108 FERC ¶ 61,043
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

MidAmerican Energy Company Docket Nos. ER96-719-000 and EL04-106-000

ORDER ON MARKET-BASED RATE AUTHORITY

(Issued July 12, 2004)

1. In this order, the Commission, acting pursuant to section 206 of the Federal Power Act (FPA),[1] proposes to modify the market-based rate authority of MidAmerican Energy Company (MidAmerican) to include the requirement to submit an updated market-based rate review every three years, and directs MidAmerican to file an updated market-based rate review within 60 days from the date on which notice of the initiation of the investigation in Docket No. EL04-106-000 is published in the *Federal Register*. This order benefits customers by ensuring that wholesale sales rates remain just and reasonable.

Background

2. The Commission uses a four-part test to determine whether to grant a public utility market-based rate authority. In order for an applicant to obtain or retain market-based rate authorization, the Commission considers, *inter alia*, whether the applicant and its affiliates possess generation market power. The other three parts of the four-part test included in the Commission's review consider whether the applicant has or has adequately mitigated transmission market power; whether the applicant can erect barriers to entry; and whether there is the potential for affiliate abuse and/or reciprocal dealing.

[1] 16 U.S.C. § 824e (2000).

3. The Commission's longstanding policy has been that entities that have received market-based rate authority submit a revised market analysis on a three-year basis (three-year market-based rate review) so that the Commission may assess whether current competitive conditions continue to reflect an applicant's lack of market power.[2]

Discussion

4. When MidAmerican received authorization in Docket No. ER96-719-000 to sell power at market-based rates the Commission did not, in the order granting MidAmerican market-based rate authority, direct MidAmerican to file three-year market-based rate reviews.[3] As noted above, it has been our general practice for many years to require market-based rate sellers to file an updated market-based rate review within three years of the date the order granting market-based rate authority was issued, and every three years thereafter. The Commission also reserves the right to require such an analysis at any time. Such filings provide the Commission with the ability to review the seller's competitive circumstances and assure that the originally-approved rates remain just and reasonable, consistent with our obligations under the Federal Power Act. It also has been our practice to require market-based rate sellers to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to: (a) ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (b) affiliation with any entity not disclosed in the applicant's filing and that owns generation or transmission facilities or inputs to electric power production, or that has a franchised service area. The Commission has allowed applicants to elect to report such changes in conjunction with their updated market-based rate reviews.

5. Accordingly, we will institute a section 206 proceeding in Docket No. EL04-106-000 to determine whether, absent the condition to submit market-based rate reviews every three years, rates charged by MidAmerican pursuant to its market-based rate authority remain just and reasonable, and whether MidAmerican continues to satisfy our four-part test. We direct MidAmerican, within 15 days from the date of issuance of this order, to explain why the Commission should not modify its market-based rate authority to include the requirement to submit a market-based rate review every three

---

[2] *See, e.g.*, Western Resources, Inc., *et al.*, 94 FERC ¶ 61,050 at 61,247 (2001); Entergy Services, Inc., 58 FERC ¶ 61,234 at 61,760 (1992); PSI Energy, Inc., 51 FERC ¶ 61,367 at 62,209 (1990).

[3] MidAmerican Energy Company, 74 FERC ¶ 61,211 (1996).

years and to require MidAmerican to file in Docket No. ER96-719 (the docket in which it originally received market-based rate authority) a market-based rate review.

6. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the initiation of the Commission's investigation in the Federal Register, and no later than five months subsequent to the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with our precedent,[4] we will establish a refund effective date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the investigation in Docket No. EL04-106-000 is published in the *Federal Register*.

The Commission orders:

(A) MidAmerican is hereby ordered, within 15 days of the date of this order, to explain why its market-based rate authority should not be modified to include the requirement to submit a market-based rate review every three years, and why MidAmerican should not be directed to file a market-based rate review, as discussed in the body of this order.

(B) MidAmerican is hereby ordered, within 60 days from the date on which notice of the initiation of investigation in Docket No. EL04-106-000 is published in the *Federal Register*, to file an updated market-based rate review.

(C) The Secretary shall promptly publish a notice of the Commission's initiation of the proceeding in Docket No. EL04-106-000 in the *Federal Register*.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[4] *See, e.g.*, Canal Electric Company, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).