

127 FERC ¶ 61,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Retail Sales, LLC

Docket No. ER09-655-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING MARKET-BASED
RATE TARIFF AND GRANTING WAIVER OF THE AFFILIATE RESTRICTIONS

(Issued April 7, 2009)

1. In this order, the Commission conditionally accepts and suspends, for a nominal period, to become effective April 8, 2009,¹ subject to refund and subject to the outcome of pending market-based rate filings submitted by Applicant's affiliates in Docket Nos. ER07-189-005,² ER07-189-006,³ ER07-188-005,⁴ and ER07-188-006,⁵ a proposed tariff filed by Duke Energy Retail Sales, LLC (Applicant). The proposed tariff would permit Applicant to sell electric capacity, energy, and ancillary services at market-based rates in all markets outside the Duke Energy Carolinas, Inc. (Duke Energy Carolinas) balancing authority area. Our acceptance here is also subject to the compliance filing ordered herein.

¹ FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-3.

² *Duke Energy Indiana, Inc.*, Docket No. ER07-189-005, Updated Market Power Analysis for the Northeast Region (filed June 30, 2008).

³ *Duke Energy Indiana, Inc.*, Docket No. ER07-189-006, Updated Market Power Analysis for the Central Region (filed December 17, 2008).

⁴ *Duke Energy Carolinas, LLC*, Docket No. ER07-188-005, Updated Market Power Analysis for the Southeast Region (filed August 29, 2008).

⁵ *Duke Energy Carolinas, LLC*, Docket No. ER07-188-006, Notice of Change in Status (filed October 30, 2008).

2. The Commission also grants Applicant's request for a determination that the Order No. 697 affiliate restrictions codified in 18 C.F.R. § 35.39 (2008) of the Commission's regulations do not apply to Applicant's relationship with one of its franchised public utility affiliates, Duke Energy Ohio, Inc. (Duke Energy Ohio).

3. Additionally, we find that Applicant meets the criteria for a Category 2 seller in the Central, Northeast, and Southeast Regions, and a Category 1 seller in all other regions and is so designated. Applicant's next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.⁶

I. Background

4. On February 6, 2009, Applicant filed an application for market-based rate authority with an accompanying tariff. The proposed tariff provides for the sale of energy, capacity, and ancillary services at market-based rates. Applicant requests waivers commonly granted to similar market-based rate applicants, and an effective date of April 8, 2009.

5. Applicant also seeks a determination that the Order No. 697 affiliate restrictions codified in 18 C.F.R. § 35.39 of the Commission's regulations do not apply to Applicant's relationship with Duke Energy Ohio, on the basis that Duke Energy Ohio has no captive wholesale or retail customers.

6. Applicant submits that it is a Category 2 seller as defined in 18 C.F.R. § 35.36(a) in the Central, Northeast, and Southeast Regions, and a Category 1 seller in all other regions. Applicant represents that it neither owns nor controls any generation or transmission facilities but is affiliated with companies that own more than 500 MW of generation in the Northeast, Central, and Southeast Regions.

7. Applicant was formed in 2003 for the purpose of selling electric power to retail customers and is an indirect, wholly-owned subsidiary of Duke Energy Corporation (Duke Energy). Applicant operates primarily in Ohio, where it is a Certified Retail Electric Service provider. Applicant states that it owns no generation or transmission

⁶ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 882-893 and Appendix D, *clarified*, 121 FERC ¶ 61,260, at P 9-10 (2007), *order on reh'g*, Order No. 697-A, 73 Fed. Reg. 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268, *order on reh'g and clarification*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, 73 Fed. Reg. 79,610 (Dec. 30, 2008), FERC Stats. & Regs. ¶ 31,285 (2008).

facilities “but will engage in the purchase and sale of physical and financial positions in the wholesale market” to support its retail sales effort.⁷

8. Applicant’s upstream owner, Duke Energy, is a public utility holding company with three principal lines of business: (1) traditional, vertically-integrated utility companies that sell electricity at retail and wholesale in North Carolina, South Carolina, Indiana, Ohio, and Kentucky, and distribute and sell natural gas in Ohio and Kentucky; (2) domestic merchant energy subsidiaries that own, operate, and market power from non-regulated energy projects; and (3) international entities that develop, operate, and manage power generation facilities, and engage in sales and marketing of natural gas and electric power outside the United States and Canada.

