

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Golden Valley Power Company

Docket Nos. ER98-4334-006  
EL05-111-002

ORDER REJECTING REQUEST FOR REHEARING AND DISMISSING UPDATED  
MARKET POWER ANALYSIS

(Issued February 28, 2006)

1. In this order, we reject an untimely request of Golden Valley Power Co. (Golden Valley) for rehearing of the Commission's May 31, 2005 Order issued in these proceedings.<sup>1</sup> We also dismiss the updated market power analysis filed with its request for rehearing.

**Background**

2. In the May 31 Order, 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. The Commission directed the captioned market-based rate sellers, including Golden Valley, 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.

3. On November 3, 2005, the Commission revoked the market-based rate authority of the companies that failed to comply with the May 31 Order and terminated their

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<sup>1</sup> *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (May 31 Order). The May 31 Order also 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.

market-based rate tariffs.<sup>2</sup> Because Golden Valley made no filing in response to the May 31 Order, Golden Valley's market-based rate authority was revoked and its market-based rate tariff was terminated effective November 3, 2005.

4. On December 6, 2005, Golden Valley filed a request for rehearing of the May 31 Order.<sup>3</sup> Golden Valley also included an updated market power analysis along with its request for rehearing. Golden Valley requests that the Commission grant rehearing of the May 31 Order and reinstate its market-based rate authority.

5. Golden Valley contends that it did not receive actual notice of the May 31 Order until after the November 3 Order was issued. Golden Valley adds that the Commission's failure to serve the May 31 Order via certified mail violates Golden Valley's constitutionally protected due process rights. Golden Valley also argues that the May 31 Order failed to properly list "Docket No. ER98-4334" in association with Golden Valley's name; it states that the May 31 Order listed "Golden Valley Power Company Docket No. ER02-1600-000."

### **Discussion**

6. Pursuant to section 313(a) of the Federal Power Act (FPA),<sup>4</sup> we will reject Golden Valley's untimely request for rehearing. Section 313(a) requires that requests for rehearing be filed no later than 30 days after the date the order which rehearing is being sought was issued by the Commission. This statutory limitation precludes the Commission from considering late-filed requests for rehearing.<sup>5</sup> The order for which

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<sup>2</sup> *3E Technologies, Inc.*, 113 FERC ¶ 61,124 (2005) (November 3 Order).

<sup>3</sup> Golden Valley also separately filed a statement of issues as required by Order No. 663. *See Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 Fed. Reg. 55,723 (Sept. 23, 2005), FERC Stats. & Regs. Regulations Preambles ¶ 31,193 (2005) (to be codified at 18 C.F.R. § 385.203(a)(7)). The statement of issues was docketed by the Commission on December 8, 2005.

<sup>4</sup> 16 U.S.C. § 8251(a) (2000).

<sup>5</sup> *See, e.g., City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) ("The 30-day time requirement of [the FPA] is as much a part of the jurisdictional threshold as the mandate to file for a rehearing."); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-78, 979 (1st Cir. 1978) (same; describing identical rehearing provision of Natural Gas Act as "a tightly structured and formal provision. Neither the Commission nor the courts are given any form of jurisdictional discretion."). *See also Commonwealth Electric Co. v. Boston Edison Co.*, 46 FERC ¶ 61,253 at 61,757-58, *order denying reh'g*, 47 FERC ¶ 61,118 at 61,349-50 (1989); *Borough of Weatherly*, 32 FERC ¶ 61,398 at 61,892 (1985).

Golden Valley seeks rehearing was issued by the Commission on May 31, 2005. Golden Valley's request for rehearing was filed with the Commission on December 6, 2005, over six months late. And even if the Commission were to treat the rehearing request as seeking rehearing of the November 3 Order, the request for rehearing would still have been filed late. Accordingly, the Commission is without authority to consider Golden Valley's request for rehearing.

7. Nevertheless, even if the Commission were to consider the arguments raised in the rehearing request, we would deny the rehearing request for the reasons discussed below.

8. Golden Valley suggests that the Commission failed to provide it with proper notice that the Commission was contemplating revoking Golden Valley's market-based rate authority and thus deprived Golden Valley of its constitutionally protected due process rights.<sup>6</sup> We disagree. The Commission published notice of its May 31 Order in the *Federal Register* on Friday, June 10, 2005.<sup>7</sup> The *Federal Register* notice listed the correct docket number and included Golden Valley's name.<sup>8</sup> Publication of notice in the *Federal Register* is an accepted form of notice.<sup>9</sup>

9. Further, Rule 2010(k) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010(k) (2005), requires that any entity subject to regulation by the Commission must designate at least one person to receive service of documents where a person to receive service has not otherwise been designated under Commission regulations. 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." Since Golden Valley failed to do so, it cannot now blame the Commission for any alleged failure to provide actual notice.<sup>10</sup>

10. 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

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<sup>6</sup> Out of an abundance of caution, we discuss the merits of Golden Valley's assertion that it was not given proper notice of the Commission's actions.

<sup>7</sup> 70 Fed. Reg. 33,888-89 (2005).

<sup>8</sup> As Golden Valley notes, the May 31 Order as issued by the Commission mistakenly listed a different docket number alongside Golden Valley's name. The correct docket number was listed one line above Golden Valley's name.

<sup>9</sup> 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>10</sup> We note that Golden Valley only updated the service list on December 29, 2005.

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.

11. Because Golden Valley's market-based rate authorization was revoked and its market-based rate tariff terminated effective November 3, 2005, Golden Valley's updated market power analysis is moot and we dismiss it as such.<sup>11</sup> However, we note that the revocation of Golden Valley's market-based rate authority is without prejudice to Golden Valley making a new filing with the Commission under section 205 of the FPA to request market-based rate authority.

The Commission orders:

(A) Golden Valley's untimely request for rehearing of the May 25 Order is hereby rejected, as discussed in the body of this order.

(B) Golden Valley'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.

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<sup>11</sup> We also note that the Commission requires that compliance filings, complaints, and other types of pleadings be submitted separately from requests for rehearing. Parties are not permitted to bundle different types of filing into a single pleading. *See, e.g., North Hartland, LLC*, 105 FERC ¶ 61,192 at P 21 (2003) (a request for interconnection may not be submitted with a rehearing request). Thus, even if Golden Valley's updated market power analysis were not moot, we would reject it on this alternative basis.