

March 22, 2022

Ruta Kalvaitis Skučas  
[Ruta.skucas@klgates.com](mailto:Ruta.skucas@klgates.com)

T +1 202 778 9210  
F +1 202 778 9100

Mr. Christopher Lawrence  
Department of Energy  
Office of Electricity Deliverability and Energy  
Reliability  
OE-20, Room 8G-024  
1000 Independence Avenue, S.W.  
Washington, DC 20585

**Re: Application of MAG Energy Solutions, Inc. for Renewal of Authorization to Transmit Electric Energy to Mexico**

Dear Mr. Lawrence:

Pursuant to 10 C.F.R. § 205.300, et seq. of the regulations of the Department of Energy, enclosed for filing on behalf of MAG Energy Solutions, Inc. and its affiliates MAG Energy Europe Inc., MMA Energy NZ Limited, MAG Energy Europe B.V., and MMA Energy México, S.A. de C.V. (collectively, "MAG") is an original copy of an Application for Renewal of Authority to Transmit Electric Energy to Mexico. Additionally, please find enclosed proof of payment for the cost of the application in the amount of \$500 paid on March 21, 2022 via Pay.gov.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,



Ruta Kalvaitis Skučas, Esq.  
Maeve C. Tibbetts, Esq.  
K&L Gates LLP  
1601 K St. NW  
Washington, DC 20006  
**Counsel for MAG Energy Solutions, Inc.**

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY**

MAG Energy Solutions, Inc.

)  
)

Docket No. EA-436

**APPLICATION OF MAG ENERGY SOLUTIONS, INC. FOR RENEWAL OF  
AUTHORITY TO TRANSMIT ELECTRIC ENERGY TO MEXICO**

Pursuant to Section 202(e) of the Federal Power Act (“FPA”), 16 U.S.C. § 824a(e) and 10 C.F.R. § 205.300, *et seq.*, MAG Energy Solutions, Inc. and its affiliates MAG Energy Europe Inc., MMA Energy NZ Limited, MAG Energy Europe B.V, and MMA Energy México, S.A. de C.V. (collectively “MAG” or “Applicant”) respectfully submits this application for a five-year extension of its blanket authorization to export electricity from the United States to Mexico (“Application”). The Department of Energy (“DOE”) previously granted MAG authorization to export electric energy as a power marketer on September 28, 2017 in Order No. EA-436 (“2017 Order”). MAG requests that this renewal application be made effective no later than August 1, 2022, to prevent any lapse in authority. MAG respectfully requests authorization for renewal of authority to transmit electric energy from the United States to Mexico for a period of five (5) years.

**I. COMMUNICATIONS**

Communications and correspondence concerning this filing should be addressed to:

Ruta Kalvaitis Skučas, Esq.  
Maeva C. Tibbets, Esq.  
K&L Gates LLP  
1601 K St., NW  
Washington, DC 20006  
Tel. (202) 778-9210  
[ruta.skucas@klgates.com](mailto:ruta.skucas@klgates.com)

Simon Pelletier  
CEO, MAG Energy Solutions, Inc.  
999 de Maisonneuve Boulevard West  
Suite 875  
Montreal, Quebec H3A 3L4 Canada  
Tel. (514) 227- 1654  
[spelletier@magenergysolutions.com](mailto:spelletier@magenergysolutions.com)

## II. DESCRIPTION OF APPLICANT

MAG is an independent Canadian corporation with its principal place of business in Montreal, Quebec. MAG is engaged in the marketing of electric power at wholesale, as well as the physical and financial trading of other energy products. MAG is a Canadian close corporation privately owned by a group of 15 shareholders. MAG wholly owns its affiliates, MAG Energy Europe Inc., MMA Energy NZ Limited, and MAG Energy Europe B.V. Affiliate MMA Energy México, S.A. de C.V is 99% owned by MAG Energy Solutions, Inc., and 0.01% owned by MAG Energy Europe, Inc. MAG does not have any affiliates or upstream owners that possess any ownership interest or have involvement in any other company that is a traditional utility or that owns, operates, or controls any electric generation, transmission or distribution facilities, nor do they have any direct involvement with the energy industry other than through the ownership of MAG. The U.S. Federal Energy Regulatory Commission (“FERC”) authorized MAG to engage in wholesale sales of electric energy, capacity and ancillary services at market-based rates.<sup>1</sup> A copy of this order is attached as Exhibit G. MAG also holds authorization to export electric energy to Canada.<sup>2</sup>

## III. JURISDICTION

MAG believes that the DOE is the only governmental agency that has jurisdiction over this application.

