

UNITED STATES OF AMERICA 88 FERC □ 61,027
 FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
 Vicky A. Bailey, William L. Massey,
 Linda Breathitt, and Curt HŠbert, Jr.

MEP Pleasant Hill, LLC) Docket No. ER99-2833-000

ORDER ACCEPTING FOR FILING
 PROPOSED RATE AGREEMENT FOR SALE OF CAPACITY
 AND ENERGY AT MARKET-BASED RATES

(Issued July 2, 1999)

In this order, we accept for filing, without suspension or hearing, the proposed market-based power sales agreement filed by MEP Pleasant Hill, LLC (Applicant), an affiliate of UtiliCorp United Inc. (UtiliCorp).

Background

On May 6, 1999, Applicant and UtiliCorp jointly filed a request for approval of a Unit Power Sales (UPS) Agreement which provides for the sale of capacity and energy to UtiliCorp at market-based rates. 1/

Applicant proposes to construct a 600 MW generating facility in Pleasant Hill, Missouri in order to supply the capacity and energy to UtiliCorp. The proposed UPS rate includes a capacity charge which ranges from \$5.70/kW/month to \$7.50/kW/month. UtiliCorp will pay for the natural gas used or the equivalent avoided fuel cost to operate the generators, as well as an energy charge of 1.25 mills/kWh and will reimburse the actual transmission charges paid under the appropriate open access tariffs. Applicant requests an effective date of June 1, 2001. 2/

- 1/ Applicant had requested market-base rate authority for sales to non-affiliates in Docket No. ER99-2858-000. This request was granted by a letter order, issued June 17, 1999. Cleco Trading and Marketing LLC, et al. 87 FERC □ 61,311 (1999). Applicant's application for Exempt Wholesale Generator status in Docket No. EG99-141-000 was granted by an order issued under delegation of authority, 87 FERC □ 62,337 (1999).
- 2/ Under the UPS Agreement, either party may terminate the proposed contract if Commission approval is not

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Applicant states that the UPS agreement resulted from a competitive bidding process that involved seven other potential suppliers, including Aquila Energy Marketing Corporation (Aquila) -- another UtiliCorp affiliate which recently received approval for a sale to UtiliCorp. Applicant argues that this process is an adequate safeguard to mitigate the potential for self-dealing.

Applicant claims that its market-based rate proposal satisfies the standards set forth in Boston Edison Re: Edgar Electric Energy Company, 55 FERC □ 61,382 (1991) (Edgar), where the Commission concluded that, when a subsidiary proposes to sell power under "market-based" rates to another affiliate who serves captive ratepayers, the seller must demonstrate that the buyer will pay no more than a non-affiliate would pay for comparable power (i.e., has not preferred its affiliate without justification). In Edgar, the Commission noted several ways for a utility to show that it has not unduly favored its affiliate: (1) a utility could show that the prices it was paying its affiliate were no higher than those non-affiliated buyers were willing to pay its affiliate; (2) a utility could show that the prices it was paying its affiliate were no higher than those other sellers were able to demand from non-affiliates; or (3) a utility could show that the transaction was the product of a properly structured competitive bidding process. 55 FERC at 62,168-69; Aquila Energy Marketing Corp., 87 FERC □ 61,217 at _____, slip op. at 2-3 & n.9 (1999).

Applicant explains that UtiliCorp conducted a competitive solicitation for capacity ranging from 325 MW in 2000 to 650 MW in 2004 and evaluated bids based on seven transaction-specific criteria. 3/ By July 3, 1998, eight parties responded to the solicitation: Aquila, Basin Electric Cooperative (Basin Coop),

2/(...continued)

obtained by July 21, 1999.

- 3/ The bid evaluation criteria were: (1) the bidder must name a specific resource which would supply the capacity and energy (financially firm proposals were not acceptable); (2) the proposal must offer a buyout option to decrease the capacity commitment at a future date; (3) the proposal should include the cost of transmission to the borders of UtiliCorp's transmission system; (4) the capacity price must be known and fixed (indexed capacity prices were not acceptable); (5) if energy pricing formulas were proposed, UtiliCorp must know the cost of energy prior to submitting its energy schedules; (6) availability of capacity and energy must be guaranteed with reductions in capacity payments for failure to meet guaranteed levels; and (7) the contract term must be for four years or less.

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LS Power, LLC. (LS Power), NP Energy, Inc. (NP Energy), NorAm Energy Services, Inc./Houston Industries (Houston), Southern Company Energy Marketing, New Century Energies (New Century), and Carolina Power & Light Company (Carolina P&L). Applicant asserts that UtiliCorp also considered as an eighth option the construction of its own generating unit to be owned by Merchant Energy Partners (MEP), a newly-formed subsidiary of UtiliCorp that will own and manage UtiliCorp's portfolio of generation projects.

According to Applicant, after soliciting a request for final proposals, UtiliCorp received confirmations from Applicant and Houston Industries (Houston). Both bidders proposed to construct generation facilities on the UtiliCorp system. 4/ In the final phase of the bidding, an independent energy consulting firm determined that: Applicant was the only bidder that met each of the seven criteria established by UtiliCorp; the total costs for Applicant's proposal were consistently more favorable than Houston's in all scenarios but one case; and in that one case the costs were virtually the same.

Applicant states that it is requesting waiver of the advance notice requirement of the Commission's regulations in order to ensure that the required regulatory authorizations are in hand before substantial expenses are incurred with respect to the construction of the Pleasant Hill facility.

Notice of Applicant's filing was published in the Federal Register, 64 Fed. Reg. 27,777 (1999), with comments, protests and interventions due on or before May 26, 1999. None was filed.

Discussion

The Commission finds, on the record before it, that Applicant has demonstrated that the rates in the UPS Agreement are no higher than the price UtiliCorp would have paid to purchase power from a nonaffiliate and that the process which resulted in the UPS Agreement satisfies the requirements set forth in Edgar. Accord, Aquila, 87 FERC at _____, slip op. at 3-5.

The Commission finds good cause to grant waiver of Section 35.3(a) of its regulations to allow the agreement to

- 4/ Applicant states that UtiliCorp decided to consider the initial transaction period (June 2000-May 2001) as a separate transaction, and decided to enter into a four month agreement with Aquila and Sunflower Electric Cooperative (Sunflower), to meet part of its near-term needs. The filing at issue here reflects UtiliCorp's remaining long term purchase need.

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be filed more than 120 days in advance of the proposed

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effective date. Accordingly, the Commission will accept the UPS Agreement for filing and allow it to go into effect, without suspension or hearing, on June 1, 2001.

The Commission orders:

(A) Waiver of section 35.3(a) of the regulations is hereby granted.

(B) The agreement submitted by MEP Pleasant Hill, LLC is hereby accepted for filing, without suspension or hearing, to become effective on June 1, 2001.

(C) MEP Pleasant Hill, LLC is hereby informed of the rate schedule designations shown on the attachment to this order.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

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Attachment
MEP Pleasant Hill, LLC
Docket No. ER99-2833-000
Rate Schedule Designations

Designations
Description

Service Agreement No. 1
Unit Power Sales with
under FERC Electric Tariff,
UtiliCorp United, Inc.
Original Volume No. 1

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