

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

July 22, 2005

In Reply Refer To:  
Williams Power Company, Inc.,  
Williams Energy Marketing & Trading  
Company  
Williams Generation Company - Hazleton,  
and Williams Flexible Generation, LLC  
Docket Nos. ER03-1331-003  
ER03-1331-004,  
ER99-1722-004,  
ER99-1722-005,  
ER97-4587-004  
ER97-4587-005,  
ER97-4587-006,  
ER00-2469-001,  
ER00-2469-002 and  
ER00-2469-003

The Williams Companies, Inc.  
Attn: Excetral K. Caldwell, Esq.  
Senior Attorney  
One Williams Center  
Suite 4100  
Tulsa, Oklahoma 74172

Dear Mr. Caldwell:

1. On March 12, 2001, Williams Power Company, Inc. (Williams Power)<sup>1</sup> filed an updated market power analysis based on the Commission's hub-and-spoke analysis. On March 12, 2004, Williams Power, Williams Generation Company – Hazleton (Williams Hazleton), and Williams Flexible Generation, LLC ( Williams

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<sup>1</sup> The March 12, 2001 filing was made by Williams Power's predecessor, Williams Energy Marketing & Trading Company. *See Williams Power Company, Inc.*, Docket No. ER03-1331-000 (December 18, 2003) (unpublished letter order accepting notice of succession).

Flex Generation) (collectively, Williams Entities) jointly filed an updated market power analysis based on the Commission's Supply Margin Assessment screen adopted on November 20, 2001.<sup>2</sup>

2. On March 24, 2005, the Williams Entities submitted for filing a revised updated market power analysis, pursuant to the Commission's order issued on May 13, 2004.<sup>3</sup> The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.<sup>4</sup> The Williams Entities also submitted for filing revised tariffs incorporating the Commission's change in status reporting requirement under Order No. 652.<sup>5</sup> On April 12, 2004, Williams Hazleton and Williams Flex Generation also submitted for filing revised tariffs incorporating the Commission's market behavior rules.<sup>6</sup>

3. As discussed below, the Commission concludes that the Williams Entities satisfy the Commission's standards for market-based rate authority. We also accept the tariff modifications incorporating the change in status reporting requirement and the Commission's market behavior rules.

4. Williams Power, an indirect and wholly-owned subsidiary of the Williams Companies (Williams), is a national energy services provider that buys, sells and transport energy and various energy products, including natural gas and electricity.

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<sup>2</sup> *AEP Power Marketing, Inc.*, 97 FERC ¶ 61,219 (2001).

<sup>3</sup> *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

<sup>4</sup> *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order) (adopting two indicative screens for market-based rate cases).

<sup>5</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005), *order on reh'g*, 111 FERC ¶ 61,413 (2005).

<sup>6</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). Williams Power's revised tariff sheets incorporating the market behavior rules have been accepted by the Commission. *AES Creative Resources, L.P.*, Docket No. ER99-1773-003 (March 29, 2004) (unpublished letter order).

Williams Power has authority to sell wholesale power at market-based rates.<sup>7</sup> Williams Power is also a party to various tolling agreements, as discussed below.

5. Williams Hazleton is a wholly-owned subsidiary of Williams Power.<sup>8</sup> Williams Hazleton owns a natural gas and oil-fired 154 MW electric generating facility located in Hazleton, Pennsylvania. Williams Hazleton also is an Exempt Wholesale Generator and is authorized to sell power at market-based rates.<sup>9</sup>

6. Williams Flex Generation is a wholly-owned subsidiary of Williams Distributed Power Services, Inc., which is wholly-owned by Williams Power. Williams Flex Generation is a former Exempt Wholesale Generator and has market-based rate authority.<sup>10</sup>

7. The Williams Entities are indirect subsidiaries of Williams. Williams also has several business segments operating under various wholly-owned subsidiaries, including natural gas pipelines, operated by Williams Gas Pipeline Company (Williams Gas); exploration and production companies, operated by Williams Production Company LLC and Williams Production RMT Company; midstream gas and liquids, operated by Williams Field Services Group, Inc. and Williams Natural Gas Liquids, Inc.; and petroleum services.

