

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

American Electric Power Service Corp.

Docket No. ER05-681-001

ORDER GRANTING REHEARING

(Issued June 2, 2005)

1. In this order the Commission grants rehearing of an unpublished letter order issued pursuant to delegated authority on April 29, 2005 (Letter Order), to the extent that the Letter Order announced that the Commission would make certain information public within five days after issuance of the Letter Order.

**Background and Request for Rehearing**

2. On March 4, 2005, American Electric Power Service Corporation, on behalf of the American Electric Power operating companies (AEP), filed an executed long-term power supply agreement (PSA) for supplemental capacity and energy and resource management services between AEP and the Northeast Texas Electric Cooperative, Inc. and East Texas Electric Cooperative, Inc. (the Cooperatives). AEP describes the PSA as a negotiated arrangement entered into under AEP's market-based rate tariff. AEP requested waiver of the Commission's 60-day prior notice requirement to permit an effective date of March 5, 2005 (with service under the PSA commencing January 1, 2006). In addition, AEP requested confidential treatment for the charges under the PSA in accordance with section 388.112 of the Commission's regulations, 18 C.F.R. § 388.112 (2004).

3. In the Letter Order, the Commission accepted the PSA and granted AEP's request for waiver of the prior notice requirement, but denied AEP's request for confidential treatment of the charges and notified AEP that the charges would be made public five days after issuance of the Letter Order.

4. On May 3, 2005, AEP filed a request for rehearing of the Letter Order, specifically requesting that the Commission not make the PSA's pricing terms public ahead of the time prescribed under the Commission's regulations. AEP supported its position with three arguments. First, AEP argues that public utilities no longer have to file market-based rate service agreements with the Commission; they need only file Electric

Quarterly Reports (EQRs) within 30 days following the end of the preceding quarter detailing all transactions that occurred during the preceding quarter. According to AEP, that policy should not be changed in this case by the fact that AEP and the Cooperatives desired to obtain the Commission's confirmation that it was appropriate for the PSA to be entered into under AEP's market-based rate authority. Second, AEP states that it already has committed that it will comply with the requirements applicable to all entities with market-based rate authority, *i.e.*, to file EQRs containing a summary of the contractual terms and conditions of the PSA. AEP states that there is no reason why confidential pricing terms of the PSA should be publicly disclosed ahead of the time prescribed under the Commission's regulations. Third, AEP submits that its request for confidential treatment is consistent with the approach the Commission has taken in the past. AEP cites *Southern Company Services, Inc.*, 100 FERC ¶ 61,328 (2004), in which the Commission, while denying requests for confidential treatment of long-term service agreements filed pursuant to market-based rate tariffs, did not direct the applicants to refile unredacted public versions of those agreements. Instead, as AEP explains, the Commission indicated that the contract and transactional data under the agreements were governed by the Commission's filing requirements under Order No. 2001. Accordingly, AEP argues, in the instant case the Commission should not release the confidential pricing terms and should hold that timely filing EQRs will be adequate.

### **Discussion**

5. Upon further consideration, the Commission will grant AEP's request for rehearing. Although section 205(c) of the Federal Power Act<sup>1</sup> requires all public utilities to file with the Commission for public inspection all rates, charges, classifications and practices, as well as any contracts that affect or relate to such charges, classifications and practices, AEP's compliance with Order No. 2001's EQR requirements<sup>2</sup> satisfies the Commission's concerns regarding public access to the filings.

6. Order No. 2001 requires that an entity with market-based rates file electronically with the Commission an EQR 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

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<sup>1</sup> 16 U.S.C. § 824d(c) (2000).

<sup>2</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001.

(one year or greater) market-based power sales during the most recent calendar quarter. EQRs must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>3</sup>

7. Furthermore, section 35.1(g) of the Commission's regulations, 18 C.F.R. § 35.1(g) (2004), while not requiring agreements such as the PSA to be filed with the Commission, specifically provides that "[a]ll agreements must . . . be made available for public inspection and copying at the public utility's business office during regular business hours . . . ." As a result of the EQR requirement and the public inspection provision, the Commission is satisfied that the outcome of this case is sufficient to protect customers while remaining consistent with prior actions.

The Commission orders:

AEP's request for rehearing of the decision to make the charges in the PSA public in advance of AEP's filing of EQRs as prescribed by Order No. 2001 is granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>3</sup> The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR 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.