

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

The Empire District Electric Company

Docket Nos. ER06-1312-000
ER06-1312-001
ER99-1757-012
EL05-67-002

ORDER ACCEPTING REVISED TARIFF SHEETS

(Issued November 13, 2006)

1. On July 31, 2006, The Empire District Electric Company (Empire) filed a revised market-based rate tariff sheet to state that Empire has authority to sell imbalance energy into the Southwest Power Pool, Inc. (SPP) energy imbalance market.¹ In its July 31, 2006 filing, Empire also filed revised tariff sheets² to remove the Commission's market behavior rules. The Commission accepts these tariff revisions removing the Commission's market behavior rules because such removal is in compliance with the Commission's February 16, 2006 Order revising market-based rates tariffs and authorizations.³

2. On September 14, 2006, Empire filed a revised market-based rate tariff sheet⁴ in compliance with the Commission's order on Empire's mitigation proposal,⁵ superseding, for the most part, Empire's July 31, 2006 filing. In this order, the Commission accepts

¹ FERC Electric Tariff, First Revised Vol. No. 3, Third Revised Sheet No. 1 (Superseding Second Revised Sheet No. 1).

² FERC Electric Tariff, First Revised Volume No. 3, Original Sheet Nos. 7 and 8.

³ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 (2006).

⁴ FERC Electric Tariff, First Revised Vol. No. 3, Fourth Revised Sheet No. 1 (superseding Third Rev. Sheet No. 1).

⁵ *The Empire District Electric Company*, 116 FERC ¶ 61,150 (2006) (August 15 Order).

Empire's September 14, 2006 proposed revisions to paragraph 2 of its market-based rate tariff with regard to sales of imbalance energy into the SPP⁶ to become effective the date which the SPP initiates the energy imbalance market. The Commission also accepts Empire's proposed revisions to its market-based rate tariff filed in its September 14, 2006, filing regarding Empire's mitigation proposal to become effective on May 16, 2005, which is the refund effective date in this proceeding.

Background

3. In an order issued March 3, 2005, acting on Empire's updated market power analysis,⁷ the Commission found that Empire failed the wholesale market share screen for each of the four seasons considered in Empire's control area. Accordingly, the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)⁸ to investigate generation market power in the Empire control area and to determine whether Empire may continue to charge market-based rates within the Empire control area.

4. On May 2, 2005, as supplemented on January 9, 2006, Empire submitted a mitigation proposal to eliminate its ability to exercise market power within its control area. Empire proposed to amend its market-based rate tariff to prohibit sales that sink in its control area. Specifically, Empire proposed to amend section 3 of its market-based rate tariff to provide that no Mitigated Sales shall be made under the tariff. The term "Mitigated Sales" is defined in the tariff as physical sales of power and/or energy that sink in the control area presently operated by Empire within SPP. Empire stated that Mitigated Sales do not include sales into markets administered by the SPP. Empire stated that Mitigated Sales for periods of one year or less would be made under Schedules A or C, as applicable, of Western Systems Power Pool (WSPP) Rate Schedule FERC No. 6, as it may be amended from time to time (WSPP Agreement).

5. On July 31, 2006, Empire filed a revised market-based rate tariff sheet to state that Empire has authority to sell imbalance energy into the SPP energy imbalance market at rates established by agreement between the purchaser and Empire. The revised tariff sheet tracks Empire's May 2, 2005 mitigation proposal, providing that no Mitigated Sales shall be made under the tariff (defining Mitigated Sales to exclude sales by Empire into

⁶ FERC Electric Tariff, First Revised Volume No. 3, Third Revised No. 1 (Superseding Second Revised Sheet No. 1) and Cancels Original Sheet Nos. 7 and 8. FERC Electric Tariff, First Revised Volume No. 3, Fourth Revised Sheet No. 1 (Superseding Third Revised Sheet No. 1).

⁷ *The Empire District Electric Company*, 110 FERC ¶ 61,214 (2005) (March 3, 2005 Order).

⁸ 16 U.S.C. § 824e (2000).

the SPP energy imbalance market, even if such sales sink in the Empire control area) and the May 2 mitigation proposal that Mitigated Sales for periods of one year or less will be made under Schedules A or C, as applicable, of WSPP Rate Schedule FERC No. 6. In addition, the revised tariff sheet states that Mitigated Sales of greater than one year shall not be made prior to Empire first submitting a separate filing and receiving Commission authorization of the transaction under section 205 of the FPA.⁹ Additionally, consistent with the Commission's decision to rescind Market Behavior Rules 2 and 6 and to codify Rules 1, 2, 4, and 5, Empire also includes redlined tariff sheets showing the removal of the market behavior rules from its tariff.¹⁰

6. On August 15, 2006, the Commission accepted Empire's proposal to revise its tariff to eliminate Empire's ability to exercise market power within Empire's control area. However, the Commission rejected the specific tariff language that Empire proposed to use to implement the sales prohibition in Empire's control area. The Commission ordered Empire to make a compliance filing to provide that service under its market-based rate tariff applies only to sales outside the Empire control area and to remove provisions in its proposed tariff stating that Mitigated Sales do not include sales into markets administered by SPP. The Commission noted that Empire provided no explanation of the basis for excluding sales into markets administered by SPP. The Commission also required Empire to remove references to its cost-based mitigation from its market-based rate tariff.¹¹ Finally, Empire was directed to state whether it accepts certain modifications to its mitigation proposal pertaining to Empire's use of the WSPP Agreement.

