

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

November 1, 2004

In Reply Refer To:  
Wheelabrator Westchester, L.P.  
Docket No. ER04-1013-000  
ER04-1013-001  
ER04-1013-002  
ER98-3030-002  
ER98-3030-004

McCauley & Plitch, LLC  
Attn: Lawrence W. Plitch, Esq.  
890 Winter Street, Suite 170  
Waltham, Massachusetts 02451

Dear Mr. Plitch:

1. On July 13, 2004, as amended on July 14, 2004, August 13, 2004, and October 4, 2004, Wheelabrator Westchester, L.P. (Westchester) filed an updated market power analysis, notice of succession and revised market-based rate tariff. Westchester's tariff has been revised to reflect the name change of Westchester RESCO Co., L.P. to Wheelabrator Westchester, L.P. and to include the Commission's market behavior rules.<sup>1</sup> The updated market power analysis is filed pursuant to the requirements of the Commission's order granting Westchester authority to sell energy and capacity at market-based rates.<sup>2</sup> Westchester's submittal is accepted for filing. As discussed below, the Commission concludes that Westchester satisfies the Commission's requirements for

---

<sup>1</sup> *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003) (*Market Behavior Rules Order*), order on reh'g, 107 FERC ¶ 61,175 (2004).

<sup>2</sup> *Wheelabrator Westchester, L.P.*, Docket No. ER98-3030-000 (June 18, 1998) (unpublished letter order).

market-based rate authority. The revised market-based rate tariff is effective on the date of this order.<sup>3</sup>

2. Westchester is an independent power producer located in the New York ISO (NYISO). It is the operator and nominal owner of a 61 MW biomass-fired small power production facility located in Peekskill, New York. Westchester's affiliates own or control an additional 17.7 MW in the NYISO.

### **Procedural Matters**

3. Notice of Westchester's filing in Docket Nos. ER04-1013-000 and ER98-3030-002 was published in the *Federal Register*, 69 Fed. Reg. 44,529 (2004), with comments, protests, and interventions due on or before August 3, 2004. Notice of Westchester's filing in Docket No. ER04-1013-001 was published in the *Federal Register*, 69 Fed. Reg. 52,503 (2004), with comments, protests, and interventions due on or before September 3, 2004. Notice of Westchester's filing in Docket Nos. ER04-1013-002 and ER98-3030-004 was issued, with comments, protests, and interventions due on or before October 22, 2004. None was filed.

### **Discussion**

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.<sup>4</sup> As discussed below, the Commission concludes that Westchester continues to satisfy its 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) (AEP Order), the Commission adopted two indicative screens for assessing generation market power. The Commission has reviewed Westchester's generation market power screens for the NYISO control area market,

---

<sup>3</sup> Westchester incorrectly designated the revised tariff submitted in the instant filing. The tariff will instead be designated as First Revised FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1 – 3 (Supercedes FERC Electric Tariff, Original Volume No. 1).

<sup>4</sup> 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).

which indicate that Westchester passes both the pivotal supplier and wholesale market share screens in that geographic market. Accordingly, the Commission finds that Westchester satisfies the Commission's standard for generation market power for the grant of market-based rate authority.

6. Westchester states that neither it nor its affiliates owns or controls any transmission assets other than certain limited interconnection facilities associated with their generating facilities. Based on this representation, the Commission finds that Westchester satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

7. Westchester states that neither it nor its affiliates are able to erect barriers to entry, because they do not own or control raw materials, fuels (other than municipal solid waster and landfill gas), emissions allowances, or other inputs needed to build or operate electric production, distribution or transmission facilities. Based on this representation, the Commission is satisfied that Westchester cannot erect barriers to entry.

8. Westchester states that is not affiliated with any entity with a franchised service area for the sale of electricity. Based on this representation, the Commission finds that Westchester satisfies the Commission's concerns with respect to affiliate abuse.

9. 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>5</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>6</sup>

---

<sup>5</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>6</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (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.

10. 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, in a Notice of Proposed Rulemaking in Docket No. RM04-14-000, 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.<sup>7</sup> Accordingly, the change in status reporting obligation for Westchester is subject to the outcome of the rulemaking.

11. Westchester 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.

### **Notice of Succession and Revised Market-Based Rate Tariff**

12. Westchester has filed a revised market-based tariff in addition to its updated market power analysis. In its initial filing, Westchester filed a revised tariff reflecting a name change and including the Commission's market behavior rules. Subsequently, Westchester amended its initial filing revising the ancillary services and affiliate sales prohibition sections of the tariff.

13. Pursuant to the Commission's Market Behavior Rules Order, the section of Westchester's tariff containing the Market Behavior Rules is effective December 17, 2003.<sup>8</sup> The other revisions to Westchester's market-based rate tariff are effective on the date of this order.

By direction of the Commission.

Linda Mitry,  
Deputy Secretary.

---

<sup>7</sup> *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).

<sup>8</sup> *Market Behavior Rules Order*, 105 FERC ¶ 61,218.