

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Hinson Power Company, Inc.

Docket Nos. ER01-3023-001
EL05-111-002

ORDER DENYING REQUEST FOR REHEARING

(Issued April 5, 2006)

1. In this order, we deny the rehearing request of Hinson Power Company, Inc. (Hinson) filed in response to the Commission's November 3, 2005 order revoking Hinson's authority to make sales at market-based rates.¹

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.² The Commission directed the captioned market-based rate sellers, including Hinson, 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. 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

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

² *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.

their market-based rate tariffs. Because Hinson made no filing in response to the May 31 Order, Hinson's market-based rate authority was revoked and its market-based rate tariff was terminated effective November 3, 2005.

4. On November 14, 2005, Hinson filed a request for rehearing of the November 3 Order revoking Hinson's market-based rate authority. Hinson acknowledges that it failed to submit an updated market power filing as required by the terms of its market-based rate authorization and subsequently by the terms of the May 31 Order. Although Hinson is not disputing the basic principle that market-based rate authority is subject to revocation for noncompliance with the Commission's market power filing requirement, it asks that the Commission allow it to retain its market-based rate authority based on a number of mitigating factors.

5. First, Hinson states that its power marketing activities have been extremely limited and that the full extent of Hinson's power marketing activities have been to purchase power and sell it to its affiliate, Columbia Falls Aluminum Company, for smelting operations. Second, Hinson states that its failure to file an updated market power analysis was the result of an inadvertent administrative oversight and not through any malicious intent. Hinson argues that it is a small entity and 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. Hinson notes that the order granting it market-based rate authority did not explicitly require it to file updated market power analyses every three years, and that thus, it was not aware of the filing requirement until after the November 3 Order was issued. Hinson adds that it has made a good faith effort to comply with other Commission requirements applicable to wholesale sellers and has diligently filed its Electric Quarterly Reports.

Discussion

6. 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. The Commission directed Hinson to submit an updated market power analysis in the May 31 Order in order to execute this statutory duty.³ In the November 3 Order, we revoked Hinson's market-based rate authority in light of Hinson's failure to comply with the May 31 Order.

³ Although Hinson 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.

7. The arguments set forth in Hinson's request for rehearing of the November 3 Order are not sufficient to justify granting rehearing. Hinson's small size, limited operations, lack of malicious intent, diligence in complying with other obligations, effort to remedy this violation, and lack of actual knowledge of the Commission's May 31 Order, do not relieve Hinson of its responsibility to file an updated market power analysis as directed by the May 31 Order.⁴ Hinson's argument that the revocation of its market-based rate authorization may impact its affiliate's aluminum smelting operations also does not relieve Hinson of its responsibility to comply with the Commission's orders. We will therefore deny Hinson's request for rehearing. The revocation of Hinson's market-based rate authority is without prejudice to Hinson making a new filing⁵ with the Commission under section 205 of the Federal Power Act to request market-based rate authority.⁶

The Commission orders:

Hinson's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴ 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).

⁵ We note that Hinson has already filed another application for market-based rate authority with the Commission in Docket No. ER06-688-000.

⁶ 16 U.S.C. § 824d (2000).