules.³ CSFBE states that the notice of cancellation for CSFBE is conditioned upon CSFBE receiving market-based rate authority. CSFBE's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective as of the date of this order, as requested.⁴

2. CSFBE is a Delaware limited liability company with its principal place of business in New York. CSFBE is wholly, but indirectly, owned by Credit Suisse First Boston Inc., an investment bank. CSFBE states that it does not own or control any electric generation assets, however, certain affiliates of CSFBE own interests in several generating facilities. CSFBE notes that it intends to market electric energy and capacity to wholesale customers as a power marketer.

Procedural Matters

3. Notice of CSFBE's filing was published in the *Federal Register*, 69 Fed. Reg. 77,751 (2004), with comments, protests, and interventions due on or before January 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.⁵ As discussed below, the Commission concludes that CSFBE satisfies the Commission's standards for market-based rate authority.

5. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. The Commission has reviewed CSFBE's generation market power screens, which include the generation

³ *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).

⁴ Rate Schedule FERC No. 1, Original Sheet Nos. 1-4. Waiver of section 35.3 of the Commission's regulations is granted to allow for the effective date noted above.

⁵ *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).

capacity owned by its affiliates in the markets administered by PJM, NYISO, and ISO-NE.⁶ The Commission's review indicates that CSFBE passes the pivotal supplier and wholesale market share screens in each of these markets.

6. CFSBE states that some of its affiliates own generation outside of PJM, NYISO and NE-ISO that was constructed after July 9, 1996. With regard to this generation, CFSBE cites section 35.27(a) of the Commission's regulations, which 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, 1996.⁷ 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.⁸ CFSBE states that it does not own any generation and all of the capacity its affiliates own or control outside of PJM, NYISO and NE-ISO was constructed after July 9, 1996.

7. Accordingly, the Commission finds that CSFBE satisfies the Commission's generation market power standard for the grant of market-based authority.

8. CSFBE states that neither CSFBE nor any of its affiliates owns, operates or controls facilities for the transmission of electricity in interstate commerce other than transmission needed for interconnection. Based on this representation, the Commission finds that CSFBE satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

9. CSFBE states that neither CSFBE nor any of its affiliates controls key inputs into the domestic power supply industry, such as interstate or intrastate natural gas transportation or distribution facilities, generation plant sites, or the manufacture of electric equipment such that CSFBE or its affiliates could erect barriers to entry for competing power suppliers nor does CSFBE or its affiliates anticipate obtaining such control. CSFBE notes that under the terms of a pending transaction, a CSFBE affiliate will acquire an indirect 2.8 percent interest in TECO-Panda Generating Company which,

⁶Applicants located in markets administered by an independent system operator (ISO) or a regional transmission organization (RTO) with sufficient market structure, such as PJM, ISO-NE, NYISO and CAISO, may consider the geographic region under the control of the ISO/RTO as the default relevant geographic market for purposes of completing their screen analyses. *See* April 14 Order, 107 FERC ¶ 61,018 at P 187.

⁷ 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.

⁸ April 14 Order, 107 FERC ¶ 61,018 at P 69.

in addition to generation assets, holds a 41-mile interstate natural gas pipeline. CSFBE further states that occasionally CSFBE or its affiliates may take title and be contractually entitled to natural gas production as collateral for loans, but that the Commission has excluded such fuel supplies from its listing of inputs to power production about which the Commission is concerned from a market power standpoint.⁹ Based on CSFBE's representations, the Commission is satisfied that CSFBE cannot erect barriers to entry. However, should CSFBE 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, then that electric competitor may file a complaint with the Commission that could result in the suspension of CSFBE's authority to sell power at market-based rates.¹⁰

10. CSFBE states that it is not affiliated with a public utility with a franchised service territory. Based on this representation, the Commission finds that CSFBE satisfies the Commission's concerns with regard to affiliate abuse.

