

[Docket Nos. ER03-341-000 and ER03-342-000]

Take notice that on December 26, 2002, Calpine PowerAmerica—CA, LLC tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

*Comment Date:* January 16, 2003.

### 13. Aquila, Inc.

[Docket No. ER03-344-000]

Take notice that on December 27, 2002, Aquila, Inc. (Aquila), filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, and part 35 of the Commission Regulations, 18 CFR part 35, an Interconnection Agreement between Aquila, Inc. d/b/a WestPlains Energy-Kansas and Russell Municipal Power and Light dated as of December 9, 2002. The Interconnection Agreement is filed as Service Agreement No. 104 to Aquila FERC Electric Tariff, Third Revised Volume No. 26.

*Comment Date:* January 17, 2003.

### 14. New England Power Pool

[Docket No. ER03-345-000] Take notice that on December 27, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted changes to Appendix E to Market Rule 1 (Appendix E), entitled "Load Response Program." Appendix E has been revised to change the basis for allocating to Participants the costs of the NEPOOL Load Response Program from Load Obligation to Network Load. NEPOOL has requested that the proposed changes become effective February 25, 2003 for transactions on and after the applicable effective dates set forth in Market Rule 1 and Appendix E (the SMD Effective Date and the effective date for the Day-Ahead Demand Response Program).

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

*Comment Date:* January 17, 2003.

### Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

*Deputy Secretary.*

[FR Doc. 03-296 Filed 1-3-03; 8:45 am]

BILLING CODE 6717-01-P

### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7435-9]

#### Availability of FY 01 Grant Performance Reports for State of North Carolina and Memphis-Shelby County, Tennessee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of grantee performance evaluation reports.

**SUMMARY:** EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of the state air pollution control program at North Carolina Department of Environment and Natural Resources, and the local program at Memphis-Shelby County Health Department, Tennessee. These evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection. Evaluations for the other

seven states and 15 local governments which have air pollution control programs were published November 18, 2002.

**ADDRESSES:** The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW, Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

**FOR FURTHER INFORMATION CONTACT:** Rayna Brown (404) 562-9093. She may be contacted at the above Region 4 address.

Dated: December 23, 2002.

Russell L. Wright, Jr.,

*Assistant Regional Administrator, Office of Policy and Management, Region 4.*

[FR Doc. 03-284 Filed 1-6-03; 8:45 am]

BILLING CODE 6560-50-P

### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7436-4]

#### Preliminary Findings of Informal Review of State of Michigan's Approved Clean Water Act Section 404 Permit Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice and request for comments.

**SUMMARY:** This document announces EPA's preliminary finding that, at this time, formal program withdrawal proceedings should not be initiated for Michigan's approved Clean Water Act section 404 permit program.

**DATES:** Comments on this document must be received in writing by March 10, 2003.

**ADDRESSES:** Written comments on today's notice may be submitted to Jo Lynn Traub, Director, Water Division, Attn: Michigan Section 404 Program Review, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. As an alternative, EPA will accept comments electronically. Comments should be sent to the following Internet Email Address: [elston.sue@epa.gov](mailto:elston.sue@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Sue Elston, Watersheds and Wetlands Branch, at the EPA address noted above or by telephone at (312) 886-6115. The Report containing EPA's preliminary findings is available via the Internet at the following location: [http://www.epa.gov/region5/water/wshednps/pdf/mi\\_404\\_program\\_review.pdf](http://www.epa.gov/region5/water/wshednps/pdf/mi_404_program_review.pdf). In addition, a hard copy of the information supporting today's notice is available for review at EPA Region 5, 77 West

Jackson Boulevard, 16th Floor, Chicago, Illinois; Library of Michigan, 702 Kalamazoo Street, Lansing, Michigan; Olson Library, Northern Michigan University, 1401 Presque Isle Avenue, Marquette, Michigan; Otsego County Library, 700 S. Otsego Avenue, Gaylord, Michigan; and at Brandner Library, Schoolcraft College, 18600 Haggerty Road, Livonia, Michigan. To arrange for access to the docket materials in Chicago, call (312) 886-6115, in Lansing call (517) 373-9489, in Marquette call (906) 227-2117, in Gaylord call (989) 732-5841, and in Livonia call (734) 462-4440.

