

DEPARTMENT OF ENERGY

Federal Energy Regulatory
CommissionOrder Revoking Market-Based Rate
Authority, Establishing Hearing and
Settlement Judge Procedures, and
Terminating Section 206 Proceeding

Issued November 3, 2005.

Before Commissioners: Joseph T. Kelliher,
Chairman; Nora Mead Brownell, and
Sueleen G. Kelly.

In the matter of: ER98-3809-000, ER97-2867-000, ER98-4685-000, ER00-105-000, ER97-512-000, ER00-861-000, ER97-2132-000, ER01-2355-000, ER00-679-000, ER98-701-000, ER01-1701-000, ER00-2945-000, ER01-2138-000, ER90-225-000, ER99-964-000, ER97-1968-000, ER05-737-000, ER98-1790-000, ER96-2624-000, ER01-2071-000, ER94-1161-000, ER94-1099-000, ER99-3098-000, ER98-2020-000, ER98-2918-000, ER96-358-000, ER01-2221-000, ER96-138-000, ER99-254-000, ER98-3233-000, ER01-666-000, ER97-382-000, ER96-918-000, ER00-1258-000, ER97-3580-000, ER02-687-000, ER96-1933-000, ER01-1078-000, ER01-2405-000, ER98-4334-000, ER01-3023-000, ER01-2129-000, ER96-1819-000, ER95-802-000, ER98-3478-000, ER00-1519-000, ER01-688-000, ER00-2306-000, ER95-784-000, ER95-295-000, ER95-232-000, ER03-1259-000, ER94-1672-000, ER02-30-000, ER01-1507-000, ER00-1781-000, ER99-801-000, ER99-1156-000, ER95-78-000, ER01-2509-000, ER02-1238-000, ER94-1593-000, ER95-192-000, ER01-352-000, ER98-2618-000, ER99-2537-000, ER97-2681-000, ER96-2892-000, ER98-1915-000, ER94-152-000, ER97-1716-000, ER01-904-000, ER98-622-000, ER02-41-000, ER98-3048-000, ER98-1125-000, ER01-1479-000, ER02-845-000, ER97-181-000, ER99-2883-000, ER95-379-000, ER03-372-000, ER01-1821-000, ER99-3275-000, ER96-2303-000, ER97-3187-000, ER96-1-000, ER01-2463-000, ER95-968-000, ER99-1876-000, ER96-404-018, ER02-809-000, ER96-1516-000, ER01-2217-002, ER96-2524-000, ER01-2694-000, ER01-373-002, ER00-494-000, ER98-1055-000, ER01-3148-000, ER01-2234-000, ER04-957-000, ER96-105-000, ER01-1709-000, ER02-1046-000, ER98-537-000, EL05-111-000; 3E Technologies, Inc., AC Power Corporation, ACN Power, Inc., AI Energy, Inc., A'Lones Group, Inc., Alrus Consulting, LLC, Atlantic Energy Technologies, I Inc., Beacon Generating, LLC, Black River Power, LLC, California Polar Power Broker, L.L.C., Callaway Golf Company, Candela Energy Corporation, Capital Energy, Inc., Chicago Electric Trading, L.L.C., Cielo Power Market, L.P., Colonial Energy, Inc., Commerce Energy Inc., Competisys LLC, Cumberland Power, Inc., Desert Power, L.P., Direct Electric Inc., Eclipse Energy, Inc., EGC 1999 Holding Company, L.P., Energy Clearinghouse Corp., Energy PM, Inc., Energy Resource Management Corp., Energy Transfer-Hanover Ventures, LP, EnergyOnline, Inc., ENMAR Corporation, Environmental Resources Trust, Inc., EWO Marketing, L.P., Exact Power Co.,

