

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Electric Quarterly Reports	Docket No. ER02-2001-004
Bravo Energy Resources, LLC	Docket No. ER04-0292-000
Core Equities, Inc.	Docket No. ER04-0646-000
HC Power Marketing	Docket No. ER02-0388-000
Maxim Energy Partners, LLC	Docket No. ER03-0827-000
Mountainview Power Company	Docket No. ER98-4301-000
Mt. Carmel Cogen, Inc.	Docket No. ER02-1324-000
Phoenix Energy Associates, L.L.C.	Docket No. ER03-0182-000
USP&G (Pennsylvania), Ltd.	Docket No. ER03-0261-000

ORDER ON INTENT TO REVOKE MARKET-BASED RATE AUTHORITY

(Issued December 22, 2005)

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000), and 18 C.F.R. Part 35 (2005), require, among other things, that all rates, terms and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, which established revised public utility filing requirements for rates, terms and conditions of jurisdictional services, the Commission required public utilities, including power marketers, to file, among other things, Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.¹

2. Commission staff review of the Electric Quarterly Report submittals has revealed that a number of public utilities that previously had been granted authority to sell power at

¹*Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002), *reh'g denied*,² Order No. 2001-A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No.2001-B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002).

market-based rates have failed to file Electric Quarterly Reports in 2005. Accordingly, this order notifies those public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements.

3. In Order No. 2001, the Commission stated that,

[i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.^[2]

4. The Commission further stated that,

[o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.^[3]

5. Pursuant to these requirements, the Commission has revoked or withdrawn the market-based rate tariffs of several market-based rate sellers that failed to submit their Electric Quarterly Report.⁴

6. Commission staff review of the Electric Quarterly Report submittals has identified a number of public utilities that previously had been granted authority to sell power at market-based rates that have failed to file Electric Quarterly Reports. Commission staff

²Order No. 2001, at P 222.

³*Id.* at P 223.

⁴ See *Intent to Revoke Market-Based Rate Authority*, 107 FERC ¶ 61,310 (2004); *Notice of the Revocation of Market-Based Rate Tariffs, et al.*, 69 Fed. Reg. 57,679 (September 27, 2004); *Intent to Withdraw Market-Based Rate Authority*, 104 FERC ¶ 61,139 (2003); and *Order on Market-Based Rates*, 105 FERC ¶ 61,219 (2003).

has made a concerted effort to contact the non-filing utilities listed in the caption to remind them of their regulatory obligations. None of the public utilities listed in the caption of this order has met those obligations.⁵

7. Accordingly, this order notifies those public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

8. In addition, the above-captioned companies' failure to comply with their Electric Quarterly Report filing requirements provides a basis for the Commission to institute a proceeding under section 206 of the FPA, to determine whether these companies may continue to make wholesale power sales at market-based rates and whether any refunds would be appropriate. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, as recently amended by section 1285 of the Energy Policy Act of 2005,⁶ requires that the Commission establish a refund effective date that is no earlier than the date of publication of notice of its initiation of the investigation, but no later than five months subsequent to that date. Consistent with our general policy,⁷ we will set the refund effective date as the date publication of notice of its initiation of the investigation.

9. In the event that any of the above-captioned market-based rate sellers have already filed their required Electric Quarterly Reports in compliance with the Commission's

⁵ According to the Commission's records, the companies subject to this order last filed their Electric Quarterly Reports in the quarters and years shown below:

Bravo Energy Resources, LLC	Docket No. ER04-0292-000	2004, Quarter 3
Core Equities, Inc.	Docket No. ER04-0646-000	2004, Quarter 3
HC Power Marketing	Docket No. ER02-0388-000	2003, Quarter 4
Maxim Energy Partners, LLC	Docket No. ER03-0827-000	2004, Quarter 1
Mountainview Power Company	Docket No. ER98-4301-000	2002, Quarter 4
Mt. Carmel Cogen, Inc.	Docket No. ER02-1324-000	2002, Quarter 4
Phoenix Energy Associates, L.L.C.	Docket No. ER03-0182-000	2004, Quarter 2
USP&G (Pennsylvania), Ltd.	Docket No. ER03-0261-000	2003, Quarter 4

⁶ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

⁷ See, e.g., *Seminole Electric Cooperative, Inc. v. Florida Power & Light Co.*, 65 FERC ¶ 61,413 at 63,139 (1993); *Canal Electric Co.*, 46 FERC ¶ 61,153 at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

requirements, its inclusion herein is inadvertent. Any such market-based rate seller is directed, within 15 days of the date of issuance of this order, to identify itself and provide details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

10. If any of the above-captioned market-based rate sellers does not wish to continue having market-based rate authority and does not foresee entering into any contracts to sell power at market-based rates, it may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel its market-based rate tariff and relieve it of its obligation to submit further Electric Quarterly Reports.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file all delinquent Electric Quarterly Reports. If a public utility fails to make this filing, the Commission will revoke that public utility's authority to sell power at market-based rates and terminate its electric market-based rate tariff. Upon expiration of the filing deadline in this order, the Secretary shall promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked.

(B) 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 section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding to determine whether the above-captioned companies may continue to make wholesale power sales at market-based rates and whether any refunds would be appropriate, as discussed in the body of this order.

(C) The Secretary is hereby directed to publish this order in the *Federal Register*.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.