

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

IEP Power Marketing, LLC

Docket Nos. ER95-802-020  
ER95-802-021  
EL05-111-002

ORDER DENYING REQUEST FOR REHEARING AND DISMISSING UPDATED  
MARKET POWER ANALYSIS

(Issued February 28, 2006)

1. In this order, we deny the rehearing request of IEP Power Marketing, LLC (IEP Power Marketing) filed in response to the Commission's November 3, 2005 Order revoking IEP Power Marketing's authority to make sales at market-based rates.<sup>1</sup> We also dismiss IEP Power Marketing's updated market power analysis filed concurrently with its request for rehearing.

**Background**

2. In an order issued on May 31, 2005, the Commission announced its policy with respect to entities that failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated market power analysis.<sup>2</sup> The Commission directed the captioned market-based rate sellers, including IEP Power Marketing, to file their updated market analyses within 60 days from the date of issuance of that order or provide satisfactory support for why they should not be required to do so. If an entity failed to file an updated market power analysis or provide satisfactory support for why it should not be required to do so within 60 days, its market-based rate authority would be revoked.

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<sup>1</sup> *3E Technologies, Inc.*, 113 FERC ¶ 61,124 (2005) (November 3 Order).

<sup>2</sup> *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (May 31 Order). The May 31 Order established a refund effective date of 60 days after publication of notice of the investigation in the *Federal Register*. The notice was published in the *Federal Register* on June 10, 2005, with a refund effective date of August 9, 2005.

3. In the November 3 Order, the Commission revoked the market-based rate authority of the companies that failed to comply with the May 31 Order and terminated their market-based rate tariffs. Because IEP Power Marketing made no filing in response to the May 31 Order, IEP Power Marketing's market-based rate authority was revoked and its market-based rate tariff was terminated effective November 3, 2005.
4. On December 2, 2005, IEP Power Marketing filed a request for rehearing of the November 3 Order. IEP Power Marketing also asks the Commission to accept its updated market power analysis filed concurrently with its rehearing request.
5. IEP Power Marketing acknowledges that it failed to submit an updated market power analysis as required by the terms of its market-based rate authorization and subsequently by the May 31 Order. IEP Power Marketing states that it was unaware of either the May 31 or November 3 Orders until November 17, 2005. IEP Power Marketing states that, had it been aware of the requirement to submit an updated market power analysis, it would have done so. IEP Power Marketing also states that it has made no wholesale electric power sales in the past three years. IEP Power Marketing notes that it has filed its Electric Quarterly Reports in a timely manner for 10 years under the belief that this filing was sufficient to maintain its market-based rate authority. IEP Power Marketing states that its failure to file an updated market power analysis was the result of inadvertent administrative oversight and not the result of any malicious intent. IEP Power Marketing states that it has not devoted significant time or resources to power market operations or to monitoring developments in the electric industry, regulatory or otherwise, because of its small size and lack of current power sales.
6. IEP Power Marketing states that its parent company Independent Energy Partners, Inc. (IEP Inc.) is developing a technology that will allow for the environmentally friendly development of oil shale resources while simultaneously producing electricity for sale into the electric power markets. IEP Inc. is in the process of obtaining financing to provide the capital necessary to undertake this project. IEP Power Marketing states that loss of its market-based rate authority has the potential to materially adversely impact IEP Inc.'s financing effort.
7. Finally, IEP Power Marketing notes that the order granting it market-based rate authority did not explicitly require it to file updated market power analyses every three year, and that thus, it was not aware of the filing requirement.

### **Discussion**

8. As the Commission stated in the May 31 Order, in the absence of an updated market power analysis, the Commission cannot exercise its statutory duty to ensure that market-based rates are just and reasonable and that market-based rate sellers continue to lack the potential to exercise market power so that market forces are in fact determining

the price. We directed IEP Power Marketing to submit an updated market power analysis in the May 31 Order in order to execute this statutory duty.<sup>3</sup> In the November 3 Order, we revoked IEP Power Marketing's market-based rate authority in light of IEP Power Marketing's failure to comply with the May 31 Order.

9. The arguments set forth in IEP Power Marketing's request for rehearing of the November 3 Order are not sufficient to justify granting rehearing. IEP Power Marketing's small size, lack of wholesale electric power sales and energy transactions, lack of malicious intent, diligence in complying with other obligations, effort to remedy this violation, and lack of actual knowledge of the May 31 Order do not relieve IEP Power Marketing of its responsibility to file an updated market power analysis as directed in the May 31 Order.<sup>4</sup> We will therefore deny IEP Power Marketing's request for rehearing.

10. IEP Power Marketing's argument that the revocation of its market-based rate authorization may impact the ability of its parent company to seek financing also does not relieve IEP Power Marketing of its filing responsibilities. The revocation of IEP Power Marketing's market-based rate authority is without prejudice to IEP Power Marketing making a new filing with the Commission under section 205 of the Federal Power Act to request market-based rate authority.<sup>5</sup>

11. Because IEP Power Marketing's market-based rate authorization was revoked and its market-based rate tariff terminated effective November 3, 2005, IEP Power Marketing's updated market power analysis is moot and we dismiss it as such.

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<sup>3</sup> Although IEP Power Marketing states that the order granting it market-based rate authority did not explicitly require it to file updated market power analyses every three years, any ambiguity in that regard was remedied by the May 31 Order.

<sup>4</sup> Rule 2010(k) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010(k) (2005), requires that any entity regulated by the Commission provide a person to receive service of documents pertaining to that entity. Rule 2010(k) (2) states that "[e]ach regulated entity has a continuing obligation to file with the Commission updated information concerning the corporate official or person designated to receive service." In addition, the Commission published notice of the May 31 Order in the *Federal Register* on June 10, 2005, 70 Fed. Reg. 33,888-89 (2005). *See* 18 C.F.R. § 385.2009 (2005). *See also* 44 U.S.C. § 1507 (2000) (Publication of an order in the *Federal Register* "is sufficient to give notice of the contents of the document to a person subject to or affected by it."); *Yakus v. United States*, 321 U.S. 414, 435 (1944) (citing 44 U.S.C. § 307, now codified as 44 U.S.C. § 1507).

<sup>5</sup> 16 U.S.C. § 824d (2000).

The Commission orders:

(A) IEP Power Marketing's request for rehearing is hereby denied, as discussed in the body of this order.

(B) IEP Power Marketing's updated market power analysis is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.