Inc., Federal Energy Sales, Inc., First Electric Cooperative Corporation, First Power, LLC, FMF Energy, Inc., Gelber Group, Inc., George Colliers, Inc., GNA Energy, LLC, Golden Valley Power Company, Hinson Power Company, LLC, Holt Company of Ohio, ICC Energy Corporation, IEP Power Marketing, LLC, INFINERGY Services, LLC, InPower Marketing Corporation, IPP Energy LLC, It's Electric & Gas, L.L.C., J. Anthony & Associates Ltd, Kaztex Energy Ventures, Inc., Kimball Power Company, Kloco Corporation, Lambda Energy Marketing Company, Longhorn Power, LP, Lumberton Power, LLC, Marquette Energy, LLC, Metro Energy Group, LLC, Michigan Gas Exchange, L.L.C., Mid-American Resources, Inc., Morrow Power, LLC, MPC Generating, LLC, National Power Exchange Corp., National Power Management Company, Natural Gas Trading Corporation, Nautilus Energy Company, Navitas, Inc., New Millennium Energy Corp., NGTS Energy Services, Nine Energy Services, LLC, North American Energy Conservation, Inc., North Atlantic Utilities Inc., North Carolina Power Holdings, LLC, North Star Power Marketing, LLC, North Western Energy Marketing, LLC, Northeast Electricity Inc., Northeast Empire L.P. #2, Northwest Regional Power, LLC, Northwestern Wind Power, LLC, Oceanside Energy, Inc., Old Mill Power Company, Peak Energy, Inc., Peak Power Generating Company, Power Dynamics, Inc., Power Management Co., LLC, Power Providers Inc., Power Systems Group, Inc., Powertec International, LLC, Pro-Energy Development LLC, Progas Power Inc., PS Energy Group, Inc., Questar Energy Trading Company, Renewable Energy Resources LLC, SEMCOR Energy, Sunrise Power Company, Symmetry Device Research, Inc., The Energy Group of America, Inc., Tiger Natural Gas, Inc., TransAlta Centralia Generation LLC, TransAlta Energy Marketing (US) Inc., TransAlta Energy Marketing Corp. (US), Travis Energy & Environment, Inc., TXU Electric Delivery Company, U.S. Power & Light, Inc., VIASYN, Inc., Walton County Power, LLC, Western Energy Marketers, Inc.

1. In this order, the Commission revokes the market-based rate authority of the companies that failed to comply with the Commission's May 31, 2005 Order¹ and the conditions under which the Commission granted them market-based rate authority. In addition, the Commission will revoke the market-based rate authority of two entities who responded to the May 31 Order, but did so in a patently deficient manner. The market-based rate tariffs of these entities are terminated effective on the date of issuance of this order. Furthermore, we will direct these entities to inform the Commission whether they have made any sales pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, and, for those entities that have made such sales or that fail to respond, we will establish

¹ 3E Technologies, Inc., 111 FERC ¶ 61,295 (2005) (May 31 Order).

hearing and settlement judge procedures to determine whether and in what amount these entities should be required to disgorge their profits from these sales. In addition, this order accepts filings notifying the Commission that certain entities were inadvertently included in the May 31 Order.²

Background

2. As a condition of receiving market-based rate authority, the Commission requires market-based rate sellers to submit an updated market power analysis every three years³ to allow the Commission to evaluate the reasonableness of their charges and to provide for ongoing monitoring of their ability to exercise market power. In the absence of an updated market power analysis, the Commission cannot exercise its statutory duty to ensure that market-based rates are just and reasonable and that market-based rate sellers continue to lack the potential to exercise market power so that market forces are in fact determining the price.

3. In the May 31 Order, the Commission announced its policy with respect to entities that have failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated or revised market power analysis. In that order, the Commission directed these market-based rate sellers to file their updated or revised market analyses within 60 days from the issuance of that order or to provide satisfactory support for why they should not be required to do so. The Commission also established a refund effective date under section 206 of the Federal Power Act (FPA) for the protection of customers.⁴

4. On June 8, 2005, in response to the May 31 Order, Questar Energy Trading Company (Questar) filed only a statement that there has been no change in the facts relied upon by the Commission when it initially granted Questar market-base rate authority.

5. On June 28, 2005, in response to the May 31 Order, Tiger Natural Gas, Inc. (Tiger) refiled its initial application for market-based rates, which it originally filed November 6, 2000.

² The Commission has also received a number of updated and revised market power analyses in response to the May 31 Order, which will be addressed in a separate order.

³ See, e.g., *Western Resources, Inc.*, 94 FERC ¶ 61,050 at 61,247 (2001); *Entergy Services, Inc.*, 58 FERC ¶ 61,234 at 61,760 (1992); *PSI Energy, Inc.*, 51 FERC ¶ 61,367 at 62,209 (1990).