**SUPPLEMENTARY INFORMATION:** On October 16, 1984, EPA approved the regulatory permitting program that the State of Michigan had submitted pursuant to the requirements and guidelines contained in subsections 404(g) and 404(h) of the Clean Water Act, 33 U.S.C. 1344(g) and (h). (See 49 FR 38947, October 2, 1984.) In that notice of approval, EPA noted that the Administrator was required to approve a program submitted by a state pursuant to subsection 404(g) of the CWA unless that program does not meet the requirements of subsection 404(h) of the CWA, and EPA then stated that it had determined that the program submitted by the State of Michigan met those statutory requirements. The components of the approved program are stated at 40 CFR 233.70. When EPA initially approved the program, Michigan did not have authority to carry out the program in Indian lands. EPA now concludes, as set forth more fully in the Report, that Michigan remains without authorization to carry out the program in Indian lands, which EPA defines to be the same as Indian Country as defined by statute (18 U.S.C. 1151).

The Michigan state agency authorized in 1984 to administer the approved section 404 program was the Department of Natural Resources. Later, the State of Michigan reorganized its agencies and transferred authority to administer the approved section 404 program to the Department of Environmental Quality (MDEQ). EPA approved this transfer on November 14, 1997 (62 FR 61173, November 14, 1997). The State of Michigan was the first state in the nation, and currently is one of only two states, to be authorized to administer a CWA section 404 permit program within its borders.

Recently EPA decided to perform an informal review of Michigan's approved section 404 program and the program's administration by MDEQ. EPA so decided, among other reasons, because since 1984 there have been a number of

changes to the relevant federal and state statutes and regulations, and because a body of State of Michigan judicial and administrative opinions relevant to permitting under the section 404 program had developed. In addition, in recent years EPA has received a number of comments and complaints about Michigan's administration of the approved section 404 program. Among these was the February 1997 submission by the Michigan Environmental Council and the Lone Tree Council which requested that EPA either ensure reform of Michigan's section 404 program or withdraw approval of the section 404 program. EPA responded that it was treating the February 1997 request as a petition to withdraw, and committed to performing an informal review of that petition's allegations, as provided for by 40 CFR 233.53(c)(1). See documents published at 62 FR 14846, March 28, 1997, and 62 FR 61173, 61174, November 14, 1997. The federal regulations allow EPA to conduct an informal review of allegations made in a petition to withdraw a section 404 program approval, 40 CFR 233.53(c).

In deciding to informally review Michigan's section 404 program, however, EPA decided to comprehensively review all aspects of Michigan's administration of the section 404 program—both with respect to permit processing and permit decision making and with respect to enforcement of the provisions of CWA section 404 and section 404 permits issued by MDEQ—and to comprehensively review the adequacy of Michigan's current legal authorities which establish and embody Michigan's section 404 program. Thus, EPA did not limit itself to reviewing the few matters of concern mentioned in the petition submitted by the Michigan Environmental Council and the Lone Tree Council.

The Regional Administrator of Region 5, EPA, informed the Director of MDEQ of the commencement of the section 404 program review in a letter of January 22, 1998.

To perform its program review, EPA requested that the State of Michigan provide an updated program description (40 CFR 233.11); a new Attorney General's Statement confirming that state laws and regulations provide adequate authority to administer the section 404 program and addressing the other subjects mentioned at 40 CFR 233.12; and a compilation of all current, relevant Michigan laws and regulations. The State of Michigan submitted these materials to EPA in June 1999, and submitted new and updated information to EPA between June 1999 and the date of this Notice.

As well as reviewing and analyzing the documents submitted by the State of Michigan, during its program review EPA reviewed hundreds of permitting files, enforcement files, and citizen complaint files that MDEQ generated between 1995 and 1999, visiting all thirteen MDEQ district offices and the central MDEQ office in Lansing, Michigan. EPA also conducted numerous interviews of MDEQ personnel in the field and central offices. Additionally, EPA reviewed most of MDEQ's written decisions issued in contested permitting cases between January 1994 and early 1999. The contested case decisions represent final agency action by MDEQ in matters involving individual permits processed under the approved state program. Also as part of its program review, EPA consulted with offices of the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers which interact with MDEQ during its administration of the program. Finally, during January and May of 1999 EPA held four availability sessions to receive comments from interested persons.