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<sup>7</sup> The Commission granted market-based rate authority to Williams Power's predecessor in *Transco Power Trading Co.*, Docket No. ER95-305-000 (March 10, 1995) (unpublished letter order). See *Williams Energy Services Co.*, Docket No. ER95-305-004 (January 19, 1996) (unpublished letter order accepting notice of succession); *Williams Energy Marketing & Trading Co.*, Docket No. ER99-1722-000 (March 4, 1999) (unpublished letter order accepting notice of succession); and *Williams Power Company, Inc.*, Docket No. ER03-1331-000 (December 18, 2003) (unpublished letter order accepting notice of succession).

<sup>8</sup> See *Williams Production Company, LLC*, 110 FERC ¶ 62,221 (2005) (authorizing the transfer of shares of stock of Williams Hazleton that resulted in Williams Power becoming the direct parent of Williams Hazleton).

<sup>9</sup> See *Williams Generation Co. – Hazleton*, Docket No. ER97-4587-000 (October 23, 1997) (unpublished letter order).

<sup>10</sup> See *Williams Flexible Generation, LLC*, Docket No. ER00-2469-000, (June 9, 2000) (unpublished letter order). By letter dated October 21, 2004, Williams Flex Generation formally notified the Commission that it no longer sought to maintain Exempt Wholesale Generator status.

8. Williams, through Williams Gas, owns and operates two interstate pipelines, Transcontinental Gas Pipe Line Corporation (Transco) and Northwest Pipeline Corporation (Northwest). Williams also owns a fifty percent interest in Gulfstream Natural Gas System, L.L.C. (Gulfstream), which provides transportation service from the Gulf of Mexico and Florida. Williams also owns a fifty percent interest in Discovery Producer Services, which provides transportation service from the offshore of the Gulf of Mexico to an onshore gas processing plant. Williams is the indirect owner of Black Marlin Pipeline Company, which provides transportation service from offshore receipt points to interconnection points with third parties. Williams also has an interest in Cardinal Pipeline Company, LLC, a Hinshaw pipeline in North Carolina and in Pine Needle LNG Company, LLC, a liquefied natural gas storage facility also in North Carolina.

### **Procedural Matters**

9. Notice of Williams Power's March 12, 2001 filing was published in the *Federal Register*, 66 Fed. Reg. 16,664 (2001), with comments, protests, and interventions due on or before April 2, 2001. A timely notice of intervention and motion for suspension of market-based rate authority, or in the alternative, protest and request for hearing was filed by the California Public Utilities Commission (California Commission). Timely motions to intervene and protests were filed by California Electricity Oversight Board (CEOB) and California Independent System Operator Corporation (California ISO). Late motions to intervene were filed by Pacific Gas & Electric Company and Southern California Edison Company (jointly, PG&E); the City and County of San Francisco (San Francisco); the City and County of Los Angeles (Los Angeles); and the Consumer Federation of America, Arizona Consumers Council, CALPIRG, Colorado PIRG, Consumer Action, Consumer Federation of California, Consumer Fraud Watch, Democratic Process Center, Illinois PIRG, Mass PIRG, Massachusetts Consumers' Coalition, Michigan Consumer Federation, New York PIRG, Pennsylvania Citizens Consumer Council, Utility Consumers' Action Network and Virginia Citizens Consumer Council (collectively, Consumer Organizations). Duke Energy North America, LLC and Duke Energy Trading & Marketing, LLC (jointly, Duke) filed a late motion to intervene raising no substantive comments.

10. Several protesters assert that Williams Power's March 12, 2001 filing was inadequate because it lacked any analysis of Williams Power's market share. California Commission, California ISO, Los Angeles and PG&E state that in light of this failure to provide an adequate analysis, the Commission should summarily terminate or suspend Williams Power's market-based rate authority, or in the alternative, establish a hearing. California ISO and the California Commission assert that there is overwhelming evidence that Williams Power has exercised market power and that its continued ability to do so would only exacerbate conditions in the

California markets. Los Angeles also argues that the then-current market conditions in California enabled market participants to exercise market power. Consumers Organizations state that the Commission should not only revoke the market-based rate authority of Williams Power, but should also suspend market-based rates throughout the interconnected Western States for at least two years, since California plays such a large role in that market.