---

<sup>1</sup> See *MAG Energy Solutions, Inc.*, Docket No. ER04-839-000 (delegated letter order issued Aug. 5, 2004); see also, *MAG Energy Solutions, Inc.*, Docket No. ER17-1419-000 (market based rate tariff update filed Apr. 13, 2017).

<sup>2</sup> See *MAG Energy Solutions, Inc.*, Order Authorizing Electricity Exports to Canada, Order No. EA-306-C (Jan. 12, 2021).

#### **IV. DESCRIPTION OF TRANSMISSION FACILITIES**

MAG intends to export electricity over existing international transmission facilities between Mexico and the United States, as identified in Exhibit C. MAG requests authority to export electricity to Mexico over any international transmission facility authorized by Presidential Permit that is appropriate for open access by third parties in accordance with the assessment made by DOE of the transmission limits for operation in the export mode.

#### **V. TECHNICAL DISCUSSION OF PROPOSAL**

Section 202(e) of the Federal Power Act (“FPA”) and DOE’s regulations provide that exports should be allowed unless the proposed export would impair the sufficiency of electric power supply within the United States or would tend to impede the coordinated use of the United States power supply network.<sup>3</sup> MAG seeks blanket authority to transmit electric power to Mexico as a power marketer. MAG has no electric power supply system on which the proposed exports could have a reliability, fuel use system or stability impact. MAG also has no obligation to serve native load usually associated with a franchised service area, and, thus, the exports proposed by MAG will not impair its ability to meet current and prospective power supply obligations.

MAG will purchase power to be exported from a variety of sources such as power marketers, independent power producers, or U.S. electric utilities and federal power marketing entities as those terms are defined in Sections 3(22) and 3(19) of the FPA. By definition, such power is surplus to the system of the generator and, therefore, the electric power that MAG will export on either a firm or interruptible basis will not impair the sufficiency of the electric power supply within the U.S.<sup>4</sup>

---

<sup>3</sup> 16 U.S.C. § 824a(e).

<sup>4</sup> See *Enron Power Marketing, Inc.*, Order EA-102 (1996).

MAG will make all necessary commercial arrangements and will obtain any and all other regulatory approvals required in order to schedule and deliver power exports. All of the electricity exported by MAG will be transmitted pursuant to arrangements with utilities that own and operate existing transmission facilities and will be consistent with the export limitations and other terms and conditions contained in the existing Presidential Permits and electricity export authorizations associated with these transmission facilities. MAG will schedule its transactions with the appropriate balancing authority areas in compliance with the reliability criteria standards and guidelines established by the North American Reliability Corporation (“NERC”) and its member Regional Entities in effect at the time of the export.

In previous orders granting export authorization to electric power marketers, DOE declined to rigidly apply the information filing requirements contained in its regulations and instead used a flexible approach that takes into consideration the unique nature of power marketers, the requirements of FERC Order No. 888 and previously authorized export limit of cross-border facilities.<sup>5</sup> These same considerations demonstrate that the exports proposed by MAG will not impair or tend to impede the sufficiency of electric supplies in the U.S. or the regional coordination of electric utility planning or operations.

## **VI. COMPLIANCE WITH CONDITIONS AND PROCEDURES**

MAG proposes to abide by the general conditions consistent with DOE’s previous grants of authorizations to power marketers as set forth in its previous orders, as described herein. From time to time, MAG will enter into agreements with third parties which involve the export of electric

---

<sup>5</sup> See e.g. *NorAm Energy Services, Inc.*, Order No. EA-105-CN (Aug. 16, 1996); *MidCon Power Services Corp.*, Order No. EA-114 (July 15, 1996); *USGen Power Services*, No. EA-112 (June 27, 1996); *CNG Power Services Corp.*, Order No. EA-110 (June 20, 1996); *North American Energy Conservation, Inc.*, Order No. EA-103 (May 30, 1996).

power from the United States into Mexico. Exports made by MAG will not exceed the export limits for the facilities, or otherwise cause a violation of the terms and conditions set forth in the export authorizations for each. With regard to specific transactions, MAG will provide written evidence to DOE that it has secured sufficient transmission service for the delivery of power to the border. When scheduling the delivery of power, MAG will comply with the applicable NERC reliability standards. For each calendar year, MAG will provide DOE with reports indicating the gross amount of electricity delivered to Mexico, consideration received during each month, and the maximum hourly rate of transmission, as well as any additional annual reports.

