

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Southwood 2000, Inc.

Docket Nos. ER98-2603-004  
ER98-2603-005  
EL05-111-000

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND  
TERMINATING SECTION 206 PROCEEDING

(Issued March 1, 2007)

1. In this order, the Commission accepts the updated market power analysis filed by Southwood 2000, Inc. (Southwood) in response to the Commission order issued on May 31, 2005.<sup>1</sup> This order also accepts tariff revisions filed by Southwood, effective the date of the issuance of this order.<sup>2</sup> In addition, this order terminates the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to Southwood.

**Background**

2. In the May 31 Order, the Commission announced its policy with respect to entities that have failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated or revised market power analysis. In that order, the Commission directed market-based rate sellers that had failed to comply with the requirement to submit an updated or revised market power analysis to file their updated or revised market analysis within 60 days from the issuance of that order or provide satisfactory support for why they should not be required to do so. The Commission also established a refund effective date pursuant to the provisions of section 206 of the Federal Power Act for the protection of customers.<sup>3</sup> In

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

<sup>2</sup> Rate Schedule FERC No. 1, First Revised Sheet Nos. 1-2 (supersedes Original Sheet Nos. 1-2).

<sup>3</sup> 16 U.S.C. § 824e (2000).

the May 31 Order, the Commission also gave entities the option to file a notice of cancellation, instead of filing the updated market power analysis or providing support as to why they should not be required to do so.

3. Southwood filed a timely updated market power analysis in response to the May 31 Order. We herein accept Southwood's updated market power analysis and terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to Southwood, as discussed below.

### **Updated Market Power Analysis**

4. On July 27, 2005, as amended on August 17, 2006, and December 22, 2006, in response to data requests, Southwood filed an updated market power analysis and revised market-based rate tariff. Southwood's revised tariff includes the change in status reporting requirement adopted by the Commission in Order No. 652,<sup>4</sup> and is in compliance with Order No. 614.<sup>5</sup>

5. Southwood states that it is a Minnesota corporation with its principal place of business in Clements, Minnesota. Southwood is owned by its investors, Redwood Electric Cooperative (Redwood) and South Central Electric Association (South Central), which are rural electric cooperatives and members of Great River Energy. Southwood states that it is a power marketer that will purchase and resell electricity to wholesale customers. Southwood states that it does not own or control any interests in generation or transmission facilities. In addition, Southwood states that it is not affiliated with any other company with generation or transmission facilities. Southwood also states that it cannot erect barriers to entry. Lastly, Southwood states that it is not affiliated with any entity with a franchised service territory.

### **Notice of Filings**

6. Notices of Southwood's filings were published in the *Federal Register*, 70 Fed. Reg. 46,164 (2005), 71 Fed. Reg. 57,939 (2006), and 72 Fed. Reg. 776 (2007), with interventions or protests due on or before August 17, 2005, September 7, 2006, and January 12, 2007. None was filed.

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<sup>4</sup> *Reporting Requirement for Changes in Status For Public Utilities With Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

<sup>5</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

## Discussion

7. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission, and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>6</sup> As discussed below, the Commission concludes that Southwood satisfies the Commission's standards for market-based rate authority.
8. On April 14, 2004, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.<sup>7</sup> Southwood states that it does not own or control generation facilities and that it is not affiliated with an entity that has generation assets.<sup>8</sup> Based on Southwood's representations, the Commission finds that Southwood satisfies the Commission's generation market power standard for the grant of market-based rate authority.
9. Southwood states that it does not own or control transmission facilities. Accordingly, we find that, based on Southwood's representations, Southwood satisfies the Commission's transmission market power standard.
10. Southwood states that it cannot erect barriers to entry into wholesale power markets. Southwood states that it does not own or control building sites or fuel supplies, engineering or construction firms, natural gas transportation or distribution facilities, or any other essential resources or inputs that could be used to restrict market entry by competing suppliers. Based on the representations of Southwood, the Commission is satisfied that Southwood cannot erect barriers to entry.
11. The Commission is concerned with the potential for affiliate abuse and reciprocal dealing. Southwood states that its filing does not raise any concern regarding affiliate abuse because it is not affiliated with a public utility with a franchised service territory. Additionally, Southwood's tariff prohibits sales to any affiliate with a franchised service

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<sup>6</sup> See, e.g., *Progress Power Mktg., Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Nw. Power Mktg. Co.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

<sup>7</sup> *AEP Power Mktg., Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

<sup>8</sup> Southwood states that Redwood and South Central are members of Great River Energy, which is a generation and transmission cooperative, but notes that Southwood is not affiliated with Great River Energy.

territory without first receiving Commission authorization. Based on the representations of Southwood, we find that Southwood satisfies the Commission's concerns with regard to affiliate abuse.

12. We find that Southwood satisfies the Commission's directive in the May 31 Order and meets the requirements for continued market-based rate authorization. We will therefore terminate the section 206 proceeding instituted in Docket No. EL05-111-000 with regard to Southwood.

### **Reporting Requirements**

13. Consistent with the procedures the Commission adopted in Order No. 2001, Southwood is required to file electronically with the Commission an Electric Quarterly Report 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 (one year or greater) market-based power sales during the most recent calendar quarter.<sup>9</sup> Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.<sup>10</sup>

14. Southwood is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

15. In Order No. 664, the Commission stated that it intends to no longer grant waivers of the full requirements of Part 45 of its regulation in its orders granting market-based rate authority. Rather, persons seeking to hold interlocking positions will be required henceforth to comply with the full requirements of Part 45.<sup>11</sup> With respect to an

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<sup>9</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. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

<sup>10</sup> The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2006). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, 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.

<sup>11</sup> *Commission Authorization to Hold Interlocking Positions*, Order No. 664, FERC Stats. & Regs. ¶ 31,194, at P 34 (2005), *order denying reh'g and stay*, Order No. 664-A, 114 FERC ¶ 61,142 (2006).

individual who is currently authorized to hold interlocking positions, that individual will not need to refile under the full requirements of Part 45 to continue to hold such interlocking positions (unless and until that individual assumes different or additional interlocking positions).<sup>12</sup> Thus, consistent with Order No. 664, Southwood will be required henceforth to comply with the full requirements of Part 45.

The Commission orders:

(A) Southwood's updated market power analysis is accepted for filing, as discussed in the body of this order.

(B) Southwood's revised tariff is accepted for filing, effective the date of the issuance of this order, as discussed in the body of this order.

(C) Southwood is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter, as discussed in the body of this order.

(D) The section 206 proceeding instituted in Docket No. EL05-111-000 is hereby terminated with regard to Southwood, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>12</sup> *Id.* at P 36.