EPA now has completed its review and analysis of all materials. EPA has preliminarily concluded that the review findings do not warrant a recommendation to the Administrator to initiate formal program withdrawal proceedings, but do warrant corrective action on the State's part. In arriving at this conclusion, EPA analyzed whether the circumstances for program withdrawal which are set forth at 40 CFR 233.53(b) exist and, with respect to those areas of concern to EPA, whether the State of Michigan has indicated its willingness to take timely corrective actions to address EPA's concerns. In performing the program review, EPA also reviewed the criteria for initial section 404 program approval which are set forth in subsection 404(h) of the CWA.

EPA has found both deficiencies and strengths in Michigan's legal authorities establishing the approved section 404 program and in the program's administration by MDEQ. These strengths, deficiencies, and proposed corrective actions are identified in the document titled *Results of the U.S. Environmental Protection Agency Region 5 Review of Michigan Department of Environmental Quality's Section 404 Program*, and other documents that are contained in the public docket that supports this Notice. To address the deficiencies, EPA will be requesting that the State of Michigan perform certain corrective actions; EPA already has consulted with the State of Michigan about the nature of those

corrective actions. The corrective actions that EPA has identified to date are described in general terms elsewhere in this Notice and supporting documents, although those corrective actions may be modified based on future experience and the specifics of the corrective actions must still be defined and finalized. EPA expects that certain corrective actions may be implemented through regulatory action by MDEQ, but that other corrective actions will require action by the Michigan legislature. EPA and the State of Michigan also have agreed on a tentative schedule for implementing the identified corrective actions, although we expect that modifications to this schedule likely will occur in the future. If adequate corrective actions are not taken by the State of Michigan in a timely manner, EPA will reconsider whether formal withdrawal proceedings, as outlined in subsection 404(i) of the CWA and 40 CFR 233.53(c), should be commenced. A summary of the most significant findings of the program review follows.

Through its review of the State of Michigan's legal authorities, EPA has determined that the State's laws and regulations are, for the most part, consistent with section 404 of the Clean Water Act, but has identified deficiencies in a few specific areas, resulting in a preliminary conclusion by EPA that the State does not have legal authority fully consistent with section 404 of the Clean Water Act and the State's implementation of the section 404 program is not entirely consistent with the requirements of 40 CFR part 233.

The scope of regulatory jurisdiction granted to MDEQ by Michigan law is one area of concern for EPA. In many Michigan counties MDEQ has no jurisdiction over a non-contiguous wetland even if that wetland is ecologically significant or large (unless MDEQ has individually determined that the wetland has essential natural resource value). EPA acknowledges that the extent of federal CWA jurisdiction over isolated wetlands recently was limited by the United States Supreme Court decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 121 S.Ct. 675 (2001) (*SWANCC*), but the precise CWA jurisdictional limitation resulting from *SWANCC* remains unclear. For that reason EPA remains concerned that Michigan's jurisdiction over non-contiguous wetlands is narrower than is federal CWA jurisdiction over isolated wetlands, even post-*SWANCC*. The State is proposing completion of a statewide wetland inventory, which upon completion in each county, will

authorize MDEQ to assert jurisdiction over all non-contiguous wetlands in that county which are larger than five acres.

Another area of concern is that Michigan law appears to exempt a wider range of activities than does the CWA under subsection 404(f) of the CWA, including exemptions for discharges occurring as part of certain agricultural activities, discharges related to drain creation and improvement, and discharges associated with iron and copper mining tailings basins. The State has agreed to seek statutory amendments and the promulgation of administrative rules to address these issues.

