

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

February 11, 2005

In Reply Refer To:  
FortisOntario, Inc.  
Docket Nos. ER03-775-002 and  
ER03-775-003  
FortisUS Energy Corporation,  
Docket Nos. ER00-136-001 and  
ER00-136-002

Dewey Ballantine LLP  
Attn: Earle H. O'Donnell  
1775 Pennsylvania Ave. N.W.  
Washington, D.C. 20006

Dear Mr. O'Donnell:

1. On September 20, 2004, as amended on December 15, 2004, FortisOntario Inc. (FortisOntario) and FortisUS Energy Corporation (FortisUS), (jointly, Fortis Entities) filed an updated market power analysis pursuant to the requirements of the Commission's order granting Fortis Entities authority to sell capacity and energy at market-based rates.<sup>1</sup> FortisUS also submitted a revised rate schedule incorporating the Commission's market behavior rules<sup>2</sup> and to comply with the Commission's requirements under Order No. 614, which streamlines the rate schedule sheet designation procedures for the Commission and the electric industry and conforms public utility tariff filing procedures with those for interstate natural gas and oil pipelines.<sup>3</sup> As discussed below, the Commission concludes that Fortis Entities satisfy the Commission's standards for market-based rate authority. FortisUS' submittal is accepted for filing effective September 21, 2004.<sup>4</sup> In addition,

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<sup>1</sup> *Canadian Niagara Power Co.*, 87 FERC ¶ 61,070 (1999) and *AES Placerita, Inc.*, 89 FERC ¶ 61,202 (1999).

<sup>2</sup> *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).

<sup>3</sup> *Designation of Electric Rate Schedule Sheets*, FERC States & Regs, Regulations Preambles 1996-2000 ¶ 31,096 (2000).

<sup>4</sup> FERC Electric Tariff, Original Volume No. 1, First Revised Sheet Nos. 1-4, Original Sheet No. 2A.

Forties Entities request that the Commission accept their joint updated market power analysis, and that future triennial updates be due on the same date three years subsequent to the date of such acceptance by the Commission. Fortis Entities' request in this regard is granted.

2. FortisOntario Inc. is a corporation organized under the laws of the Province of Ontario, Canada, having its principal place of business in, Ontario Canada . FortisOntario is a wholly-owned subsidiary of Fortis Inc., which is a publicly-traded holding company existing under the laws of Newfoundland and Labrador, Canada.<sup>5</sup> FortisOntario, through subsidiaries licensed by the Ontario Energy Board distributes electricity to retail customers in Fort Erie, Port Colborne, Gananoque and Cornwall, Ontario, Canada, with an installed generating capacity of approximately 87 MW located exclusively in Canada. FortisOntario is a licensed electric generator and is a registered market participant with the Independent Electricity Market Operator in Ontario and holds two permits from the National Energy Board of Canada for the import/export of electricity between Canada and the United States. FortisOntario is a member of the New York Independent System Operator (NYISO) and owns no jurisdictional facilities.

3. FortisUS states that it is a corporation organized under the laws of the State of New York, having its principal place of business in, Charlottetown. FortisUS is wholly-owned by a subsidiary of Fortis Inc., a public-traded holding company existing under the laws of Newfoundland and Labrador, Canada with its principal offices located in St. John's, Newfoundland and Labrador, Canada. FortisUS, which has been determined by the Commission to be an exempt wholesale generator (EWG),<sup>6</sup> owns and operates two run-of-river hydroelectric projects in New York state that qualify as small power production facilities: the 12.2 MW Moose River Project and the 3.4 MW Philadelphia Project. All of the output of these facilities was sold under long-term contract to Niagara Mohawk Power Corporation (NiMo), which expired in October 2004. FortisUS also owns the 1.88 MW Diana Project, a hydroelectric project and small power production facility, located in the Town of Diana, Lewis County, New York, and the 5 MW Dolgeville Project, a hydroelectric project and small power production facility located in the Village of Dolgeville, Herkimer County, New York. All of the output of these facilities are sold under a long-term contract to NiMo, which expires in December 2006. All interconnecting transmission facilities are owned, operated and maintained by NiMo.

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<sup>5</sup> On January 31, 2003, the Commission authorized the intracorporate transfer of the jurisdictional assets of Canadian Niagara to a newly formed entity, FortisOntario, pursuant to an amalgamation under Canadian law. *Canadian Niagara Power Co.*, 102 FERC ¶ 62,068 (2003).

<sup>6</sup> *FortisUS Energy Corp.*, 89 FERC ¶ 62,153 (1999) and *FortisUS Energy Corp.*, Docket No. EG00-12-000.

4. Notice of Fortis Entities' September 20, 2004, filing was published in the *Federal Register*, 69 Fed. Reg. 58,899 (2004), with motions to intervene and protest, to be filed by October 12, 2004. None was filed. Fortis Entities' answer to the Commission's data request filed on November 24, 2004, was noticed on December 15, 2004, and published in the *Federal Register*, 69 Fed. Reg. 78,011 (2004) with motions to intervene and protests to be filed by January 5, 2005. None was filed.

5. 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.<sup>7</sup> As discussed below, the Commission concludes that Fortis Entities satisfy the Commission's standards for market-based rate authority.

6. 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. Fortis Entities have prepared both the pivotal supplier and the wholesale market share screen analyses for the NYISO control area. The Commission has reviewed the Forties Entities' generation market power screen analyses for the NYISO market, which indicate that Fortis Entities pass the screens in that market. Accordingly, the Commission finds that Fortis Entities satisfy the Commission's generation market power standard for the grant of market-based rate authority.

7. Fortis Entities states that neither Fortis Entities nor any of its affiliates possesses any transmission facilities in the United States other than step-up transformers and other interconnecting transmission facilities needed to effect sales from FortisUS' Qualifying Facilities. Based on Fortis Entities' representation, the Commission finds that Fortis Entities satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. Fortis Entities states that neither it nor any of its affiliates own or controls any resources that could be used to restrict the market entry of competing suppliers. Based on this representation, the Commission is satisfied that neither Fortis Entities nor any of its affiliates can erect barriers to entry.

9. Fortis Entities states that neither Fortis Entities nor any of its affiliates has a franchised service territory for the sale of electricity in the United States. Based on this representation, the Commission finds that Fortis Entities satisfy the Commission's concerns with regard to affiliate abuse.

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<sup>7</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,921 (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).

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.<sup>8</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>9</sup>

11. With regard to reporting changes in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing, the Commission instituted a rulemaking proceeding in Docket No. RM04-14-000.<sup>10</sup> The Commission proposed 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. Accordingly, the change in status reporting obligation for Fortis Entities is subject to the provisions of the Change in Status Final Rule.

By direction of the Commission.

Linda Mitry,  
Deputy Secretary.

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<sup>8</sup> *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>.

<sup>9</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10(b) (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.

<sup>10</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Change in Status Final Rule).