

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

November 1, 2004

In Reply Refer To:
DB Energy Trading LLC.
Docket No. ER04-1222-000

White & Case LLP
Attn: Mr. Peter P. Thieman, Esq.
Counsel for DB Energy Trading LLC
601 Thirteenth Street, NW
Suite 600 South
Washington, DC 20005-3807

Dear Mr. Thieman:

1. On September 14, 2004, DB Energy Trading LLC (DB Energy) 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 DB Energy Trading LLC Cayman Islands (DB Energy Cayman). The proposed market-based rate tariff provides for the sale of capacity and energy at market-based rates, the reassignment of transmission capacity and the resale of firm transmission rights, or their equivalents. It also includes the Commission's market behavior rules.¹ DB Energy states that the notice of cancellation for DB Energy Cayman is conditioned upon DB Energy receiving market-based rate authority.² DB Energy's submittal, as discussed below, satisfies the Commission's standards for market-based rate authority and is accepted for filing, effective October 14, 2004, as requested.³

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 DB Energy Cayman is requesting to transfer its market-based rate authority to DB Energy. Upon granting DB Energy market-based rate authority, DB Energy Cayman will no longer transact under market-based rates.

³ 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.

2. DB Energy is a Delaware limited liability company with its principal place of business in New York, New York. DB Energy is a wholly-owned subsidiary of Deutsche Bank Americas Holding Corp., which is wholly-owned by Taunus Corporation (Taunus), a Delaware Corporation. Taunus is in turn wholly-owned by of Deutsche Bank AG (DB AG), a New York Stock Exchange traded company organized under the laws of the Federal Republic of Germany. DB Energy states that neither DB Energy nor its affiliates owns, operates or controls any facilities for the generation, transmission or distribution of electricity or inputs for electric power production. DB Energy notes that it intends to market electric energy and capacity to wholesale customers as a power marketer.

Procedural Matters

3. Notice of DB Energy's filing was published in the *Federal Register*, 69 Fed. Reg. 59,913 (2004), with comments, protests, and interventions due on or before October 5, 2004. 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.⁴ As discussed below, the Commission concludes that DB Energy satisfies the Commission's standards for market-based rate authority.

5. In its order issued in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. DB Energy states that DB Energy does not own or control through contract any generation nor is it affiliated with generation asset-owning utilities.

6. DB Energy notes that within the next several months, the New York Branch of DB AG will indirectly acquire a small minority ownership interest in a company owning generation facilities in Connecticut and California. DB Energy cites section 35.27(a) of the Commission's regulations, which provides that applicants shall not be required to

⁴ 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., et al.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

demonstrate any lack of market power in generation with respect to sales from capacity constructed after July 9, 1996.⁵ 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.⁶

7. DB Energy notes that both generation facilities were constructed after July 9, 1996. DB Energy's affiliates do not own or control any other generation. Accordingly, the Commission finds that DB Energy satisfies the Commission's generation market power standard for the grant of market-based rate authority.

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

9. DB Energy states that neither DB Energy nor any of its affiliates owns or controls natural gas transmission or distribution systems, sites for potential construction of new generation or any other key inputs into the domestic power supply industry that may be used to create barriers to entry for competing power suppliers. Based on this representation, the Commission is satisfied that DB Energy cannot erect barriers to entry.

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

11. DB Energy's market-based rate tariff also provides for the sale of capacity and energy at market-based rates, the reassignment of transmission capacity and the resale of firm transmission rights, or their equivalents. The Commission finds that these provisions are consistent with the Commission's requirements.⁷

Other Waivers, Authorizations and Reporting Requirements

12. DB Energy 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)

⁵ 18 C.F.R. § 35.27(a) (2004).

⁶ *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 at P 69 (2004), *order on reh'g*, 108 FERC ¶ 61,026 (2004).

⁷ *See Southwestern Public Service Company*, 80 FERC ¶ 61,245 (1997).

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.

13. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.⁸ Notwithstanding the waiver of the accounting and reporting requirements here, we expect DB Energy to keep its accounting records in accordance with generally accepted accounting principles.

14. 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 DB Energy 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.

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

16. 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 DB Energy. Any such person instead shall file a sworn application providing the following information:

⁸ 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).

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

17. 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 DB Energy's issuances and securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

18. The Commission will direct DB Energy 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.⁹

19. DB Energy states that its affiliates may own a direct or indirect interest in generation, transmission or other energy assets due to their bank related activities. DB Energy 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. DB Energy notes that if an affiliate anticipates that it will obtain ownership or control of such assets and DB Energy plans to engage in power marketing activities in the same market in which such assets are located, DB Energy will determine if such ownership may affect its continuing eligibility for power marketer status, and if so, promptly notify the Commission.

20. The Commission rejects DB Energy's proposal to notify the Commission of a change in status where: an affiliate anticipates that it will obtain ownership or control of generation, transmission or other energy assets; DB Energy plans to engage in power marketing activities in the same market in which such assets are located; and DB Energy determines that such ownership may affect its continuing eligibility for power marketer

⁹ 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. The change in status reporting requirement outlined herein are subject to the outcome of the rulemaking. *Reporting 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).

status. DB Energy's proposal in this regard is too limited. Rather, the Commission will require DB Energy to promptly notify the Commission of any change in status within the scope described in Paragraph 18.¹⁰

21. 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 very 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 Accordingly, DB Energy must file its first Electric Quarterly Report no later than 30 days after the first quarter DB Energy's rate schedule is in effect.¹³

22. In addition, DB Energy 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.

¹⁰ 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).

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/Electric/eqr/eqr.htm>.

¹² The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004).

¹³ 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.

23. DB Energy Cayman is hereby informed that its market-based rate schedule is cancelled, effective October 14, 2004, as requested.¹⁴

By direction of the Commission.

Linda Mitry,
Deputy Secretary

¹⁴ Rate Schedule FERC No. 1, First Revised Sheet No. 1 (Supersedes Original Sheet No. 1).