11. Protesters also asserted that the Commission's hub and spoke methodology for evaluating generation market power was inadequate and should be revised.

12. On April 16, 2001, Williams Power filed an answer to the California Commission's request for suspension of Williams Power's market-based rate authority. On April 16, 2001, Williams Power also filed a motion to reject and strike the motion to intervene of the California ISO. On May 2, 2001, Williams Power filed an answer to the protests.

13. On May 3, 2001, California ISO filed a motion to file an answer out of time and an answer to Williams Power's motion to reject and strike.

14. On May 17, 2001, San Francisco filed an answer to Williams Power's answer.

15. On May 25, 2001, California ISO filed an emergency motion requesting the immediate suspension of market-based rate authority, the institution of refund proceedings and for a shortened time to answer. On May 29, 2001, CEOB and California Commission also filed a joint emergency motion for immediate suspension of market-based rate authority and for the institution of refund proceedings. On May 31, 2001, the People of the State of California, *ex rel* Bill Lockyer (State of California) filed a late motion to intervene and emergency motion for the immediate suspension of market-based rate authority and for the institution of refund proceedings.

16. On May 31, 2001, Williams Power filed an answer to the California ISO's motion for a shortened period of time to file answer. On June 1, 2001, Williams Power filed an answer to San Francisco's motion to treat filed material as privileged. On June 4, 2001, Williams Power filed an answer to the CEOB and California Commission's joint emergency motion.

17. On June 8, 2001, San Francisco filed an answer in support of the motions for immediate suspension of market-based rate authority filed by California ISO, CEOB, California Commission and the State of California.

18. On June 11, 2001, Williams Power filed an answer to the motions for immediate suspension of market-based rate authority and institution of refund

proceedings filed by California ISO, CEOB, California Commission and the State of California.

19. Notice of the Williams Entities' March 12, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 15,318 (2004), with interventions or protests due on or before April 4, 2004. None was filed.

20. Notice of the Williams Entities' March 24, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 19,750 (2005), with interventions or protests due on or before April 21, 2005. None was filed.

## **Discussion**

### **Procedural Matters**

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will also grant the untimely motions to intervene filed by PG&E, San Francisco, Los Angeles, Consumer Organizations and Duke, given their interest in the proceeding, and the absence of any undue prejudice or delay.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers to protests or answers filed herein and will, therefore, reject them. However, pursuant to Rule 213(a)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(3) (2005), we will allow the answers to motions filed herein.

### **Market- Based Rate Authorization**

23. 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>11</sup> As discussed below, the Commission concludes that Williams Entities satisfy the Commission's standards for market-based rate authority.

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<sup>11</sup> See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (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).

24. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. The Williams Entities have prepared both screens for six relevant markets in which they own or control generation.<sup>12</sup>

25. The Williams Entities state that Williams Power is a party to various tolling agreements that give it certain rights to various generating facilities, and, under certain agreements, obligations to supply full requirements services. Williams Power has tolling arrangements with the owners of three facilities with a total capacity of approximately 3850 MW located in the California ISO, two facilities with total capacity of approximately 1400 MW in PJM Interconnection, LLC, Mid-Atlantic Area Council, one 850 MW facility in the Southern control area, one 750 MW facility in the Southwest Power Pool, Inc. and CLECO control area and one 550 MW facility in MECS. In addition, Williams Power has agreements with four Electric Membership Cooperatives (Coops) in Georgia under which Williams Power has rights to approximately 340 MW of the Coops' generation entitlements within the Southern control area. These agreements also obligate Williams Power to provide full requirements service to approximately 600 MW of the Coops' load.