EPA's examination of Michigan law included review of MDEQ's authorities and procedures for issuing permits. MDEQ issues section 404 and State permits for activities in waters of the United States under two different state statutes: Part 301 and Part 303 of the Natural Resources and Environmental Protection Act. EPA has several concerns with regard to MDEQ's permitting authority. The first concern is that MDEQ may not have clear authority to require all permit conditions required under federal law, and may not have clear authority to revoke and modify issued permits in all situations provided for by federal law. The State has agreed to promulgation of administrative rules to resolve these concerns. EPA also considered the Michigan statutory provision which directs that a permit under Part 303 shall issue within 90 days of a triggering event, and found this provision does not pose an impediment to MDEQ's proper implementation of the section 404 program.

Michigan law also fails to require that MDEQ incorporate the section 404(b)(1) guidelines (or state environmental criteria which are equivalent to the section 404(b)(1) guidelines) into its permit decision making processes. The criteria in the section 404(b)(1) guidelines as to which MDEQ-issued permits are not explicitly required to meet include application of a proper feasible and prudent alternatives analysis, application of the correct water dependency test, a bar on issuing permits which will jeopardize federally threatened or endangered species or their critical habitats, and a bar on issuing permits which will result in significant degradation of waters of the United States. The State has already promulgated administrative rules that address many of these concerns, and has agreed to promulgate rules to address the remaining issues.

EPA's review of contested case decisions issued over the years by

MDEQ's Office of Administrative Hearings found that final agency decisions frequently have failed to interpret and apply Michigan law in a manner that is consistent with the federal requirements for administering a section 404 program; the result has been the issuance of permits—which constitute section 404 permits—for activities which have not been subjected to proper analyses for water dependency, satisfaction of the section 404(b)(1) guidelines, and other federal criteria, thereby undermining the State's ability to administer a program which meets the terms of section 404(h) of the CWA. For these reasons, EPA has found that certain changes must be made to some Michigan statutory provisions and administrative rules in order to make them more clearly consistent with federal law. MDEQ has acknowledged EPA's concerns and has proposed what appear to be effective corrective actions to resolve these concerns. Some of these corrective actions already have been taken by MDEQ, while others are proposed for the future.

With regard to MDEQ's administration of the section 404 program, the program review found that, in general, MDEQ is doing a good job. MDEQ is operating its regulatory program in a manner consistent with the State Program Regulations found at 40 CFR part 233. The majority of permit files which EPA reviewed were found to contain the necessary documentation supporting the permit decision. The State's general permit program was found to be consistent with the federal requirements for general permits. MDEQ's permit application process was found to be consistent with the requirements in the federal regulations. MDEQ is including appropriate conditions in its permits to ensure compliance with the section 404(b)(1) guidelines and applicable water quality standards, and the duration of permits issued is consistent with federal requirements.

This program review did, however, identify several problems with MDEQ's administration of its section 404 permit program. The program review identified a need for MDEQ, USFWS and EPA to develop a procedure regarding how the agencies will coordinate when a potential project may have some effect on a federally threatened or endangered species or critical habitat.

The EPA has identified the need for MDEQ to modify its public notice procedures to make them consistent with 40 CFR 233.32. EPA found that MDEQ public notice procedures do not ensure that interested members of the public always have sufficient

opportunity to submit comments in response to public notices nor do the state's public notice procedures include providing public notices by mail to all interested parties, as required by the regulations. In order to partially address this concern, the state has implemented an internet based public notice system that makes all public notices available on the MDEQ website. EPA and MDEQ will be discussing additional corrective actions that need to be taken to ensure that all interested persons receive timely public notices of projects requiring CWA section 404 permits.

As part of our review of MDEQ's enforcement efforts, citizen complaint files were reviewed in all of the MDEQ district offices. Based on the annual reports prepared by MDEQ, an average of 800 citizen complaints are investigated each year. The program review found that district offices make a concerted effort to address complaints. Generally, the review found complaints were routinely followed with site inspections, which usually were made within two weeks of receipt of the complaint.

An opportunity for public participation in the State's enforcement process is required by federal law, and MDEQ has agreed to implement procedures to comply with the requirements of 40 CFR 233.41(e)(2).