9. Duke Energy Ohio, an indirect wholly-owned subsidiary of Duke Energy, is a combination electric and gas utility company that sells both electricity and natural gas at retail in portions of Ohio. Its retail electric distribution operations and natural gas distribution operations are regulated by the Public Utilities Commission of Ohio (Ohio Commission). Applicant states that under Ohio’s restructuring statute, Duke Energy Ohio’s retail customers have had the legal right to purchase power from competitive retail service providers since 2001. Duke Energy Ohio is the provider of last resort for its service territory, which means that it supplies power to all retail customers who have not chosen to take service from a competitive supplier. Applicant states that Duke Energy Ohio currently offers provider of last resort service to retail customers under an electric security plan approved by the Ohio Commission. Duke Energy Ohio is authorized to make sales at market-based rates outside of the Duke Energy Carolinas balancing authority area.⁸

10. Duke Energy Ohio is the direct parent of Duke Energy Kentucky, Inc. (Duke Energy Kentucky), which operates in northern Kentucky. Duke Energy Kentucky’s principal lines of business include generation, transmission, distribution and sale of electricity, and the sale and transportation of natural gas. Duke Energy Kentucky is authorized to sell power at market-based rates outside of the Duke Energy Carolinas balancing authority area.⁹

⁷ Application at 3.

⁸ See *Duke Energy Carolinas, LLC*, Docket No. ER07-188-000 (Jan. 8, 2007) (unpublished letter order) (accepting revised tariffs filed in connection with name changes).

⁹ *Id.*

11. Duke Energy Indiana, Inc. (Duke Energy Indiana) is a vertically-integrated electric utility that generates, transmits, distributes, and sells electricity within its franchised service territory in central, north central and southern Indiana. Duke Energy Indiana is a wholly-owned indirect subsidiary of Duke Energy. Duke Energy Indiana is authorized to sell wholesale power at market-based rates outside of the Duke Energy Carolinas balancing authority area.¹⁰

12. Duke Energy Carolinas, a wholly-owned subsidiary of Duke Energy, is a vertically-integrated utility that sells electricity within its franchised service territory in North Carolina and South Carolina. Duke Energy Carolinas is authorized to make sales at market-based rates outside of the Duke Energy Carolinas balancing authority area.¹¹

II. Notice of Filing and Responsive Pleadings

13. Notice of the application was published in the *Federal Register*,¹² with interventions or protests due on or before February 27, 2009. The Office of the Ohio Consumers' Counsel (Ohio Consumers' Counsel) filed a motion to intervene and protest. On March 9, 2009, Applicant filed an answer.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), Ohio Consumers' Counsel's timely, unopposed motion to intervene serves to make it a party to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Applicant's answer and will, therefore, reject it.

¹⁰ *Id.*

¹¹ *Id.*

¹² 74 Fed. Reg. 8525 (2009).