26. The Commission has determined that under a tolling arrangement, a gas supplier could receive the output of a gas-fired generator as payment for the gas it supplies to the generator. If the gas supplier is the only supplier to that generator, then the gas supplier could effectively control the generator.<sup>13</sup> The data provided by the Williams Entities indicate that all generation controlled by the Williams Entities through tolling agreements or other contracts is included in their generation market power analyses. The Commission has reviewed the Williams Entities' generation market power analyses for the six relevant geographic markets, and determined that

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<sup>12</sup> Williams Entities performed generation market power analyses for the following markets and control areas in which they own or control generation: California Independent System Operator (California ISO), Western Area Power Administration-Lower Colorado (WALC), PJM Interconnection LLC (PJM), Southern Company (Southern), Michigan Electric Coordinated System (MECS) and Cleco Corporation, Inc. (CLECO).

<sup>13</sup> *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs. ¶ 31,111 at 31,877 n. 17 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001); Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005), *order on reh'g*, 111 FERC ¶ 61,413 (2005).

Williams Entities pass the screens in those markets. Based on Williams Entities' representations, the Commission finds that the Williams Entities satisfy the Commission's generation market power standard for the grant of market-based rate authority.

27. With regard to the protests filed in response to Williams Power's March 12, 2001 filing, we note that the Commission has abandoned the hub-and-spoke analysis, as discussed in the April 14, May 13 and July 8 Orders. Instead, we have reviewed Williams Power's ability to exercise market power in generation under the two new indicative screens, the pivotal supplier screen and the wholesale market share screen. Moreover, these protests relate to conditions prevalent in the California market during 2001. Accordingly, the Commission finds that the protests are now moot, and no one protested the Williams Entities most recent filings.

28. The Williams Entities state that neither they nor any of their affiliates owns or controls any transmission facilities other than those necessary to interconnect with the relevant transmission grids. Further, no intervenors have raised transmission market power concerns. Based on the Williams Entities' representations, the Commission finds that the Williams Entities satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

29. The Williams Entities note that in evaluating barriers to entry, the Commission assesses several factors, such as ownership of building sites, affiliation with or ownership of interstate natural gas pipelines or local distribution systems and control over key inputs to generation. The Williams Entities state that their affiliation with the Transco, Northwest and Gulfstream pipelines does not raise concerns about barriers to entry. The Williams Entities state that the pipelines affiliated with the Williams Entities are non-discriminatory, open access carriers. The Williams Entities also state that neither they nor their affiliates exercise control over sites for generating plants that could restrict entry by other suppliers or other barriers to entry. In addition, the Williams Entities state that if the Williams Entities or their affiliated pipelines were to deny or delay service, a competitor or other affected party may file a complaint with the Commission that could result in the suspension of the Williams Entities' market-based rate authority. Further, no intervenors have raised concerns regarding barriers to entry. As the Commission has explained, affiliation with an interstate natural gas pipeline does not raise market power concerns because the pipeline is subject to the Commission's open access requirements for natural gas pipelines.<sup>14</sup> Based on the Williams Entities' representations, the Commission is satisfied that the Williams Entities cannot erect barriers to entry.

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<sup>14</sup> See *Vantus Energy Corporation*, 73 FERC ¶ 61,099 (1995); *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993).

30. The Williams Entities state that they do not have a franchised service area for the sale of electricity. The Williams Entities state that, accordingly, they cannot secure a competitive advantage by pass-through to captive ratepayers of excessive costs paid to affiliates for power or by ratepayer cross-subsidy or preferential pricing of services. In addition, no intervenor has raised concerns regarding affiliate abuse. Based on these representations, Williams Entities satisfy the Commission's concerns with regard to affiliate abuse.

### **Reporting Requirements**

31. 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>15</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>16</sup>

32. The Williams Entities must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>17</sup> Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. As noted above, the

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<sup>15</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>16</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.

<sup>17</sup> Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005), *order on reh'g*, 111 FERC ¶ 61,413 (2005).

Williams Entities have revised their tariffs to include the change in status reporting requirement.

33. The Williams Entities are 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.

By direction of the Commission.

Linda Mitry,  
Deputy Secretary.