## **VII. VERIFICATION, REQUIRED COPIES, AND FEE**

Verification executed by authorized representatives of MAG in accordance with 10 C.F.R. § 205.302(h) is enclosed with the Application. In accordance with the requirements of 10 C.F.R. § 205.307, and DOE’s directions, five (5) copies of the Application are being provided to the Department. In accordance with the requirements of 10 C.F.R. § 205.309, a copy of this application will be provided to the Secretary of the Federal Energy Regulatory Commission. Payment in the amount of \$500.00 has been submitted through Pay.gov on March 21, 2022.

## **VIII. REQUIRED EXHIBITS**

The following information is provided pursuant to the required exhibits as set forth in DOE regulations 10 C.F.R. § 205.303:

Exhibit A	Transmission Agreements	Not Applicable
Exhibit B	Opinion of Counsel	Attached
Exhibit C	Transmission Facilities	List of international transmission facilities submitted in lieu of a map
Exhibit D	Designation of Agent	Attached

Exhibit E	Statement of Corporate Relationship	Not Applicable
Exhibit F	Operating Procedures	Not Applicable
Exhibit G	FERC Market Based Rate Authority	Attached – FERC order granting MAG Market-Based Rate Authorization

**X. CONCLUSION**

WHEREFORE, MAG respectfully requests that DOE grant this application for renewal of its blanket authorization to export power from the United States to Mexico, for a period of five (5) years, with such authorization to be effective as of August 1, 2022.

Respectfully submitted,



Ruta Kalvaitis Skučas, Esq.  
Maeve C. Tibbetts, Esq.  
K&L Gates LLP  
1601 K St N.W.  
Washington, D.C. 20006  
Telephone: (202) 778-9210  
[ruta.skucas@klgates.com](mailto:ruta.skucas@klgates.com)

**Attorneys for MAG Energy Solutions,  
Inc.**

March 22, 2022

## VERIFICATION

I, Simon Pelletier, being authorized to execute this verification and having knowledge of the matters set forth in this Application of MAG Energy Solutions, Inc., hereby verify that the contents thereof are true and correct to the best of my knowledge and belief.



---

Simon Pelletier  
CEO  
MAG Energy Solutions, Inc.



Name of Notary Public (Dominique Charbonneau)  
Notary Public, 213897  
My commission expires: 02/21/2025

**EXHIBIT A – TRANSMISSION AGREEMENTS**

*MAG has not entered into any transmission agreements at this time.*

**EXHIBIT B – OPINION OF COUNSEL**

March 22, 2022

Ruta Kalvaitis Skučas  
[Ruta.skucas@klgates.com](mailto:Ruta.skucas@klgates.com)

T +1 202 778 9210  
F +1 202 778 9100

Mr. Christopher Lawrence  
Department of Energy  
Office of Electricity Deliverability and Energy  
Reliability  
OE-20, Room 8G-024  
1000 Independence Avenue, S.W.  
Washington, DC 20585

**Re: Application of MAG Energy Solutions, Inc. for Renewal of Authorization to Export  
Electricity to Mexico**

Dear Mr. Lawrence:

Pursuant to 10 C.F.R. § 205.303(b), I hereby provide a legal opinion regarding the corporate powers of MAG Energy Solutions, Inc. and its affiliates MAG Energy Europe Inc., MMA Energy NZ Limited, MAG Energy B.V, and MMA Energy México, S.A. de C.V. (collectively “MAG” or “Applicant”) to export electricity to Mexico. I have examined the Certificate of Incorporation of MAG, as well as relevant amendments thereto. Based on my review of those documents and representations provided to me by authorized representatives of MAG, it is my opinion that:

1. The import and export of electricity contemplated by this Application is within the corporate powers of the Applicant; and
2. To the best of my knowledge and belief, the Applicant. has directed its officers and agents to take all necessary steps to comply with all applicable state and federal laws in connection with the actions to be taken under the Application.

I am opining here only as to the federal laws of the United States, and laws of relevant states within the United States. I express no opinion as to the laws of any other jurisdiction. I am not assuming any obligation to review or update this opinion should the law or existing facts or circumstances change. This opinion is provided by me as counsel to MAG solely to you for your exclusive use and is not to be made available or relied upon by any other person or entity without my prior written authorization.

