

107 FERC ¶ 61,014  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Automated Power Exchange, Inc.

Docket No. ER04-556-000

ORDER ON NOTICES OF TERMINATION

(Issued April 13, 2004)

1. This order accepts in part and rejects in part Automated Power Exchange, Inc.'s (APX) seven Notices of Termination to terminate its electricity market tariffs on file with the Commission, effective April 15, 2004. This action will benefit customers by ensuring that APX remains bound to pay any refunds in the California markets, or take any other required steps, related to jurisdictional sales made under the affected rate schedule.

**I. Background**

2. In 1998, in conjunction with the restructuring of the electricity market in California, APX began operating an electricity market in California. The Commission held that APX was a "public utility" under the Federal Power Act because of its role in forming the transactions that occurred in the APX electricity market.<sup>1</sup> Since 1998, APX has filed electricity market tariffs for seven markets: California, Mid-Columbia, Midwest, New England, New York, Palo Verde and the PJM Interconnection, L.L.C. (PJM).<sup>2</sup>

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<sup>1</sup> Automated Power Exchange, Inc., 82 FERC ¶ 61,287, reh'g denied, 84 FERC ¶ 61,020 (1998), aff'd, Automated Power Exchange, Inc. v. FERC, 204 F.3d 1144 (2000).

<sup>2</sup> FERC Electric Tariff Original Volume No. 10 (California); Rate Schedule FERC No. 3 (Mid-Columbia); FERC Electric Tariff Original Volume No. 5 (Midwest); FERC Electric Tariff First Revised Volume No. 7 (New England); FERC Electric Tariff First Revised Volume No. 1 (New York); FERC Electric Tariff Original Volume No. 9 (Palo Verde); and FERC Electric Tariff First Revised Volume No. 8 (PJM).

3. On February 13, 2004, pursuant to section 35.15 of the Commission's Regulations, 18 C.F.R. § 35.15 (2003), APX filed seven Notices of Termination to terminate its electricity market tariffs on file with the Commission, effective April 15, 2004. APX states that the volume of transactions in APX's electricity markets is so low that it is no longer economical for APX to continue to operate those markets. It contends that the termination of the APX tariffs will not prejudice any person or harm any markets because of the low volume of transactions and no participant has notified APX of any objection to the termination of its markets.

4. APX states that it will continue to be a non-jurisdictional scheduling coordinator in the California Independent System Operator Corporation market and other markets.<sup>3</sup> APX adds that termination of its electricity market tariffs will not affect its provision of scheduling services or its scheduling customers' rights and obligations in connection with those scheduling activities.

## II. Procedural Matters

5. Notice of APX's filing was published in the Federal Register, 69 Fed. Reg. 8,637 (2004), with protests or interventions due on March 5, 2004. None was filed.

## III. Discussion

6. We will accept the Notices of Termination of Rate Schedule FERC No. 3 (Mid-Columbia); FERC Electric Tariff Original Volume No. 5 (Midwest); FERC Electric Tariff First Revised Volume No. 7 (New England); FERC Electric Tariff First Revised Volume No. 1 (New York); FERC Electric Tariff Original Volume No. 9 (Palo Verde); and FERC Electric Tariff First Revised Volume No. 8 (PJM) without suspension or hearing, effective April 15, 2004.

7. We will reject APX's Notice of Termination of FERC Electric Tariff Original Volume No. 10 (California) without prejudice to APX refileing this notice after the date on which APX has settled all amounts owed and owing as part of the California refund proceeding.

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<sup>3</sup> APX notes that the Commission has held that such scheduling services are not subject to the Commission's jurisdiction. *Washington Water Power Co.*, 74 FERC ¶ 61,033 at 61,083-84 (1996), reh'g denied, 81 FERC ¶ 61,164 (1997); *Idaho Power Co.*, 74 FERC ¶ 61,149 (1996).

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The Commission orders:

(A) The Notices of Termination are hereby accepted in part, to become effective on April 15, 2004, as discussed in the body of this order.

(B) The Notice of Termination of FERC Electric Tariff Original Volume No. 10 is hereby rejected without prejudice, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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Automated Power Exchange, Inc.  
Tariff and Rate Schedule Designations

1. First Revised Sheet No. 1, under FERC Rate Schedule No. 3  
(Cancels Original Sheets as supplemented under Rate Schedule No. 3)
2. First Revised Sheet No. 1, under FERC Electric Tariff Original Volume No. 5  
(Cancels Original Sheet Nos. 1-12 under Tariff No. 5)
3. First Revised Sheet No. 1, under FERC Electric Tariff, First Revised Volume  
No. 7 (Cancels Original Sheet Nos. 1-10 under First Revised Volume No. 7)
4. First Revised Sheet No. 1, under FERC Electric Tariff, First Revised Volume  
No. 1 (Cancels Original Sheet Nos. 1-13 under First Revised Volume No. 1)
5. First Revised Sheet No. 1, under FERC Electric Tariff Original Volume No. 9  
(Cancels Original Sheet Nos. 1-9 under Tariff No. 9)
6. First Revised Sheet No. 1, under FERC Electric Tariff, First Revised Volume  
No. 8 (Cancels Original Sheet Nos. 1-11 under First Revised Volume No. 8)