B. Analysis**1. Market-Based Rate Authorization**

16. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹³

a. Horizontal Market Power

17. The Commission has adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen, and the wholesale market share screen.¹⁴

18. Applicant submitted in support of its application market power studies filed previously by its affiliates, which are pending before the Commission. Applicant explains that several of its affiliates have submitted an updated market power analysis for the Northeast Region showing that they satisfy the horizontal market power screens for the PJM Interconnection, L.L.C. market.¹⁵ Applicant states that also pending before the Commission are recent updated market power analyses for Duke Energy Ohio, Duke Energy Indiana, Duke Energy Kentucky, and Duke Energy Carolinas that demonstrate that the Duke Energy companies continue to satisfy the Commission's indicative horizontal market power screens in the Southeast Region (except for the Duke Energy Carolinas balancing authority area)¹⁶ and the Central Region.¹⁷

19. Applicant states that there have been no material changes to the facts stated in the affiliates' recent filings. Applicant therefore asks that the Commission rely upon those pending updated market power analyses to find that Applicant satisfies the indicative screen requirements for the Northeast, Southeast, and Central Regions. Based on the results of those screen analyses, Applicant states that it cannot exercise generation market power in any relevant market outside of the Duke Energy Carolinas balancing authority area and thus satisfies the Commission's horizontal market power analysis.

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 408, 440.

¹⁴ *Id.* P 62.

¹⁵ *Duke Energy Indiana, Inc.*, Docket No. ER07-189-005, *et al.*

¹⁶ *Duke Energy Carolinas, LLC*, Docket Nos. ER07-188-005 and ER07-188-006.

¹⁷ *Duke Energy Indiana, Inc.*, Docket No. ER07-189-006, *et al.*

20. Our preliminary analysis indicates that Applicant's proposed market-based rate tariff has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed market-based rate tariff for filing, suspend it for a nominal period, make it effective April 8, 2009, subject to refund and subject to the outcome of the pending proceedings in Docket Nos. ER07-189-005, ER07-189-006, ER07-188-005, and ER07-188-006. The screen analyses on which Applicant relies to support its argument that it does not possess horizontal market power are pending before the Commission in those proceedings. The Commission will determine whether Applicant passes the indicative screens in all markets outside of the Duke Energy Carolinas balancing authority area upon completion of its review of the pending market power analyses submitted in Docket Nos. ER07-189-005, ER07-189-006, ER07-188-005, and ER07-188-006. In this regard, we will direct Applicant to make a compliance filing in this docket updating the record in this proceeding to reflect the results of the Commission's determination(s) with respect to the horizontal market power analyses in Docket Nos. ER07-189-005, ER07-189-006, ER07-188-005, and ER07-188-006 after orders have been issued in these pending dockets. Only one compliance filing will be due for all four pending dockets. This compliance filing is due 30 days from the date that the last order has been issued for each of the pending proceedings in Docket Nos. ER07-189-005, ER07-189-006, ER07-188-005, and ER07-188-006.

b. Vertical Market Power

21. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved open access transmission tariff (OATT) on file before granting a seller market-based rate authorization.¹⁸

22. Applicant states that service over the transmission facilities owned or controlled by its affiliates is provided under Commission-approved OATTs and/or is under the control of a regional transmission operator (the Midwest Independent Transmission System Operator, Inc.) with Commission-approved market monitoring and mitigation processes.

23. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.¹⁹ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

¹⁹ *Id.* P 440.

controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and sources of coal supplies and equipment for the transportation of coal supplies, such as barges and rail cars (collectively, inputs to electric power production).²⁰

24. Applicant states that neither it nor any of its affiliates owns or controls any intrastate gas transportation or intrastate gas storage facilities. In addition, Applicant asserts that, while Duke Energy Ohio and Duke Energy Kentucky operate local natural gas distribution and storage facilities in the Central Region, these facilities cannot be used to erect barriers to entry.

25. Applicant further maintains that, while various affiliates have limited ownership and control of sites for generation capacity development, as well as sources of coal supplies and transportation for coal supplies, these affiliations do not confer the ability to erect barriers to entry.

26. The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²¹ Applicant affirmatively states that it has not erected barriers to entry and will not erect barriers to entry in the relevant markets in the future.

27. Based on Applicant's representations, we find that it satisfies the Commission's requirements for market-based rates regarding vertical market power.