Respectfully submitted,



Ruta Kalvaitis Skučas  
**Counsel for MAG Energy Solutions, Inc.**

**EXHIBIT C – INTERNATIONAL TRANSMISSION FACILITIES**

**At the U.S.-Mexico Border  
Authorized for Use by Third Party Transmitters**

<b>Present Owner</b>	<b>Location</b>	<b>Voltage</b>	<b>Presidential Permit No.</b>
AEP Texas Inc.	Brownsville, TX	138kV	PP-425
		69kV	PP-425
	Laredo, TX	138kV	PP-423
		230kV	PP-423
	Eagle Pass, TX	138kV	PP-424
Baja California Power, Inc.	Imperial Valley, CA	230kV	PP-234
Comision Federal de Electricidad	Falcon Dam, TX	138kV	N/A
	Redford, TX	7.2kV	PP-51
	Presidio, TX	13.8kV	PP-03
El Paso Electric Company	Diablo, NM	115kV	PP-92
	Ascarate, TX	115kV	PP-48
Generadora del Desierto – WAPA	San Luis, AZ	230kV	PP-304 <sup>6</sup>
San Diego Gas & Electric Company	Miguel, CA	230kV	PP-68
	Imperial Valley, CA	230kV	PP-79
Sharyland Utilities, Inc.	McAllen, TX	138kV	PP-285
Nogales Transmission	Nogales, AZ	230kV	PP-420 <sup>7</sup>

<sup>6</sup> These transmission facilities have been authorized but not yet constructed or placed into operation.

<sup>7</sup> These transmission facilities have been authorized but not yet constructed or placed into operation.

**EXHIBIT D – DESIGNATION OF AGENT AND POWER OF ATTORNEY**

**IRREVOCABLE LIMITED  
POWER OF ATTORNEY**

This IRREVOCABLE LIMITED POWER OF ATTORNEY is made on March 10, 2022 by MAG Energy Solutions, Inc. (the “Principal”), a corporation organized and existing under the Canadian Business Corporations Act, with its headquarters at 999 de Maisonneuve Boulevard West, Suite 875, Montreal, Quebec H3A 3L4.

1. Appointment. The Principal hereby appoints Ruta Kalvaitis Skučas of K&L Gates LLP, as the Principal's true and lawful agent for the limited purpose set forth below.
2. Scope of Authority. Pursuant to 10 C.F.R. § 205.303(d), Attorney Skučas shall have the limited power and authority to serve as the agent for the Principal regarding all matters related to the Principal's authorization to export electricity to Mexico as issued by the U.S. Department of Energy (“DOE”). This appointment will remain in effect for the duration of the authorization, a five-year period, and will terminate simultaneously with the expiration of the authorization granted by DOE.
3. Irrevocability. This Power of Attorney is irrevocable by the Principal.

IN WITNESS HEREOF, the Principal has caused this Power of Attorney to be duly executed on this 10th day of March, 2022.



By: \_\_\_\_\_  
Simon Pelletier  
CEO

SUBSCRIBED AND SWORN BEFORE ME, this 10<sup>th</sup> day of March, 2022.



A handwritten signature in blue ink, appearing to be "D. Charbonneau".

Name of Notary Public (Dominique Charbonneau)

Notary Public, 213897

My commission expires: 02/21/2025

**EXHIBIT E – STATEMENT OF ANY CORPORATE RELATIONSHIP  
OR EXISTING CONTRACT**

*Not Applicable*

**EXHIBIT F – OPERATING PROCEDURES**

*Not Applicable*

**EXHIBIT G – FERC MARKET BASED RATE AUTHORITY**

*FERC order granting Market-Based Rate Authorization  
Docket No.ER04-839-000, issued on August 5, 2004*

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

In Reply Refer To:  
MAG Energy Solutions, Inc.  
Docket Nos. ER04-839-000 and  
ER04-839-001  
August 5, 2004

Martin Gauthier  
MAG Energy Solutions, Inc.  
7290 Pelletier  
Brossard, Québec  
Canada, J4W 2R1

Reference: Market-Based Rate Authorization

Ladies and Gentlemen:

Pursuant to the authority delegated to the Director, Division of Tariffs and Market Development - South, under 18 C.F.R. § 375.307, the market-based rate application in the referenced docket, along with the proposed designation, is accepted for filing, effective August 25, 2004, as requested.<sup>1</sup>

On May 13, 2004, as amended July 6, 2004, you filed on behalf of MAG Energy Solutions, Inc. (MAG E.S.), an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity and energy at market-based rates. MAG E.S. requests waivers commonly given to similar market-based rate applicants.

MAG E.S. is an independent Canadian corporation with its principal place of business in Montréal, Québec. MAG E.S. intends to market electricity to wholesale customers as a power marketer. MAG E.S. is neither a subsidiary of any other company nor is it organized with any other affiliates.