⁴ 16 U.S.C. 824e (2000).

Discussion

Revocation of Market-Based Rate Authority and Termination of Market-Based Rate Tariffs

6. The entities listed in Appendix A of this order have made no filing in response to the Commission's May 31 Order. In the May 31 Order, we stated that we would revoke the market-based rate authority and terminate the market-based rate tariff of any market-based rate seller that failed to file the required updated or revised market power analysis. Accordingly, we hereby revoke the market-based rate authority of the entities identified in Appendix A of this order and terminate their market-based rate tariffs, effective on the date of issuance of this order.

7. We find that the filings submitted by Questar and Tiger do not satisfy the Commission's directive in the May 31 Order. We note that Questar did not submit any market power analysis whatsoever and instead states that there have been no changes since its market-based rate tariff was accepted on January 29, 1996. Tiger simply refiled the same initial application for market-based rate authorization that it submitted five years ago. The Commission requires that an updated market power analysis contain current information. The submissions of Questar and Tiger are patently deficient and thus fail to comply with the clear directive in the May 31 Order. Accordingly, we revoke Questar's and Tiger's market-based rate authority and terminate their market-based rate tariffs, effective on the date of issuance of this order.

8. Furthermore, any waivers and authorizations previously granted in connection with the market-based rate authority of the entities listed in Appendix A, Questar, and Tiger are no longer applicable.

Disgorgement of Profits

9. As discussed above, the May 31 Order established a refund effective date in this proceeding. If any of the entities listed in Appendix A, Questar, or Tiger made sales pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, they may be required to disgorge their profits from those sales. Accordingly, we direct the entities listed in Appendix A, Questar, and Tiger to inform the Commission within five days of the issuance of this order whether they have made such sales at market-based rates during this period. For the entities that inform the Commission that they have not made any such sales during this period, the

Commission will terminate the section 206 proceeding with respect to them and will not impose the remedy of disgorgement.

10. For any entities that inform the Commission that they have made such sales or that fail to respond, we will establish hearing and settlement judge procedures to determine whether and in what amount these entities should be required to disgorge their profits from these sales. These entities have failed to comply with the conditions of their market-based rate authorizations, namely, the obligation to file an updated market power analysis when requested to do so by the Commission. Their failure to comply with this express obligation impeded the Commission's ability to ensure that utilities do not acquire market power and that rates remain just and reasonable. Under these circumstances, we find that disgorgement of the profits earned on transactions during this period is justified.

11. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁶ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

Entities Inadvertently Included in May 31 Order

12. The inclusion in the May 31 Order of the entities listed in Appendix B of this order was inadvertent, and we hereby terminate the section 206 proceeding with regard to them.

The Commission orders:

⁵ 18 CFR 385.603 (2005).

⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's Web site contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov>—click on Office of Administrative Law Judges).

(A) The market-based rate authority of the entities listed in Appendix A, Questar, and Tiger is hereby revoked. The market-based rate tariffs of those entities are terminated effective on the date of issuance of this order and any waivers and authorizations previously granted in connection with the market-based rate authority of these entities are no longer applicable.

(B) The entities listed in Appendix A, Questar, and Tiger are directed to inform the Commission within five days of the issuance of this order whether they have made any sales pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, as discussed above.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held in Docket No. EL05-111 to determine whether and in what amount the entities listed in Appendix A, Questar, and Tiger should be required to disgorge any profits from sales made pursuant to their market-based rate tariffs after the refund effective date established in this proceeding, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 CFR 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type

evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The section 206 proceeding instituted in Docket No. EL05-111-000 is hereby terminated with regard to the entities listed in Appendix B of this order.

(H) The Secretary is directed to publish a copy of this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,
Secretary.