11. CSFBE 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 PJM, NYISO, ISO-NE, and CAISO. Consistent with Commission precedent granting authority to sellers to engage in such transactions in those markets, the Commission will grant CSFBE's request.¹¹ In addition, CSFBE proposes to sell additional ancillary services in these markets and in additional geographic markets as the Commission may specify and authorize from time-to-time in orders that extend such authority to all sellers previously authorized to sell energy and/or capacity at market-based rates. We will grant CSFBE's request in this regard; however, our grant does not relieve CSFBE of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. § 35.1 (2004).¹²

⁹ Application at 28, citing *Louis Dreyfus Elec. Power Inc.*, 61 FERC ¶ 61,303 (1992).

¹⁰ See, e.g., *Louisville Gas & Electric Company*, 62 FERC ¶ 61,016 (1993).

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 *Calhoun Power Company*, 96 FERC ¶ 61,056 (2001).

12. CSFBE's market-based rate tariff also provides for the reassignment of transmission capacity and the resale of FTRs. The Commission finds that these provisions are consistent with its requirements.¹³ Accordingly, we grant this request.

Other Waivers, Authorizations and Reporting Requirements

13. CSFBE 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) waiver of the full filing requirements of Parts 45 and 46 of the Commission's regulations, requiring only an abbreviated filing identifying any interlocking directorates; and (4) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

14. CSFBE's request for waiver of Part 46 of the Commission's regulations regarding interlocking directorates is denied. The Commission has stated that the requirements of Part 46 regarding interlocking directorates are statutory in nature and may not be waived.¹⁴

15. The Commission will grant the remaining requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.¹⁵ Notwithstanding the waiver of the accounting and reporting requirements here, we expect CSFBE to keep its accounting records in accordance with generally accepted accounting principles.

¹³ See *Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997).

¹⁴ *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994).

¹⁵ 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).

16. 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 CSFBE 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.

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

18. 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 CSFBE. 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.

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

20. The Commission directs CSFBE to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to: (a) ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (b) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.¹⁶

¹⁶ The Commission issued a Notice of Proposed Rulemaking in Docket No. RM04-14-000 in which the Commission is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates. *Reporting*

21. CSFBE states that its affiliates may own a direct or indirect interest in generation, transmission or other energy assets due to their bank related activities. CSFBE states that the affiliates typically hold security in such assets as part of a lending group and such entities or assets are expected to be owned collectively by the lending syndicate and controlled by unaffiliated third parties. CSFBE notes that if an affiliate anticipates that it will obtain control of such assets and CSFBE plans to engage in power marketing activities in the same market in which such assets are located, CSFBE will determine if such control may affect its continuing eligibility for power marketer status, and if so, promptly notify the Commission.

22. The Commission rejects CSFBE's proposal to notify the Commission of a change in status where: an affiliate anticipates that it will obtain control of generation, transmission or other energy assets; and CSFBE plans to engage in power marketing activities in the same market in which such assets are located; and CSFBE determines that such control may affect its continuing eligibility for power marketer status. CSFBE's proposal in this regard is too limited. Rather, the Commission will require CSFBE to promptly notify the Commission of any change in status within the scope described in Paragraph 20.¹⁷

23. 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

Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority, 69 Fed. Reg. 61,180 (Oct. 15, 2004), FERC Stats. & Regs. ¶ 32,576 (2004). The change in status reporting requirement outlined herein is subject to the outcome of the rulemaking.

¹⁷ An alternative approach was considered and approved in *UBS AG and Bank of America, N.A.*, 101 FERC ¶ 61,312 (2002), *reh'g granted in part and denied in part*, 103 FERC ¶ 61,284 (2003), *reh'g granted*, 105 FERC ¶ 61,078 (2003).

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.¹⁸ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁹ Accordingly, CSFBE must file its first Electric Quarterly Report no later than 30 days after the first quarter CSFBE's rate schedule is in effect.²⁰

24. In addition, CSFBE 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.

25. CSFBE is hereby informed that its market-based rate schedule is cancelled, effective as of the date of this order, as requested.²¹ Accordingly, the updated and revised market power analyses submitted by CSFBE are now moot.

By direction of the Commission.

Magalie R. Salas,
Secretary.

¹⁸ *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/Electric/eqr/eqr.htm>.

¹⁹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

²⁰ 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.

²¹ Rate Schedule FERC No. 1, First Revised Sheet No. 1 (Supersedes Original Sheet No. 1).