

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. ER06-839-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued May 22, 2006)

1. In this order, we grant an application by Conectiv Energy Supply, Inc. (Conectiv) requesting Commission authorization for Conectiv to make wholesale power sales to its affiliate, Delmarva Power & Light Company (Delmarva), as the result of a request for proposal (RFP) process issued by Delmarva for wholesale supply in Virginia. 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 March 22, 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 provide full requirements wholesale power supply for Delmarva's standard offer service load in Virginia. Through its RFP, Delmarva sought supplies to serve two residential customer classes and six commercial customer classes. Conectiv states that service under its full requirement service agreement with Delmarva will commence June 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 its transmission facilities to PJM Interconnection, L.L.C (PJM). Conectiv is a power

¹ 16 U.S.C. § 824d (2000).

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 Virginia State Corporation Commission (Virginia Commission) has not dictated a specific method through which utilities in Virginia will be required to acquire full requirements service to serve their standard offer service load. Conectiv states that Delmarva, therefore, patterned its RFP in Virginia after the competitive solicitation process used in Maryland, which the Commission has found satisfies its concerns regarding affiliate abuse.³

5. Conectiv states that it is currently providing full requirements service to Delmarva for its Virginia standard offer service load under the terms of a power purchase agreement that resulted from a similar RFP held in 2004. Conectiv sought Commission authorization to make sales to Delmarva under this power purchase agreement. It states that the Commission set this request for hearing because Delmarva did not use an independent third party monitor as part of its RFP. The interested parties reached a settlement which was approved by the Commission on October 14, 2005.⁴ Conectiv states that this settlement stated that Delmarva's RFP did not unduly favor Delmarva's affiliates. The settlement also described a letter Delmarva would send to the Virginia Commission setting forth a plan for Delmarva's future competitive solicitations. Specifically, that plan contemplated that in any future RFP for wholesale supply in Virginia, Delmarva would use an independent third party monitor as part of the RFP process. Delmarva has therefore used an independent third party to monitor and supervise the RFP in the instant filing. Conectiv states that Delmarva's RFP was otherwise the same process approved by the Commission on October 14, 2005.

6. Conectiv states that Delmarva initiated the solicitation process for its Virginia standard offer service load for service commencing on June 1, 2006 by sending notice to more than 60 potential bidders and issuing trade press releases. Conectiv states that because Delmarva's standard offer service load in Virginia is relatively small (less than 100 MW), Delmarva did not use the multi-round, rate class specific bidding process that it used to solicit bids for wholesale supply to meet standard offer service requirements in its other jurisdictions. Instead, Delmarva solicited bids for the entire Delmarva standard

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 Conectiv application at 6, *citing Allegheny Energy Supply, Inc.*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

⁴ *Conectiv Energy Supply, Inc.* 113 FERC ¶ 61,082 at 61,037 (2005).

offer service load in Virginia. Conectiv states that bidders were pre-qualified so that non-price factors were not a part of the bid evaluation process. Conectiv states that bids were evaluated on price alone and were binding and that no negotiation was allowed after winning bidders were selected. Conectiv states that Delmarva hired an independent consultant to monitor and supervise the competitive solicitation process to procure supplies to serve load in Virginia. Conectiv has included in its filing a statement by the independent consultant which states that 22 entities submitted expression of interest forms and eight bidders were pre-qualified to participate in the RFP.

Notice and Pleadings

7. Notice of Conectiv's filing was published in the *Federal Register*, 71 Fed. Reg. 20,081 (2006), with motions to intervene and protests due on or before April 17, 2006. None was filed.

Discussion

8. As noted above, Conectiv seeks Commission authorization to make sales to its affiliate with a franchised service territory in Virginia, Delmarva, pursuant to a service agreement entered into as a result of a competitive solicitation process. In order to meet the Commission's 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.⁵

9. 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.⁶ 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.⁷ When an entity presents this kind of evidence, the Commission has required

⁵ *Id.*

⁶ See *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 at 62,167 (1991) (*Edgar*).

⁷ 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

(continued)

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.⁸

10. 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: (1) Transparency: the competitive solicitation process should be open and fair; (2) Definition: the product or products sought through the competitive solicitation should be precisely defined; (3) Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders; (4) 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.

Transparency Principle

11. 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 public website which made information about the competitive solicitation available for bidders. It further states that Delmarva posted answers to questions submitted by prospective bidders on this website so that all potential bidders could see Delmarva's responses. Conectiv concludes that all bidders had equal access to the data relevant to Delmarva's RFP.

(1999); *Edgar*, 55 FERC at 62,167-69; *Allegheny*, 108 FERC ¶ 61,082 (2004); *Conectiv Energy Supply, Inc.*, 115 FERC ¶ 61,076 (2006).

⁸ *Edgar*, 55 FERC at 62,168.

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

Definition Principle

13. 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 energy, capacity, and ancillary services for its Virginia 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 and other documentation involved in the RFP were available to all bidders via Delmarva's website. Conectiv states that no negotiation of non-price terms of the agreement was permitted. The bidders were notified that the winning bidder would be required to execute the agreement as it appeared on the Delmarva website. Conectiv concludes that bidders knew the terms of the agreement and the standard offer service load requirements going into the solicitation process.

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

Evaluation Principle

15. Conectiv contends that the RFP satisfies the Commission's guidelines regarding the evaluation principle. Conectiv states that potential bidders were pre-qualified before the bid process 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; and (5) execute a binding bid agreement. 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.

16. In addition, Conectiv states that an independent consultant actively monitored 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 RFP procedure as described on the Delmarva website.

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

Oversight Principle

18. Conectiv contends that the RFP satisfies the Commission's guidelines regarding the oversight principle. As mentioned above, Conectiv states that Delmarva selected an independent consultant to monitor and supervise the solicitation process. Conectiv states that the independent consultant used for Delmarva's Virginia RFP is the same independent consultant the Maryland Commission selected to monitor Delmarva's RFP in Maryland. Conectiv states that the independent consultant certified to Delmarva that all bids were received and evaluated in accordance with the terms of Delmarva's RFP and that the bids were evaluated on the basis of price alone. On this basis, Conectiv states that there can be no assertion that it received any undue preference in either the design phase or the evaluation phase of Delmarva's competitive solicitation.

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

20. 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 Delmarva as a result of the RFP discussed herein, effective June 1, 2006, as requested.

21. 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, the Commission's regulations provide that service agreements under market-based rate tariffs shall not be filed with the Commission.⁹

⁹ 18 C.F.R. § 35.1(g) (2005) (“[A]ny market-based rate agreement pursuant to a tariff shall not be filed with the Commission.”). Order No. 2001, which implemented section 35.1(g) of the Commission's regulations, 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

22. 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.¹⁰ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹¹

The Commission orders:

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

service agreement for market-based power sales. *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002).

¹⁰ 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>.

¹¹ 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.