

157 FERC ¶ 61,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Electric Quarterly Reports	Docket Nos. ER02-2001-020
AP&G Holdings LLC	ER12-2430-000
Bargain Energy, LLC	ER14-1343-001
CES Placerita, Incorporated	ER14-57-000
Crawfordsville Energy, LLC	ER15-631-001
DES Wholesale, LLC	ER12-1770-001
Dillon Power, LLC	ER15-1810-000
DownEast Power Company, LLC	ER10-1304-002
Escanaba Green Energy, LLC	ER12-2307-001
GearyEnergy, LLC	ER10-2817-000
LVI Power, LLC	ER12-2484-000
Madstone Energy Corp	ER11-4482-000
NiGen, LLC	ER15-567-001
R&R Energy, Inc.	ER11-4711-002
Societe Generale Energy LLC	ER11-2775-000
Tall Bear Group, LLC	ER12-2374-000
Western Reserve Energy Services, LLC	ER13-1706-000

ORDER ON INTENT TO REVOKE MARKET-BASED RATE AUTHORITY

(Issued October 27, 2016)

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2012), and 18 C.F.R. Part 35 (2016), require, among other things, that all rates, terms, and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file 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 providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.¹

2. The Commission requires sellers with market-based rate authorization to file Electric Quarterly Reports.² Commission staff's review of the Electric Quarterly Reports indicates that the following 16 public utilities with market-based rate authorization have failed to file their Electric Quarterly Reports: AP&G Holdings LLC, Bargain Energy, LLC, CES Placerita, Incorporated, Crawfordsville Energy, LLC, DES Wholesale, LLC, Dillon Power, LLC, DownEast Power Company, LLC, Escanaba Green Energy, LLC, GearyEnergy, LLC, LVI Power, LLC, Madstone Energy Corp, NiGen, LLC, R&R Energy, Inc., Societe Generale Energy LLC, Tall Bear Group, LLC, and Western Reserve Energy Services, LLC. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

¹ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008). *See also Filing Requirements for Electric Utility Service Agreements*, 155 FERC ¶ 61,280 (2016) (order clarifying reporting requirements and updating data dictionary).

² *See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, FERC Stats. & Regs. ¶ 31,374 (2015), *order on reh'g*, Order No. 816-A, 155 FERC ¶ 61,188 (2016); *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 3, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

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.^[3]

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.^[4]

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

6. Sellers must file Electric Quarterly Reports consistent with the procedures set forth in Order Nos. 2001, 768⁶ and 770.⁷ The exact filing dates for Electric Quarterly Reports are prescribed in 18 C.F.R. § 35.10b (2016). As noted above, Commission staff's review of the Electric Quarterly Reports for the period up to the first quarter of 2016 identified 16 public utilities with market-based rate authorization that failed to file Electric Quarterly Reports. Commission staff contacted or attempted to contact these entities to remind them of their regulatory obligations. Despite these reminders, the public utilities listed in the

³ Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 222.

⁴ *Id.* P 223.

⁵ *See, e.g., Electric Quarterly Reports*, 80 Fed. Reg. 58,243 (Sep. 28, 2015); *Electric Quarterly Reports*, 79 Fed. Reg. 65,651 (Nov. 5, 2014).

⁶ *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

⁷ *Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338 (2012).

caption of this order have not met these obligations. Accordingly, this order notifies these 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.

7. In the event that any of the above-captioned market-based rate sellers has already filed its Electric Quarterly Reports in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If any of the above-captioned market-based rate sellers does not wish to continue having market-based rate authority, it may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel its market-based rate tariff.

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 with the Commission all delinquent Electric Quarterly Reports. If a public utility subject to this order fails to make the filings required in this order, the Commission will revoke that public utility's market-based rate authorization and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.