

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

November 3, 2004

In Reply Refer To:  
ENMAX Energy Marketing, Inc.  
Docket No. ER01-2508-001

Skadden, Arps, Slate, Meagher & Flom, LLP  
Attn: Jerry L. Pfeffer, Esq.  
Energy Industries Advisor  
1440 New York Avenue, N.W.  
Washington, D.C. 20005

Dear Mr. Pfeffer:

1. On August 26, 2004, ENMAX Energy Marketing, Inc. (ENMAX) filed an updated market power analysis pursuant to the requirements of the Commission's order granting ENMAX authority to sell capacity and energy at market-based rates.<sup>1</sup> It also submitted a revised rate schedule incorporating the Commission's market behavior rules.<sup>2</sup> ENMAX's submittal is accepted for filing.<sup>3</sup> As discussed below, the Commission concludes that ENMAX satisfies the Commission's standards for market-based rate authority.
2. ENMAX is an Alberta corporation with its principal place of business at Calgary, Alberta, Canada. ENMAX states that it has been established to act as a power marketer in the business of marketing electricity in the United States and Canada and exporting and importing electricity between the United States and Canada for sales to utilities, power marketers and wholesale customers.
3. ENMAX is a wholly-owned subsidiary of ENMAX Energy Corporation (ENMAX Energy), which in turn is a wholly owned subsidiary of ENMAX Power Corporation

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<sup>1</sup> ENMAX Energy Marketing, Inc., Docket No. ER01-2508-000 (August 27, 2001) (unpublished letter order).

<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> Rate Schedule FERC No. 1, First Revised Sheet Nos. 1-4.

(ENMAX Power). ENMAX Power owns the electrical transmission and distribution system in the Calgary area. According to ENMAX, access to this system is provided by the Alberta Electric System Operator (AESO), an Independent System Operator that provides open access and non-discriminatory transmission service. ENMAX asserts that it participates in the wholesale trading of energy within the Western Electricity Coordinating Council service territory and holds permits issued by the Canadian National Energy Board authorizing the export of electricity from Canada to the United States. Furthermore, ENMAX notes that it has obtained Electricity Authorization EA-264-A from the United States Department of Energy, which allows ENMAX to export electric energy from the United States to Canada using certain existing transmission facilities located at the United States border with Canada.

### **Procedural Matters**

4. ENMAX's filing was published in the *Federal Register*, 69 Fed. Reg. 54,663, with motions to intervene, protests and comments due to be filed by September 16, 2004. None was filed

### **Discussion**

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>4</sup> As discussed below, the Commission concludes that ENMAX satisfies the Commission's standards for market-based rate authority.

6. In its order issued in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two indicative screens for assessing generation market power. ENMAX states that all of its nameplate capacity of generation owned or controlled through contract and firm purchases is located in the province of Alberta, ENMAX's home control area. ENMAX's first-tier markets are British Columbia Transmission Corporation (BCTC) and Saskatchewan Power Corporation. Neither their home control area nor first-tier markets fall under Commission jurisdiction.<sup>5</sup> ENMAX asserts that interconnections with BCTC serve as an indirect link for Alberta electricity marketers to export electricity to the U.S. market.

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<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).

<sup>5</sup> See *British Power Exchange Corporation*, 80 FERC ¶ 61,343 (1997).

Therefore, ENMAX states that the province of Alberta is only indirectly connected to U.S. markets and, as such, no U.S. control area is considered to be a relevant geographic market. The Commission finds that ENMAX satisfies the Commission's generation market power standard for the grant of market-based rate authority.

7. ENMAX states that it does not own or control any transmission facilities but that its affiliate, ENMAX Power, owns transmission assets located within the province of Alberta. ENMAX states that access to these transmission facilities is provided on an open and non-discriminatory basis by the AESO in the province of Alberta. ENMAX further states that the Commission has previously found in *TransAlta Enterprises Corporation (TransAlta)* that the general form of open access transmission arrangements in Alberta effectively mitigates any transmission market power concerns.<sup>6</sup> ENMAX asserts that it has thereby mitigated any transmission market power that it might possess through its affiliation with ENMAX Power.<sup>7</sup> The Commission finds that ENMAX satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. ENMAX states that neither ENMAX nor any of its affiliates own or control resources or factor inputs such as plant sites, fuel supply or transportation facilities that in accordance with prior Commission orders, would allow ENMAX or its affiliates to impose barriers to market entry by other bulk power suppliers. Furthermore, according to ENMAX, neither ENMAX nor its affiliates own or control natural gas supply or transportation facilities in the U.S. or Canada. Based on this representation, the Commission is satisfied that ENMAX cannot erect barriers to entry.

9. ENMAX notes that the Commission typically requires a power marketer with market-based rate authorization to file for Commission approval under section 205 of the Federal Power Act before selling power to or purchasing power from any utility affiliate. However, as the Commission has previously stated, this general requirement does not apply to situations, such as that presented by ENMAX, involving sales of power to or from a Canadian utility outside of the Commission's jurisdiction.<sup>8</sup>

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<sup>6</sup> See *TransAlta Enterprises Corporation*, 75 FERC ¶ 61,268 (1996) at 61,875.

<sup>7</sup> In *TransAlta*, the Commission concluded that, "these [transmission] arrangements are sufficient for a foreign utility affiliate of a United States marketer to address the market power concerns raised by the Commission in *Energy Alliance, supra*, and to meet the general principles of transmission comparability in Order No. 888," *TransAlta, supra*.

<sup>8</sup> See *Energy Alliance*, 73 FERC ¶ 61,019 (1995).

10. Furthermore, ENMAX states that because ENMAX's Canadian utility affiliate, ENMAX Power, and ENMAX's parent company, ENMAX Energy are not subject to the Commission's jurisdiction but instead are subject to regulation by the Alberta Energy and Utilities Board, the traditional code of conduct does not apply. ENMAX does commit that should it acquire a U.S. jurisdictional utility with a franchised service territory in the future, it will file a code of conduct for its U.S. operations that conforms to the Commission's requirements. The Commission finds that ENMAX satisfies the Commission's concerns with regard to affiliate abuse.

11. 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>9</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>10</sup>

12. 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>11</sup> Accordingly, the change in status reporting obligation for ENMAX is subject to the outcome of the rulemaking.

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<sup>9</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>10</sup> The exact filing 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>11</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).

13. ENMAX 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.

By direction of the Commission.

Magalie R. Salas,  
Secretary.