

123 FERC ¶ 61,102
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.

Electric Quarterly Reports
Dunhill Power, L.P.
Exel Power Sources, LLC

Docket No. ER02-2001-007
Docket No. ER07-430-000
Docket No. ER07-591-000

ORDER ON INTENT TO REVOKE MARKET-BASED RATE AUTHORITY

(Issued April 30, 2008)

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000), and 18 C.F.R. Part 35 (2005), require, among other things, that all rates, terms, and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.¹

2. Commission staff's review of the Electric Quarterly Report submittals has revealed that two utilities with authority to sell electric power at market-based rates have failed to file their Electric Quarterly Reports for more than one quarter. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

¹*Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002).

3. In Order No. 2001, the Commission stated that,

[i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.^[2]

4. The Commission further stated that,

[o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.^[3]

5. Pursuant to these requirements, the Commission has revoked or withdrawn the market-based rate tariffs of several market-based rate sellers that failed to submit their Electric Quarterly Reports.⁴

6. Commission staff's review of the Electric Quarterly Report submittals identified two public utilities with authority to sell power at market-based rates that failed to file Electric Quarterly Reports through the fourth quarter of 2007. Commission staff

contacted these entities to remind them of their regulatory obligations.⁵ None of the public utilities listed in the caption of this order has met those obligations.⁶ Accordingly,

²Order No. 2001 at P 222.

³*Id.* at P 223.

⁴ See *Electric Quarterly Reports*, 115 FERC ¶ 61,073 (2006) (April 2006 Revocation Order), *Electric Quarterly Reports*, 114 FERC ¶ 61,171 (2006) (February 2006 Revocation Order); *Electric Quarterly Reports*, 107 FERC ¶ 61,310 (2004); *Notice of Revocation of Market-Based Rate Tariffs*, 69 Fed. Reg. 57,679 (September 27, 2004); *Electric Quarterly Reports*, 105 FERC ¶ 61,219 (2003); and *Electric Quarterly Reports*, 104 FERC ¶ 61,139 (2003).

this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that either of the above-captioned market-based rate sellers has already filed its Electric Quarterly Reports in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If either of the above-captioned market-based rate sellers does not wish to continue having market-based rate authority and does not foresee entering into any contracts to sell power at market-based rates, it may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel its market-based rate tariff and end its obligation to submit further Electric Quarterly Reports.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility fails to make this filing, the Commission will revoke the public utility's authority to sell power at market-based rates and terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

⁵ See *Dunhill, L.P.*, Docket No. ER07-430-000 (February 13, 2008) (unpublished letter order); *Exel Power Sources, LLC*, Docket No. ER07-591-000 (February 13, 2008) (unpublished letter order).

⁶ According to the Commission's records, the companies subject to this order last filed their Electric Quarterly Reports in the quarters and years shown below:

| Respondent | Last Quarter Filed |
|----------------------------|---------------------------|
| Dunhill Power, L.P. | 2007, Quarter 2 |
| Exel Power Sources, L.L.C. | Never Filed |

(B) The Secretary is hereby directed to publish this order in the *Federal Register*.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.