7. In response to the August 15 Order, on September 14, 2006, Empire filed a revised tariff that, for the most part, supersedes its July 31, 2006 filing. The September 14, 2006 filing provides that service under the tariff applies only to sales outside the Empire control area. Empire also removes the proposed tariff language that provides that Mitigated Sales do not include sales into markets administered by SPP, removes all references to its cost-based WSPP Agreement mitigation proposal and revised its tariff to make it applicable to all sales in the SPP energy imbalance market, even if title transfers

⁹ Consistent with the order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,108 (2004) (April 14 Order), the Commission "require[s] all long-term sales (one year or more) into any market where the applicant has market power to be filed with the Commission for review and approval prior to the commencement of service, and to be priced on an embedded cost-of-service basis." April 14 Order at P 155.

¹⁰ See *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 114 FERC ¶ 61,165 at ordering paragraph B (2006).

¹¹ August 15 Order, 116 FERC ¶ 61,150 at P 19.

at a point within the Empire control area subject to the rules and mitigation specific to SPP's energy imbalance market. As Empire had previously explained in its July 31, 2006 filing, in the SPP Order the Commission found that SPP had demonstrated that its proposed mitigation will eliminate the exercise of market power in the SPP energy imbalance market, and concluded that all market participants will be granted market-based rates for sales of imbalance energy into SPP's energy imbalance market.¹² Empire also states that it accepts the Commission's modifications to its mitigation proposal as outlined in the Commission's August 15 Order.

Notice of Filings and Responsive Pleadings

8. Notice of Empire's July 31, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 45,814 (2006), with interventions and protests due on or before August 21, 2006. Notice of Empire's September 14, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 56,516 (2006), with interventions and protests due on or before September 27, 2006. None was filed.

Discussion

9. On July 31, 2006, as revised on September 14, 2006, Empire proposed to revise its market-based rate tariff to (1) revise paragraph 2 to provide that service under the tariff applies only to sales outside the Empire control area; (2) remove tariff language in paragraph 3 that provides that Mitigated Sales do not include sales into markets administered by SPP; (3) remove references in paragraph 3 to Empire's cost-based WSPP Agreement mitigation proposal;¹³ and, (4) include provisions in paragraph 2 providing for sales into the SPP energy imbalance market.

10. With regards to Empire's revisions (1) providing that service under the tariff applies only to sales outside the Empire control area; (2) removing tariff language that provides that Mitigated Sales do not include sales into markets administered by SPP; and (3) removing references to the cost-based WSPP Agreement from Empire's market-based rate tariff, we find that these revisions are in compliance with the Commission's August 15 Order and, accordingly, are accepted for filing effective on May 16, 2005, which is the refund effective date in this proceeding.

¹² Empire July 31 filing at 2 (citing *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289 at P 203 (2006) (SPP Order)).

¹³ Empire's September 14, 2006 filing supersedes the July 31, 2006 filing with regards to Empire's market-based rate tariff. The September 14, 2006 filing does not supersede the July 31, 2006 filing with regards to Empire's market behavior rules, as discussed below.

11. With regards to Empire's revisions to paragraph 2 of its market-based rate tariff providing for sales into the SPP energy imbalance market, Empire has included language stating that the tariff is applicable to "all sales in the [SPP] energy imbalance market, even if title transfers at a point within the Empire control area, subject to the rules and mitigation specific to SPP's energy imbalance market." We will accept these revisions, effective as of the date on which the SPP initiates the energy imbalance market,¹⁴ noting that the Commission has previously found that the SPP imbalance market is competitive in the absence of transmission constraints and because SPP's mitigation measures and monitoring plan are sufficient to protect customers from the exercise of market power that might occur in the energy imbalance market when transmission constraints bind.¹⁵

13. In its July 31, 2006 filing, Empire submitted revised tariff sheets to remove the Commission's market behavior rules. These revisions were not superseded by any part of the Empire's September 14, 2006 filing. Empire's July 31, 2006 tariff revision in this regard is hereby accepted effective February 27, 2006.

The Commission orders:

(A) Empire's proposed revisions to paragraph 2 of its market-based rate tariff to provide sales of imbalance energy into the SPP imbalance energy market are accepted as of the date on which the SPP initiates the energy imbalance market.

(B) Empire's September 14, 2006 proposed revisions to its market-based rate tariff regarding its mitigation proposal are hereby accepted for filing, effective May 15, 2005, the refund effective date in this proceeding.

(C) The July 31, 2006 tariff revision removing the Commission's market-behavior rules from Empire's market-based rate tariff is hereby accepted for filing, effective February 27, 2006.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁴ Within 30 days of the date SPP initiates the energy imbalance market, Empire is directed to file an informational filing to inform the Commission in this regard.

¹⁵ *Southwest Power Pool, Inc.*, 116 FERC ¶ 61,289 at P 30 (2006).