2. Waiver Requests and Affiliate Restrictions

28. Applicant requests the following waivers and authorizations: (1) waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except as to sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of Parts 41, 101, and 141 of the Commission's accounting and periodic reporting requirements; and (3) blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

²⁰ *Id.* P 447. In Order No. 697-A, the Commission revised the definition of inputs to electric power production to include "physical coal supply sources and ownership of or control over who may access transportation of coal supplies." Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²¹ Order No. 697, FERC Stats. & Regs. ¶ 31, 252 at P 447.

29. The Commission will grant the requested waivers and authorizations consistent with those granted other entities with market-based rate authorizations.²² Notwithstanding the waiver of the accounting and reporting requirements here, the Commission expects Applicant to keep its accounting records in accordance with generally accepted accounting principles.

30. Additionally, Applicant requests that the Commission determine that the affiliate restrictions codified at 18 C.F.R. § 35.39 do not apply between Applicant and Duke Energy Ohio, because Duke Energy Ohio has no captive wholesale or retail customers. Applicant explains that Order 697-A defines captive customers as “any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation.”²³ Applicant asserts that the affiliate restrictions are not applicable in jurisdictions where there are no “captive customers” needing the protections afforded by these restrictions. Applicant states that it does not have any captive retail customers because retail customers in Ohio have retail choice. Applicant states that it does not have any captive wholesale customers because it does not serve any wholesale customer under cost-based requirements contracts.

31. Ohio Consumers’ Counsel asks the Commission to reject Applicant’s request to waive the affiliate restrictions in the proposed market-based rate tariff on the basis that such a waiver would subject Duke Energy Ohio’s retail customers to the potential for affiliate abuse. It argues that the Commission should treat Ohio retail customers as captive for purposes of the Order No. 697 affiliate restrictions and reject Applicant’s revised tariff sheets proposing a waiver of those restrictions. The Ohio Consumers’ Counsel states that Order No. 697-A provides that retail customers may be treated as captive customers even though state law makes retail choice available to such customers where retail customers are not sufficiently protected under state regulation. Ohio Consumers’ Counsel further requests that the Commission set for hearing the issue of whether Duke Energy Ohio’s retail customers are captive for the purposes of Order No. 697-A.

²² It should be noted that the Commission has examined and approved the continued applicability of the waivers of its accounting and reporting requirements (18 C.F.R. Parts 41, 101, and 141), as well as continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities (18 C.F.R. Part 34). *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 984-85 (regarding waiver of Parts 41, 101, and 141), 999-1000 (regarding blanket approval under Part 34).

²³ Application at 11, citing Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 202; 18 C.F.R. § 35.36(a)(6) (2008).

32. Ohio Consumers' Counsel asserts that, contrary to Applicant's claims, Duke Energy Ohio's retail customers are captive to that utility despite having the legal right to procure service from an alternative supplier. In support of this assertion, Ohio Consumers' Counsel states that no competitive retail electric service providers are currently enrolling customers, according to the Ohio Commission's website, and that none have solicited new customers for several years. In addition, Ohio Consumers' Counsel points out that Duke Energy Ohio provides retail service to over 98 percent of the residential customers in its service territories, and that statewide, over 98 percent of Ohio's retail customers obtain service from incumbent public utilities and their affiliates.

33. Ohio Consumers' Counsel asserts that the Ohio Commission's regulatory oversight provides inadequate protection against the potential for affiliate abuse. Ohio Consumers' Counsel states that the Ohio Commission's ability to review the prices set in any contract between Duke Energy Ohio and Applicant is limited by the filed rate doctrine. In addition, Ohio Consumers' Counsel states that the Ohio Commission's ability to disallow the contract rates on grounds that Duke Energy Ohio should have purchased power from an unaffiliated source also likely would be subject to arguments that the Ohio Commission lacks such authority.