You state that MAG E.S. does not currently own, operate or control any generating or transmission facilities and therefore cannot have market power. You further state that they are unable to erect barriers to entry because they do not own or control building sites for energy-related assets, interstate natural gas pipelines, engineering and construction firms, or gas distribution facilities. You also assert that

---

<sup>1</sup> Rate Schedule FERC No. 1, Original Sheet Nos. 1-3.

Docket Nos. ER04-839-000 and -2-  
ER04-839-001

MAG E.S. is not affiliated with a public utility with a franchised electric service territory, so no affiliate abuse concerns exist.

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

Your submittal satisfies the Commission's requirements for market-based rates regarding generation and transmission market power, other barriers to entry and affiliate abuse.

You intend to act as a power marketer and are not requesting approval to reassign transmission capacity. You are hereby informed that you are authorized to reassign transmission capacity pursuant to the Commission's order in *Enron Power Marketing, Inc.*, 81 FERC ¶ 61,277 (1997).

### **Waivers**

You request waiver of Part 41, Part 101, and Part 141 of the Commission's Regulations concerning accounting and reporting requirements. This waiver is granted with the exception of 18 CFR §§ 141.14 and 141.15.<sup>2</sup>

Your request for waiver of Part 45 of the Commission's Regulations regarding interlocking directorates is granted with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving the applicant. Such personnel shall file a sworn application providing his or her full name and business address and all jurisdictional interlocks, identifying the affected companies and the positions held by that person.<sup>3</sup> The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of issuances of securities or assumptions of liabilities or by the continued holding of any affected interlocks.

You request waiver of Part 34 of the Commission's Regulation regarding securities and assumption of liabilities. Since these requirements are statutory in nature they cannot be waived. However, a separate notice will be published in the Federal Register following this letter order establishing a period during which protests may be

---

<sup>2</sup> Citizens Energy Corp., 35 FERC ¶ 61,198 (1986); Citizens Power and Light Corp., 48 FERC ¶ 61,210 (1989) (*Citizens Power*); Enron Power Marketing, Inc., 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994) (*Enron*).

<sup>3</sup> *Enron*, 65 FERC ¶ 61,305.

Docket Nos. ER04-839-000 and -3-  
ER04-839-001

filed. Absent a request to be heard in opposition within the set comment period, you are authorized to issue securities and assume obligations or liabilities.<sup>4</sup>

### **Reporting Requirements**

You are required to file electronically with the Commission an Electric Quarterly Report<sup>5</sup> containing a summary of the contractual terms and conditions, which are described in attachments B and C of Order No. 2001, in every effective service agreement and detailed transaction information for effective short-term (less than one year) and long-term (one year or greater) power sales during the most recent calendar quarter. Each Electric Quarterly Report must be filed no later than the last day of the month following each calendar quarter.

If you fail to file an Electric Quarterly Report (without an appropriate request for extension), or fail to report an agreement in a report, you may forfeit your market-based rate authority requiring filing of a new application for market-based rate authority if you wish to resume making sales at market-based rates.

You are also required to file an updated market 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.

You are further required to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing in a separate report filed under the docket in which you first received market-based rate authority. These include, but are not limited to: (a) ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (b) affiliation with any entity not disclosed in the applicant's filing and that owns generation or transmission facilities or inputs to electric power production, or that has a franchised service area. You may elect to report such changes in conjunction with your updated market analysis.

### **Procedural Matters**

Your filing was noticed on May 17, 2004, with comments, protests or interventions due on or before June 3, 2004, and on July 13, 2004, with comments, protests or interventions due on or before July 28, 2004. No protests or adverse

---

<sup>4</sup> *Citizens Power*, 48 FERC ¶ 61,210; *Enron*, 65 FERC ¶ 61,305.

<sup>5</sup> 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>.

Docket Nos. ER04-839-000 and -4-  
ER04-839-001

comments were filed. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR ¶ 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicant.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR § 385.713.

