

108 FERC ¶ 61,319
FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

September 29, 2004

In Reply Refer To:
East Texas Electric Cooperative, Inc.
Docket No. ER04-1067-000

Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, DC 20007

Attention: Ms. Christine C. Ryan
Counsel for East Texas Electric Cooperative, Inc.

Reference: Market-Based Rate Authorization

Dear Ms. Ryan:

1. On July 30, 2004, East Texas Electric Cooperative, Inc. (ETEC) filed 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. It also includes the Commission's market behavior rules.¹ ETEC's submittal, as discussed below, complies with the Commission's requirements for market-based rates and is accepted for filing, effective September 30, 2004, as requested.²

2. ETEC is a not-for-profit, member-owned electric cooperative organized and existing under the laws of Texas. ETEC serves three members, Northeast Electric Cooperative (NTEC), Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T), and Tex-La Electric Cooperative of Texas, Inc. (Tex-La). ETEC provides power to its members through partial requirements contracts, unit power contracts, and its 7.13 percent

¹ *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).

² Rate Schedule FERC No. 5, Original Sheet Nos. 1-3. Please note that ETEC incorrectly designated this Rate Schedule as No. 3, however Rate Schedule FERC No. 3 already exists, therefore this Rate Schedule is being redesignated as stated herein.

ownership interest in the 842 MW Independence Steam Electric Station, Unit 2, located near Newark, Arkansas. ETEC currently purchases power from Entergy Services, Inc., Southwestern Electric Power Company (SWEPCO), Entergy Gulf States, and American Electric Power Service Corporation. ETEC serves load in the Entergy and AEP-West control areas.

3. In the mid-1990s, ETEC constructed approximately 156 miles of 138 kV transmission lines at two separate projects: the Crockett-Jacksonville 138 kV loop and the Burgess to Crow Tap 138 kV loop. In addition, Tex-La owns 43 miles of transmission lines. The distribution cooperatives that are served by ETEC's three members own an additional 1,065 miles of transmission lines.

4. ETEC has submitted an interim generation market power analysis based on the Commission's two indicative screens (pivotal supplier screen and wholesale market share screen). ETEC states that it passes both screens without considering simultaneous import capability.

5. ETEC states that it has an open access transmission tariff (OATT) on file with the Commission and therefore claims there should be no transmission market power concerns.³ ETEC states that Tex-La and several distribution cooperatives that ETEC's members serve also own transmission. ETEC notes that these cooperatives are not under this Commission's jurisdiction, and therefore they do not have OATTs on file with the Commission. ETEC states that ETEC and its members will accommodate all lawful requests to interconnect or for transmission service across their transmission systems. ETEC believes that this commitment mitigates any transmission market power concerns.

6. ETEC states it is unable to erect barriers to entry because ETEC does not own and is not affiliated with any entities that could impose barriers to entry into the electric power market through their ownership or control of any resources that could be essential to market entry by competitors.

7. Lastly, ETEC asserts there should be no concerns with affiliate abuse or reciprocal dealing because the Commission previously noted that affiliate abuse and reciprocal dealing are not a concern where a member-owned cooperative seeks authority to sell power at market-based rates on behalf of its member-owners.⁴

³ ETEC's OATT was filed in Docket No. OA97-652-000 and was accepted by unpublished delegated letter order dated February 24, 1999 in Docket No. OA96-156-001, *et al.*

⁴ ETEC cites *Competitive Utility Services Co.*, 79 FERC ¶ 61,052 (1997).

Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 358.214 (2004), an entity's filing of a notice of intervention or a timely unopposed motion to intervene in a proceeding makes it a party to that proceeding. None was filed.

Market-Based Rate Authorization

9. 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 new interim generation market power screens to be applied to market-based rate applications pending the outcome of a rulemaking proceeding regarding potential new analytical methods for assessing markets and market power.⁵ The Commission has reviewed ETEC's generation market power screens for the AEP-West and Entergy control area markets. ETEC passes both the pivotal supplier and wholesale market share screens in those markets.

10. In addition, ETEC's submittal satisfies the Commission's requirements for market-based rates regarding transmission market power, other barriers to entry and affiliate abuse. The Commission accepts ETEC and its member's commitment to accommodate all lawful requests to interconnect or for transmission service across their transmission systems.

Waivers

11. ETEC requests waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16. Consistent with granting such waivers for similar entities, this waiver is granted.

Reporting Requirements

12. 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

⁵ See *Market-Based Rates For Public Utilities*, 107 FERC ¶ 61,019 (2004).

greater) market-based power sales during the most recent calendar quarter.⁶ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁷ Accordingly, ETEC must file its first Electronic Quarterly Report no later than 30 days after the first quarter ETEC's rate schedule is in effect.⁸

13. ETEC is 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.

14. ETEC is directed 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. These characteristics include, but are not limited to: (1) ownership of generating or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area.

By direction of the Commission.

Linda Mitry,
Acting Secretary.

⁶ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Regs. & Stats. ¶ 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>.

⁷ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b .

⁸ Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in a 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.