34. In response to the Ohio Consumers' Counsel, we note that Order No. 697-A provides that, if a state regulatory authority in a retail choice state does not believe that retail customers are sufficiently protected and that the Commission's affiliate restrictions should apply to the local franchised public utility, it may raise that argument as part of its comments in a market-based rate proceeding.²⁴ Under the Federal Power Act (FPA), "State regulatory authority" is defined to mean the same as "State commission," which "means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or municipality."²⁵ We note that the Ohio Consumers' Counsel is not a state regulatory authority as defined in the FPA. We further note that the Ohio Commission (the state regulatory authority) did not raise this argument. Accordingly, we will deny Ohio Consumers' Counsel's request to set for hearing the question of whether Duke Energy Ohio's retail customers are captive for the purposes of Order 697-A.

35. In addition, with regard to Ohio Consumers' Counsel's arguments concerning the filed rate doctrine, while a state may not disallow a pass-through of purchased power costs in retail rates because it disagrees that the wholesale rate approved by the Commission is reasonable, nothing in this order limits the Ohio Commission's ability to

²⁴ *Id.* P 203.

²⁵ Sections 3(15) and 3(21) of the FPA, 16 U.S.C. § 796(15) and (21) (2006).

review the prudence of purchase decisions under the circumstances presented or to undertake such reviews “up-front” as opposed to at the time the utility seeks to flow power purchase costs through retail rates.²⁶

36. In light of the foregoing, we will grant Applicant’s request for waiver of the affiliate restrictions.

3. Reporting Requirements

37. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report (EQR) 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 longer) market-based power sales during the most recent calendar quarter.²⁷ Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.²⁸

²⁶ See *Pike County Light & Power Co. v. Pennsylvania Public Utility Comm’n*, 77 Pa. Commw. 268, 465 A.2d 735, 737-38 (1983); *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 at 965-67, 106 S. Ct. 2349, 90 L. Ed. 2d 943; *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354 at 369, 108 S. Ct. 2428, 101 L. Ed. 2d 322 (1988); *Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Comm’n*, 837 F.2d 600, 609 (3d Cir.) *cert. denied*, 488 U.S. 941, 109 S. Ct. 365, 102 L. Ed. 2d 355 (1988).

²⁷ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh’g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh’g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports 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>.

²⁸ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2008). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, 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.

38. Additionally, Applicant must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.²⁹

39. In Order No. 697, the Commission created two categories of sellers.³⁰ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888³¹); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.³² Sellers that do not fall into Category 1 are designated as Category 2 and are required to file an updated market power analysis.³³

40. Based on Applicant's representations, we find that Applicant meets the criteria for a Category 2 seller in the Central, Northeast, and Southeast Regions, and a Category 1 seller in all other regions and is so designated. Applicant's next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697.

²⁹ *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); 18 C.F.R. § 35.42(a) (2008).

³⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

³¹ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³² 18 C.F.R. § 35.36(a)(2) (2008).

³³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

The Commission orders:

(A) Applicant's market-based rate tariff is hereby conditionally accepted for filing and suspended for a nominal period, to become effective April 8, 2009, as requested, subject to refund and subject to the outcome of the proceedings in Docket Nos. ER07-189-005, ER07-189-006, ER07-188-005, and ER07-188-006, as discussed in the body of this order.

(B) Applicant is hereby directed to submit a compliance filing, within 30 days from the date that the last order has been issued for each of the pending proceedings in Docket Nos. ER07-189-005, ER07-189-006, ER07-188-005, and ER07-188-006, as discussed in the body of this order.

(C) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, is hereby granted.

(D) Waiver of Parts 41, 101, and 141 of the Commission's regulations is hereby granted, with the exception of 18 C.F.R. §§ 141.14, 141.15 (2008).

(E) Applicant is required to file EQRs in compliance with Order No. 2001. If the effective date of Applicant's market-based rate tariff falls within a quarter of the year that has already expired, Applicant's EQRs for the expired quarter(s) are due within 30 days of the date of this order.

(S E A L)

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.