

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

IPP Energy, Inc.

Docket Nos. ER01-688-001
EL05-111-002

ORDER DENYING REQUEST FOR REHEARING

(Issued April 6, 2006)

1. In this order, we deny the rehearing request of IPP Energy, Inc. (IPP Energy) filed in response to the Commission's November 3, 2005 Order revoking IPP Energy'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 IPP Energy, 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 Because IPP Energy made no filing in response to the May 31 Order, IPP Energy's market-based rate authority was revoked and its market-based rate tariff was terminated effective November 3, 2005.

4. On December 5, 2005, IPP Energy filed a request for rehearing of the November 3 Order. IPP Energy recognizes that it failed to submit a timely updated market power study as required by the terms of IPP Energy's market-based rate authorization and the Commission's May 31 Order. IPP Energy asks the Commission to be lenient and grant IPP Energy's request for rehearing and not revoke its market-based rate authority. IPP Energy states that its failure to submit a timely updated market power analysis was inadvertent and the result of an administrative oversight.

5. IPP Energy states that its market-based rate sales are extremely limited. In support of its request for rehearing, IPP Energy states it only has one 47.7 MW generating facility and that it only makes sales to an affiliate and that because it only sells to an affiliate, it receives no profit from the wholesale sales of power at market-based rates to any unaffiliated customer. IPP Energy states that its parent company, TransAlta USA Inc. (TransAlta), had not devoted significant staffing and other resources to IPP Energy's operation. For this reason, IPP Energy claims that TransAlta personnel were unaware that the individual and office location listed on the Commission's official service list in the captioned docket was no longer current. IPP Energy claims it therefore did not receive the Commission's correspondence until after the November 3 Order was issued.

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

7. The arguments set forth in IPP Energy's request for rehearing of the November 3 Order are not sufficient to justify granting rehearing. The fact that IPP Energy sells only to an affiliate and did not have adequate staffing and resources does not relieve IPP Energy of its responsibility to file an updated market power analysis as directed by the May 31 Order. Nor does the fact that IPP Energy was unaware of the Commission's

order directing IPP Energy to file an updated market power analysis justify a grant of rehearing. It is IPP Energy's responsibility to update the official service list in order to avoid just such a situation.³ We therefore will deny IPP Energy's request for rehearing.

8. The revocation of IPP Energy's market-based rate authority is without prejudice to IPP Energy making a new filing⁴ with the Commission under section 205 of the Federal Power Act to request market-based rate authority.⁵

The Commission orders:

IPP Energy'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.

³ 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).

⁴ We note that IPP Energy has already filed another application for market-based rate authority and the Commission issued a letter order accepting that application in Docket Nos. ER06-459-000 and ER01-688-002 on March 1, 2006.

⁵ 16 U.S.C. § 824d (2000).