Sincerely,

Steve P. Rodgers, Director  
Division of Tariffs and Market  
Development – South

Docket Nos.ER04-839-000 and -#-  
ER04-839-001

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

In Reply Refer To:  
MAG Energy Solutions, Inc.  
Docket Nos.ER04-839-000 and  
ER04-839-001  
August 5, 2004

Martin Gauthier  
MAG Energy Solutions, Inc.  
7290 Pelletier  
Brossard, Quebec  
Canada, J4W 2R1

Reference:Market-Based Rate Authorization

Ladies and Gentlemen:

Pursuant to the authority delegated to the Director, Division of Tariffs and Market Development - South, under 18 C.F.R. \* 375.307, the market-based rate application in the referenced docket, along with the proposed designation, is accepted for filing, effective August 25, 2004, as requested.[1]

On May 13, 2004, as amended July 6, 2004, you filed on behalf of MAG Energy Solutions, Inc. (MAG E.S.), an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity and energy at market-based rates. MAG E.S. requests waivers commonly given to similar market-based rate applicants.

MAG E.S. is an independent Canadian corporation with its principal place of business in Montreal, Quebec. MAG E.S. intends to market electricity to wholesale customers as a power marketer. MAG E.S. is neither a subsidiary of any other company nor is it organized with any other affiliates.

You state that MAG E.S. does not currently own, operate or control any generating or transmission facilities and therefore cannot have market power. You further state that they are unable to erect barriers to entry because they do not own or control building sites for energy-related assets, interstate natural gas pipelines, engineering and construction firms, or gas distribution facilities. You also assert that MAG E.S. is not affiliated with a public utility with a franchised electric service territory, so no affiliate abuse concerns exist.

Market-Based Rate Authorization

Your submittal satisfies the Commission's requirements for market-based rates regarding generation and transmission market power, other barriers to entry and affiliate abuse.

You intend to act as a power marketer and are not requesting approval to reassign transmission capacity. You are hereby informed that you are authorized to reassign transmission capacity pursuant to the Commission's order in Enron Power Marketing, Inc., 81 FERC \* 61,277 (1997).

Waivers

You request waiver of Part 41, Part 101, and Part 141 of the Commission's Regulations concerning accounting and reporting requirements. This waiver is granted with the exception of 18 CFR \*\* 141.14 and 141.15.[2]

Your request for waiver of Part 45 of the Commission's Regulations regarding interlocking directorates is granted with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving the applicant. Such personnel shall file a sworn application providing his or her full name and business address and all jurisdictional interlocks, identifying the affected companies and the positions held by that person.[3] The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission

approval of issuances of securities or assumptions of liabilities or by the continued holding of any affected interlocks.

You request waiver of Part 34 of the Commission's Regulation regarding securities and assumption of liabilities. Since these requirements are statutory in nature they cannot be waived. However, a separate notice will be published in the Federal Register following this letter order establishing a period during which protests may be filed. Absent a request to be heard in opposition within the set comment period, you are authorized to issue securities and assume obligations or liabilities.[4]

#### Reporting Requirements

You are required to file electronically with the Commission an Electric Quarterly Report[5] containing a summary of the contractual terms and conditions, which are described in attachments B and C of Order No. 2001, in every effective service agreement and detailed transaction information for effective short-term (less than one year) and long-term (one year or greater) power sales during the most recent calendar quarter. Each Electric Quarterly Report must be filed no later than the last day of the month following each calendar quarter.

If you fail to file an Electric Quarterly Report (without an appropriate request for extension), or fail to report an agreement in a report, you may forfeit your market-based rate authority requiring filing of a new application for market-based rate authority if you wish to resume making sales at market-based rates.

You are also required to file an updated market 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.

You are further required to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing in a separate report filed under the docket in which you first received market-based rate authority. These include, but are not limited to: (a) ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (b) affiliation with any entity not disclosed in the applicant's filing and that owns generation or transmission facilities or inputs to electric power production, or that has a franchised service area. You may elect to report such changes in conjunction with your updated market analysis.

#### Procedural Matters

Your filing was noticed on May 17, 2004, with comments, protests or interventions due on or before June 3, 2004, and on July 13, 2004, with comments, protests or interventions due on or before July 28, 2004. No protests or adverse comments were filed. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR \* 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicant.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR \* 385.713.

Sincerely,

Steve P. Rodgers, Director  
Division of Tariffs and Market  
Development - South

## Footnotes

[1] Rate Schedule FERC No. 1, Original Sheet Nos. 1-3.

[2] Citizens Energy Corp., 35 FERC \* 61,198 (1986); Citizens Power and Light Corp., 48 FERC \* 61,210 (1989) (Citizens Power); Enron Power Marketing, Inc., 65 FERC \* 61,305 (1993), order on reh'g, 66 FERC \* 61,244 (1994) (Enron).

[3] Enron, 65 FERC \* 61,305.

[4] Citizens Power, 48 FERC \* 61,210; Enron, 65 FERC \* 61,305.

[5] 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>.