Appendix A

The following market-based rate sellers have failed to submit a response to the Commission's May 31 Order. As discussed above, we revoke the following entities' authority to sell power at market-based rates and terminate their electric market-based rate tariffs: 3E Technologies, Inc., AC Power Corporation, ACN Power, Inc., AI Energy, Inc., A'Lones Group, Inc., Alrus Consulting, LLC, Astra Power, LLC, Atlantic Energy Technologies, Inc., Beacon Generating, LLC, Black River Power, LLC, California Polar Power Broker, L.L.C., Callaway Golf Company, Candela Energy Corporation, Capital Energy, Inc., Chicago Electric Trading, L.L.C., Cielo Power Market, L.P., Colonial Energy, Inc., Competisys LLC, Cumberland Power, Inc., Direct Electric Inc., Eclipse Energy, Inc., EGC 1999 Holding Company, L.P., Energy Clearinghouse Corp., Energy PM, Inc., Energy Resource Management Corp., Energy Transfer-Hanover Ventures, LP, EnergyOnline, Inc., ENMAR Corporation, Environmental Resources Trust, Inc., Exact Power Co., Inc., Federal Energy Sales, Inc., First Electric Cooperative Corporation, First Power,

LLC, FMF Energy, Inc., Gelber Group, Inc., George Colliers, Inc., GNA Energy, LLC, Golden Valley Power Company, Hinson Power Company, LLC, Holt Company of Ohio, ICC Energy Corporation, IEP Power Marketing, LLC, INFINERGY Services, LLC, InPower Marketing Corporation, IPP Energy LLC, It's Electric & Gas, L.L.C., J. Anthony & Associates Ltd, Kaztex Energy Ventures, Inc., Kimball Power Company, Klocor Corporation, Lambda Energy Marketing Company, Longhorn Power, LP, Lumberton Power, LLC, Marquette Energy, LLC, Metro Energy Group, LLC, Michigan Gas Exchange, L.L.C., Mid-American Resources, Inc., Morrow Power, LLC, National Power Exchange Corp., National Power Management Company, Natural Gas Trading Corporation, Nautilus Energy Company, Navitas, Inc., New Millennium Energy Corp., NGTS Energy Services, Nine Energy Services, LLC, North American Energy Conservation, Inc., North Atlantic Utilities Inc., North Carolina Power Holdings, LLC, North Star Power Marketing, LLC, Northeast Electricity Inc., Northeast Empire L.P. #2, Northwest Regional Power, LLC, Northwestern Wind Power, LLC, Oceanside Energy, Inc., Old Mill Power Company, Peak Energy, Inc., Peak Power Generating Company, Power Dynamics, Inc., Power Management Co., LLC, Power Providers Inc., Power Systems Group, Inc., Powertec International, LLC, Pro-Energy Development LLC, Progas Power Inc., PS Energy Group, Inc., Renewable Energy Resources LLC, SEMCOR Energy, Symmetry Device Research, Inc., The Energy Group of America, Inc., Travis Energy & Environment, Inc., U.S. Power & Light, Inc., VIASYN, Inc., and Western Energy Marketers, Inc.

Appendix B

The following market-based rate sellers were inadvertently included on the May 31 Order. We therefore terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to these entities: Commerce Energy, Inc., Desert Power, L.P., EWO Marketing, L.P., MPC Generating, LLC, NorthWestern Energy Marketing, L.L.C., Sunrise Power Company, LLC, TransAlta Centralia Generation LLC, TransAlta Energy Marketing (US) Inc., TransAlta Energy Marketing Corp. (US), TXU Electric Delivery Company, and Walton County Power, LLC.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-7996-4]

Public Water System Supervision Program Revisions for the State of Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Michigan is revising its approved Public Water System Supervision Program. Michigan has: revised its administrative penalty authority for public water systems; adopted the Consumer Confidence Report Rule, which requires annual drinking water quality reports from all community water systems; adopted the Interim Enhanced Surface Water Treatment Rule, which will help improve control of microbial pathogens in drinking water; adopted the Stage 1 Disinfectants and Disinfection Byproducts Rule, which will set new requirements to limit the formation of chemical disinfection byproducts in drinking water; and adopted the Public Notification Rule, which revises the general public notification regulations (sets requirements for public water systems to follow regarding the form, manner, frequency, and content of a public notice).

EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these program revisions. This approval action does not extend to public water systems (PWSs) in Indian Country, as that term is defined in 18 U.S.C. 1151. By approving these rules, EPA does not intend to affect the rights of federally recognized Indian tribes in Michigan, nor does it intend to limit existing rights of the State of Michigan.

Any interested party may request a public hearing. A request for a public hearing must be submitted by December 14, 2005, to the Regional Administrator at the EPA Region 5 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by December 14, 2005, EPA Region 5 will hold a public hearing.

If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on December 14, 2005. Any request for a public hearing shall include the following