

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Avista Corporation	Docket Nos. ER99-1435-003 ER99-1435-004 ER99-1435-006 ER99-1435-008 ER99-1435-009
Avista Energy, Inc.	ER96-2408-018 ER96-2408-019 ER96-2408-020 ER96-2408-021
Spokane Energy, LLC	ER98-4336-007 ER98-4336-008 ER98-4336-009 ER98-4336-010
Avista Turbine Power, Inc.	ER00-1814-001 ER00-1814-002 ER00-1814-003 ER00-1814-004

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued March 3, 2005)

1. In this order we accept an updated market power analysis filed by Avista Corporation (d/b/a Avista Utilities), on behalf of itself and three of its affiliates, Avista Energy, Inc.; Spokane Energy, LLC; and Avista Turbine Power, Inc. (collectively, Avista). As discussed below, we conclude that Avista satisfies the Commission's standards for market-based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. Avista's next updated market power analysis is due three years from the date of this order.

Background

2. On September 9, 2002, Avista filed an updated market power analysis including a supply margin assessment of generation market power pursuant to the Commission's order granting Avista authority to sell electric energy and capacity at market-based rates.¹ In that filing, Avista stated that it satisfies the Commission's standards for generation market power, transmission market power, barriers to entry, and affiliate abuse or reciprocal dealing.

3. On September 27, 2004, as amended December 7, 2004 and February 4, 2004, Avista submitted for filing a revised updated market power analysis, pursuant to the Commission's order issued on May 13, 2004.² The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.³

4. We note that on December 7, 2004, as amended January 12, 2005, Avista filed revisions to its market-based rate tariffs in other dockets.⁴ These revisions included adding the Commission's market behavior rules to each of Avista's market-based rate tariffs.⁵ Avista's revised market-based rate tariffs including the market behavior rules were accepted by delegated letter order on January 25, 2005 and February 25, 2005.

Notice and Responsive Pleadings

5. Notice of Avista's September 9, 2002 filing was published in the *Federal Register*, 67 Fed. Reg. 59,057 (2002), with protests and interventions due on or before September 30, 2002. None was filed.

6. Notice of Avista's September 27, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 60,386 (2004), with protests and interventions due on or before October 18, 2004. None was filed.

¹ *Washington Water Power Company*, 77 FERC ¶ 61,233 (1996).

² *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

³ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

⁴ Avista filed these tariff revisions in Docket Nos. ER05-310-000, ER05-310-001, ER05-311-000, ER05-311-001, ER05-312-000, ER05-313-000, and ER05-313-001.

⁵ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004).

7. Notice of Avista's December 7, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 75,943 (2004), with protests and interventions due on or before December 28, 2004. None was filed.

8. Notice of Avista's February 4, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 7,495 (2004), with protests and interventions due on or before February 14, 2005. None was filed.

Discussion

Market-Based Rate Authorization

9. 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.⁶

10. As discussed below, the Commission concludes that Avista satisfies the Commission's standards for market-based rate authority.

Generation Market Power

11. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. Avista has prepared both the pivotal supplier and the wholesale market share screens for its home control area and each of its interconnected first-tier control areas. Avista's control area is directly interconnected to the control areas operated by Puget Sound Energy, Inc., Bonneville Power Administration, Public Utility District No. 2 of Grant County, Public Utility District No. 1 of Chelan County, Idaho Power Company, PacificCorp, Montana Power, Seattle City Light, and Tacoma Power. According to Avista's filing, between 1754 MW and 2162 MW can be imported into the Avista control area from first-tier markets depending on the season.

12. For its home control area, Avista provided the Commission with pivotal supplier screens and wholesale market share screens reflecting different hydroelectric conditions. As required by the April 14 Order, Avista has performed each screen de-rating

⁶ 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).

hydroelectric generation to reflect the average of the prior five hydro years and has performed each screen de-rating hydroelectric generation to reflect the lowest hydro year in the last five.⁷ In either case, Avista passes both generation market power screens.⁸

13. The Commission has reviewed Avista's generation market power screens and has determined that Avista passes the screens in both its home control area and its interconnected first-tier control areas. Accordingly, the Commission finds that Avista satisfies the Commission's generation market power standard for the grant of market-based rate authority.

Transmission Market Power

14. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. Avista states that it has an OATT on file with the Commission. We note that Avista's OATT was accepted by Commission order.⁹ Further, no intervenors have raised transmission market power concerns. Based on Avista's representation, the Commission finds that Avista satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

15. Avista states that it owns and operates natural gas distribution facilities in Washington, Oregon, and California. Avista states that it understands that if it or its affiliates deny, delay, or require unreasonable rates, terms, or conditions for natural gas service to a potential electric competitor, then the Commission may suspend Avista's authority to sell electricity at market-based rates. Avista further states that it does not engage in discriminatory practices with respect to the provision of natural gas service. In addition, no intervenors have raised barrier to entry concerns. Based on Avista's representations, the Commission is satisfied that Avista cannot erect barriers to entry.

⁷ April 14 Order, 107 FERC ¶ 61,018 at P 126.

⁸ In the market share screen, Avista's market share ranges from 3 to 9 percent de-rating hydroelectric generation to reflect average conditions over the last five years. Avista's market share ranges from 0 to 4 percent de-rating hydroelectric generation to reflect the lowest hydro year of the last five. Avista also passes the pivotal supplier screen in both hydro cases.

⁹ See *Puget Sound Energy, Inc.*, 97 FERC ¶ 61,309 (2001).

Affiliate Abuse

16. Avista states that its market-based rate tariffs restrict sales of electricity to, or purchases of electricity from, any of its affiliates without first receiving Commission approval under section 205 of the Federal Power Act. Avista further states that it has on file with the Commission a code of conduct that governs the sharing of non-public market information with its affiliates, and the pricing of non-power goods and services in transactions between those affiliates. In addition, no intervenors have raised affiliate abuse concerns. Based on Avista's representations, the Commission finds that Avista satisfies the Commission's concerns with regard to affiliate abuse.

Reporting Requirements

17. 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.¹⁰ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹¹

18. Avista 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.¹² A change in status includes, but is not limited to each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (ii) affiliation with any entity not

¹⁰ *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/docs-filing/eqr.asp>.

¹¹ 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.

¹² *Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097 (2005) (Order No. 652).

disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

19. 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. Accordingly, Avista is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariffs to incorporate the change in status reporting requirement adopted in Order No. 652.

20. Avista 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.

The Commission orders:

(A) Avista's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) Avista's next updated market power analysis is due within three years of the date of this order.

(C) Avista is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariffs to include the change in status reporting requirement.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.