This review concludes that MDEQ has maintained a satisfactory enforcement program. MDEQ has designed the enforcement program to identify unpermitted activities and initiates enforcement responses in a timely manner. Overall, Michigan's enforcement program achieves appropriate injunctive relief through wetlands restoration and wetland mitigation and obtains adequate penalties. The review of MDEQ's use of administrative consent agreements found that the agreements effectively resolved the violations at issue and resulted in additional environmental restoration and conservation of wetland.

Although there is no legal requirement that EPA receive public comment regarding the preliminary determinations of its informal review of Michigan's section 404 program, EPA has decided to accept such public comments for a period of sixty (60) days from the publication date of this notice. EPA seeks public comment on its preliminary determination that formal withdrawal proceedings not be commenced, as well as EPA's detailed findings regarding MDEQ's administration of the permitting and enforcement program and the adequacy of Michigan's legal authorities. If public comments received by EPA indicate

significant public interest in the holding of a public hearing, EPA may decide to hold such a hearing.

Dated: December 18, 2002.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 03-285 Filed 1-6-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7436-5]

### Issuance of a General Permit to the National Science Foundation for the Ocean Disposal of Man-Made Ice Piers From its Base at McMurdo Sound on Antarctica

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed permit.

**SUMMARY:** EPA is today proposing to issue a general permit under sections 102(a) and 104(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) to the National Science Foundation (NSF) for the disposal at sea of man-made ice piers from its base at McMurdo Sound on Antarctica. The NSF is the agency of the United States Government responsible for oversight of the United States Antarctic Program. The NSF currently operates three major bases in Antarctica: McMurdo Station on Ross Island, adjacent to McMurdo Sound; Palmer Station, near the western terminus of the Antarctic Peninsula; and Amundsen-Scott South Pole Station, at the geographic South Pole. McMurdo Station is the largest of the three stations, and serves as the primary logistics base for Antarctica. In order to unload supplies at McMurdo Station, ships dock at an ice pier at McMurdo Station; this man-made pier has a normal life span of three to five years. At the end of its useful life, all transportable equipment, materials, and debris are removed, the pier is cast loose from its moorings at the base and towed out to McMurdo Sound for disposal, where it melts naturally. Issuance of this general permit is necessary because the pier must be towed out to sea for disposal at the end of its useful life. This proposed general permit is intended to protect the marine environment by setting forth specific permit terms and conditions, including operating conditions during use of the pier and clean-up, with which the NSF must comply before the disposal of such ice piers would take place.

**DATES:** Written comments on this proposed general permit will be

accepted until February 6, 2003. All comments must be received or postmarked by midnight of February 6, 2003, or must be delivered by hand by the close of business of that date to the address specified below.

**ADDRESSES:** This proposed permit is identified as Docket No. OW-2002-0048. Please send an original and three copies of your comments and enclosures (including references) to the "OW-2002-0048, Comment Clerk", Water Docket (MC 4101T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries should be delivered to: EPA Water Docket, 1301 Constitution Avenue, NW., Room B-135, Washington, DC 20004. Electronic mail comments will be accepted at the e-mail address, [ow-docket@epamail.epa.gov](mailto:ow-docket@epamail.epa.gov), and must be received by close of business of the date specified above. Electronic comments must be submitted as an ASCII, WP 5.1, WP 6.1, or WP 8 file, avoiding the use of special characters and any form of encryption. Electronic comments must be identified by Docket Number OW-2002-0048. Comments and data will also be accepted on discs in ASCII, WP 5.1, WP 6.1, or WP 8 file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. To ensure that the Agency can read, understand, and therefore properly respond to comments, commenters should cite the paragraph(s) or sections in the proposed permit to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Commenters should submit any references cited in their comments. Commenters who want the Agency to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No comments submitted by facsimile transmission (fax) will be accepted. The record for this proposed permit has been established, as noted above, as Docket No. OW-2002-0048, and includes printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, 1301 Constitution Avenue, NW., Room B-135, Washington, DC 20004. For access to docket materials, call (202) 566-2426, to schedule an appointment.

**FOR FURTHER INFORMATION CONTACT:** David Redford, Chief, Marine Pollution Control Branch, Oceans and Coastal Protection Division (4504T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W.,